



Fyber RTB Supplier General Terms and Conditions

1. Definitions

When used in this Agreement with capitalized initial letters, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Account” means an online, password-protected Customer account provided by Supplier allowing Customer to access and use the Services for marketing and selling the Inventory of the Target Sites, including the management of Ad Requests and Ad Bids.

“Account Data” means the Performance Data and the Ad Data as well as any other information Supplier may make available to Customer in the Customer’s Account during the Term.

“Ad” means any advertisement, including any video, graphics, text, hyperlink or other promotional content therein, provided by Advertiser to Supplier for placement in the Inventory of the Target Sites through the System.

“Ad Bid” or **“RTB Bid”** means a bid response received by Customer through the System from an Advertiser (including an Ad and a bid price) in response to an Ad Request of that Customer.

“Ad Impression” means a view of an Ad by a Visitor accessing the Inventory of a Target Site, whereby the viewed Ad is delivered to the Inventory through the System.

“Ad Request” means an electronic request sent by Customer for a specific Target Site through the System for the placement of an Ad in the Inventory of that Target Site.

“Ad Server” means the functionalities provided by Supplier that enable the self-serving by Customer of Ads from the System to Target Sites for display to Visitors based on criteria selected by Publishers and Advertisers.

“Advertiser” means third-party clients of Supplier that submit Ad Bids and Ads through the System, either directly or indirectly, including demand side platform partners (DSPPs), direct advertisers and their agencies (as applicable).

“Confidential Information” means any non-public information relating to or disclosed in the course of and/or in connection with the Agreement, which is or should reasonably be understood to be confidential. Among other things, and without limiting the generality of this definition, the terms of the Agreement are Confidential Information of each Party. Confidential Information does not include information that: (a) is or becomes part of the public domain through no fault of the receiving Party or any unlawful act committed by a Third Party; (b) was already in possession of the receiving Party without an obligation of confidentiality; (c) was independently developed by the receiving Party without accessing the Confidential Information and without violating this Agreement; or (d) was received from a Third Party that was under no obligation to keep such information confidential, as proved by the receiving Party in each case (a) to (d).

“Customer Revenue” means the Net Proceeds less the greater of (i) the Supplier Revenue Share or (ii) the Supplier Monthly Minimum Fee (if applicable).

“Effective Date” has the meaning set forth in the Supplier Agreement.

“Fyber RTB Tech Service” means (i) the service provided by Supplier through the System to Customer to enable the sale of Inventory on Target Sites to Advertisers; and (ii) Ad Server service (if applicable).

“Fraud” means (a) any action taken by Customer, Associated Publishers or any other Third Party, which is intended to inflate, either directly or indirectly, the fees (including the Customer Revenue) payable to Customer under the Agreement; and/or (b) the generation of Ad Impressions or other payable activities by a mechanism not approved or accepted by Supplier, including but not limited to (i) creating fake Ad Impressions or Ad clicks generated by a person, a robot, an automated program, or any equivalent or similar mechanism having an equivalent or similar effect; (ii)



operating or linking to a Target Site that displays no content for the sole purpose of generating Ad Impressions or clicks; (iii) implementing 1x1 pixels to deliver invisible advertisements; (iv) impersonating or misappropriating the identity of a Publisher and/or any other Third Party; (v) using unsolicited email (SPAM) to promote Inventory/Target Sites, (vi) applying automatic redirection of Visitors, blind text or misleading links, forced clicks, or any other method or automatic process that may generate a payable activity on the Target Site (such as Ad Impressions or clicks on Ads) without a conscious and intended action of a Visitor of that Target Site in relation to the Ad.

“Intellectual Property Rights” means any patent; copyright; neighboring right to copyright, including database right, right to trademarks, right to trade and business secrets, right to trade dresses, right to domain names, right to mask works, right to moral rights of authors of copyright protected works, right to publicity, right to 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 law, common law, or otherwise.

“Inventory” means the elements of any Target Site that Customer registers in the Customer’s Account and makes available via the System for the placement of Ads.

“Net Proceeds” means the gross revenues actually received by Supplier from Advertisers as consideration for the delivery of programmatic and RTB campaigns in the Inventory of the Target Sites through the System under this Agreement less any Taxes, fees and commissions charged by Advertisers, rebates and/or discounts granted to Advertisers, payment processing fees, credit card charges, and refunds, costs and fees related to the operation, maintenance, and security of the Fyber RTB Tech Service that are directly associated with providing the Services to Customer, including but not limited to costs and fees related to Third-Party ad serving and bidding, tracking, attribution and measurement, as well as risk fees, tracking discrepancy and fraud prevention and mitigation costs.

“Platform Data” means (i) information relating to the performance of programmatic and RTB campaigns served on the Inventory of the Target Sites as well as of self-serving Ad campaigns delivered through the Ad Server (if any), including the number of Ad Requests, Ad Bids, Ad Impressions and clicks on Ads (the **“Performance Data”**); (ii) data relating to the Publisher, the Target Sites and the Inventory (**“Publisher Data”**); (iii) data relating to Ad Bids, Ads and Advertisers, including bid price, types and categories of Ads (**“Ad Data”**); and (iv) data relating to the Visitors, their use of the Target Sites and their Ad-related behavior, including advertiser identifiers, IP addresses, session-based browsing behavior, http header information, Visitor’s device-related data, such as the type of the Visitor’s device, the operating system, the wireless carrier providing communication services to such device, and the geographical location of the device (**“Visitor Data”**) that is (in each case (i) to (iv)) either tracked by Supplier through the System or made available to Supplier by the Advertiser or Customer through the System in connection with the performance of the Agreement. Visitor Data may include Personal Data as defined in Appendix A.

“Prohibited Content” means any content or other material that (a) violates any applicable law or regulation, including the criminal code, data protection, consumer law and youth protection provisions, or infringes any Third-Party rights, including any Third Party Intellectual Property Rights; (b) is obscene, sexually explicit, defamatory or otherwise objectionable; (c) contains depictions of violence or is threatening or harassing; (d) contains viruses, spyware, adware, 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; (e) is false, misleading or deceptive; (f) includes references to gambling, alcohol, tobacco, drugs, or firearms, including without limitation ammunitions, fireworks and explosives; (g) endorses or encourages violence, hatred, revenge, racism, sexism, victimization, discrimination of any kind; (h) is suitable to cause serious moral harm to children and young people or threatens their well-being, (i) is directed to or likely results in consumer fraud, product liability, or breach of contract to which Customer is a party, or causes injury to any third party; or (j) promotes any products and services that fall within any of the foregoing categories (a) to (i).

“Publisher” means a party (a) who (i) owns or otherwise controls the Target Site, or (ii) is authorized by the owner or controller of the Target Site to sell or resell Inventory of the Target Site; and (b) who (in both cases (a)(i) and (a)(ii)) either (i) is a Party to the Agreement as a customer of Supplier for marketing and selling the Inventory of that Target Site for placement of Ads through the System, or (ii) is a Third Party who has authorized Customer to enable and execute the marketing and sale of Inventory of that Target Site for placement of Ads through the System under the Agreement (**“Associated Publisher”**).

“Services” means Fyber RTB Tech Service, consulting services, support services and other related services Supplier agrees to provide to Customer as stipulated in the Supplier Agreement.

“**Supplier Monthly Minimum Fee**” means the predetermined, fixed amount charged by Supplier in a given calendar month in lieu of the Supplier Revenue Share if, and in the amount, agreed between Supplier and Customer in the Supplier Agreement.

“**Supplier Property**” has the meaning set forth in Section 6 hereof.

“**Supplier Revenue Share**” means Supplier’s revenue share in a given calendar month that is a percentage of the Net Proceeds as agreed between Customer and Supplier in the Supplier Agreement.

“**System**” means Supplier’s proprietary supply side platform, including the RTB platform and the Ad Server technology owned, licensed or otherwise controlled by Supplier that is made available to Customer in connection with providing the Services.

“**Tag**” means, collectively, Supplier’s web beacons and/or any programming code or HTML code as integrated in the Target Site that request the delivery of an Ad (including, without limitation, a default Ad) to the Target Site.

“**Target Site**” means a website or an application, including a mobile application, the Inventory or parts of the Inventory which are (i) owned, otherwise controlled or managed by Customer or by an Associated Publisher who has authorized Customer to enable and execute the marketing and sale of Inventory on that Target Site for placement of Ads through the System under the Agreement, and (ii) registered by Customer in its Account for placement of Ads through the Fyber RTB Tech Service.

“**Tax**” means all taxes, customs, and charges accessory to taxes within the meaning of Sec. 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**” has the meaning set forth in Section 8(a) hereof.

“**Third Party**” means any natural person or legal entity other than a Party or authorized agent of a Party.

“**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 Customer it being understood that the terms in the VAT-related queries shall be construed in accordance with the EU VAT Directive, the EU VAT Regulation, and applicable VAT laws in Germany.

“**Visitor**” means an end-user accessing a Target Site.

“**Website**” the website located at www.fyber.com, including all content published thereunder.

2. General

Supplier will provide to Customer the Services over the System, as they are described in the applicable Supplier Agreement.

In the event of a conflict between a provision of these Supplier General Terms and Conditions and a provision of the Supplier Agreement, the provision of the Supplier Agreement shall prevail.

3. Sign-up Process

(a) Customer shall establish an Account by completing the registration process on the Website and provide Supplier with accurate and complete information, including accurate and complete information on the Target Sites, the Inventory, and accurate and complete VAT Information.

(b) Customer is solely responsible for activating or deactivating filters and other options and for applying various blacklisting and tagging features available on the dashboard in its Account.

(c) **CUSTOMER 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.** Customer will similarly keep all other Account information up-to-date and shall promptly notify Supplier of any changes of its Account information by email. Account access is provided on a password-protected basis.

(d) Customer 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 Supplier's prior written (email suffices) approval.

(e) Customer 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 Customer, the use by that Third Party shall be deemed as being performed by Customer.

(f) The Customer must inform Supplier immediately upon becoming aware of the fact that an unauthorized Third Party has gained access data or that an unauthorized Third Party uses Customer's equipment, property, and/or system.

(g) In case of a justifiable suspicion that access data are known to an unauthorized Third Party or that Customer's equipment, property and/or systems are or were used by an unauthorized Third Party, then, for security reasons, Supplier 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, Supplier will inform the Customer without undue delay and provide the new access data upon request within a reasonable time. Customer has no claim that the original access data must be restored.

(h) Customer 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 marketing of its Inventory on the applicable third-party platforms.

4. Payment; Tax

(a) Payment Terms. The payment terms and any fees in respect of the Services are set forth in the Supplier Agreement and in this Section 4(a).

(i) Calculation of Customer Revenue. The Customer Revenue shall be calculated solely based on Supplier's tracking and reporting regarding Ad impressions and other payable activities under the Agreement (if applicable). Customer shall duly examine the report when provided by Supplier and shall notify Supplier, in writing (email suffices) and without undue delay, of any inaccuracy of the report that could be reasonably identified during such examination, however, no later than fourteen (14) days upon receipt of the applicable report. If Customer fails to notify Supplier of any such identifiable inaccuracy within such time period, the report shall be deemed correct with regard to such identifiable inaccuracy. Customer further agrees and acknowledges that the tracking and reporting made by Supplier with respect to the Customer Revenue is final if the difference between the evidence provided by Customer and the relevant Supplier reporting for a given calendar month is less than ten percent (10%), which is considered a deviation in tracking customary in the trade and therefore reasonably acceptable by both Parties. If Customer can prove that the deviation is 10% or more, the Parties will negotiate in good faith to find an amicable solution.

(ii) Billing. The Customer Revenue will be settled by self-billing: Supplier will issue credit notes (i.e., self-billed invoices - *Gutschriften*), and Customer must not issue any invoices (*Rechnungen*). Credit notes to Customers are exclusively sent by email. Customer explicitly waives any requirement or request to receive the credit notes by ordinary mail. At the beginning of each calendar month, Supplier will provide to Customer a monthly credit note summarizing the previous calendar month's payable activities as basis for the calculation of Customer Revenue. Supplier hereby declares and Customer hereby accepts that the monthly credit note provided to Customer is preliminary only, and the credit note and payment of the so credited Customer Revenue to Customer are subject to later correction should Supplier not receive the applicable and credited proceeds from the respective Advertisers. The Customer agrees that it will not object to Supplier's credit notes if the content of such credit notes is correct. The Customer shall immediately after receipt of any credit note check its accuracy. In case of any inaccuracy (including, where applicable, any non-compliance with the requirements of Sec. 14, 14a of the German VAT Act), Customer shall notify Supplier in writing (email suffices) on such inaccuracy no later than fourteen (14) days upon receipt of the credit note, and Supplier will then issue a corrected credit note. In case the Customer does not object to the credit note within such time period, then the credit note shall be deemed approved and accepted by Customer.

(iii) VAT. Any legally owed German VAT for Services supplied by Customer in Germany shall be added to the Customer Revenue in the respective statutory amount and be paid to Customer, provided that (i) Customer is the tax debtor of such legally owed VAT, (ii) Customer has not objected to the respective credit note, and (iii) the

respective credit note corresponds to the requirements of Sec. 14, 14a of the German VAT Act. If any Services supplied by Supplier to Customer are subject to VAT under the applicable VAT jurisdiction and Supplier is the tax debtor of such VAT and, as the case may be, of any related charges accessory to Taxes, Customer shall pay these Taxes in the respective statutory amounts to Supplier.

(iv) **Fraud.** Notwithstanding anything to the contrary stated anywhere else in this Agreement, Supplier reserves the right, where it has reason to believe in good faith that Fraud actually took place, to withhold or suspend payment of associated revenues, unless and until Customer provides evidence satisfactorily establishing the validity of the Ad Impressions or other payable Visitors' activities (if applicable). The remedy set forth herein is cumulative and in no way limits or waives any other remedies available to Supplier.

(v) The Customer shall ensure that the Fyber ads.txt identifier, as provided to Customer by Supplier, is included in the respective ads.txt of the Publisher Inventory, insofar as such a mechanism for the public declaration of its authorized advertising systems and identifiers within these systems is implemented in accordance with the IAB Tech Lab OpenRTB Ads.txt Public Spec. Supplier shall in no event be obligated to pay to Customer any proceeds under this Agreement, if Customer fails to fully comply with the obligation set forth herein.

(b) Taxes. SUBJECT TO SECTIONS 4(a)(iii) AND 11(f), CUSTOMER WILL BE SOLELY RESPONSIBLE FOR THE PAYMENT OF, AND WILL HOLD HARMLESS AND INDEMNIFY SUPPLIER AGAINST, ALL TAXES APPLYING UNDER ANY LAW IN CONNECTION WITH THE SERVICES SUPPLIED BY CUSTOMER TO SUPPLIER OR BY SUPPLIER TO CUSTOMER UNDER THIS AGREEMENT, EXCLUDING, HOWEVER, (I) ANY VAT THAT IS ISSUED ON COMMISSION IN CASE THE TAX DEBTOR IS SUPPLIER, AND (II) ANY TAXES OF WHICH THE BASIS IS SUPPLIER'S NET INCOME.

5. Customer's Obligations and Warranties

(a) **Restrictions on Use of Ads and Supplier Property.** Customer 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 Inventory of the Target Sites; (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 (except as set forth in Section 6 hereof) without prior written (email suffices) approval of Supplier; (vii) modify, translate, reverse engineer, decompile, disassemble or otherwise attempt to derive any source material from the Supplier Property, or create derivative works from the Supplier Property (information pursuant to Sec. 69e of the German Copyright Act (*Urhebergesetz – UrhG*), which is required to achieve interoperability with other computer programs created independently as necessary for the use of the Services under the Agreement, and which will be provided by Supplier upon Customer's request as part of the Services); (viii) disclose, lend, rent, sell, or otherwise distribute or make available or grant use of the Supplier Property, or use the Supplier Property for providing services to any Third Party (other than its Associated Publishers, if applicable), 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 Supplier Property; (x) circumvent, disable, or otherwise interfere with security-related features of the Ads or the Services; (xi) introduce any software virus, bug or malware into the Services; (xii) alter, modify, eliminate, conceal, or otherwise render inoperable or ineffective source codes, links, pixels, modules or other data provided by or obtained from Supplier that allows Supplier to track and measure Ad performance or (xiii) otherwise damage, tamper with or misappropriate any aspect of the Services.

(b) Customer represents and warrants that it will not issue Ad Requests for, or place Ads in, any Inventory containing Prohibited Content or violating Supplier's Content Guidelines and Best Practice Policy published on the Website, as amended by Supplier from time to time (Supplier will notify Customer in advance of any such amendments).

(c) If Customer becomes aware of any actual or threatened activity described in Sections 5(a) or (b) hereof in connection with its Account or its use of the Services, Customer shall immediately take all reasonable measures necessary to stop or to mitigate, to the maximum extent possible under the circumstances, the effects of such activity or threatened activity, including but not limited to

- (i) preventing any use and disclosure of unlawfully obtained material or information;
- (ii) destroying any copies of unlawfully obtained material or information; and
- (iii) immediately notifying Supplier by email or telephone of any such event.

(d) Customer represents and warrants that it has obtained all necessary rights, licenses, consents, waivers and permissions from Associated Publishers (if applicable) and Visitors (i) required for Supplier to provide the Services with regard to the Target Sites under the Agreement, including the delivery of Ads to and the provision and use of Tags on the Target Sites; and (ii) required for Supplier to receive, collect, process and transfer data and information (including Publisher Data and Visitor Data) provided by Customer to Supplier, or collected by Supplier on the Target Sites in accordance with the Agreement; and (iii) that such receipt, collection, processing and transfer of data and information by Supplier in accordance with the Agreement does not result in a breach of applicable data protection law or regulations, or in an infringement of Third Party Intellectual Property Rights.

(e) Customer represents and warrants that (i) Customer and its Associated Publishers (if applicable) will not induce Visitors to view or respond to Ads based on incentives without express written authorization from Supplier in each case; (ii) none of the Target Sites are installed on a Visitor's device without the Visitor's consent; and (iii) each Target Site provides clear disclosure and removal policies.

6. Proprietary Rights; Licenses

(a) Subject to the rights granted in Section 6(b) hereof, nothing contained in this Section 6 shall transfer any right, title, or interest in or to the System, the Tags provided to Customer, the Ads, the Services, the Website (in each case including, but not limited to all software, concepts, methodologies, techniques, models, templates, algorithms, trade secrets, processes, information, materials, source codes and know-how contained therein, all modifications, updates and enhancements thereof, and all documentation and manuals related thereto and all other aspects of such technology), any trademarks and logos made available to Customer through the Services or otherwise, the Platform Data (except for the Publisher Data and for the Visitor Data provided by Customer to Supplier), Account Data and any Intellectual Property Rights in and to any of the foregoing owned by Supplier and/or licensed by Supplier from Third Parties, including any Advertisers, (collectively, "**Supplier Property**"), which are all retained by Supplier and its suppliers (as applicable).

(b) Subject to the terms and conditions of this Agreement and for the duration of the Term, Supplier hereby grants Customer a limited, non-exclusive, royalty-free, non-transferable, non-sub-licensable, revocable license to use the Supplier Property (i) to facilitate the marketing and sale of Inventory of the Target Sites through the System (including to make Ad Requests, receive, evaluate and select Ad Bids) and to place and display Ads on the Inventory of the Target Sites in an unmodified form, subject to the territorial (if any) and other restrictions set out for the respective Ad (e.g., display of the Ad only to Visitors domiciled in a specific country, or not to minors under a certain age); (ii) integrate and use the Tags on the Target Sites solely to exchange data between the Target Site and the System (e.g. to submit Ad Requests); (iii) to access and use the Ad Server for self-serving of advertisements (if applicable); and (iv) access and use the Account Data for the sole purpose of Customer's internal business operations (if Customer is a Publisher) in connection with the Services and in accordance with applicable laws and regulations. If Customer collaborates with Associated Publishers that own and/or operate the Target Sites, Customer shall have the right to grant each of its Associated Publishers a sublicense to use Account Data concerning its respective Target Sites within the scope and subject to the terms set forth in the foregoing sentence of this Section 6(b). For this purpose, Customer shall have the right to make Account Data concerning a specific Target Site available to the Associated Publisher of that Target Site.

(c) Subject to the terms and conditions of this Agreement and for the duration of the Term, Customer grants to Supplier the non-exclusive, royalty-free, and worldwide right and license to (i) submit to Advertisers Customer's Ad Requests and relevant Publisher Data and Visitor Data (as received from Customer); and (ii) to access the Inventory, including any password-protected area thereof, for the purpose of serving Ads and collecting Platform Data. Customer grants Supplier a non-exclusive, royalty-free, worldwide, transferable, sub-licensable, and perpetual right to collect, analyze, combine with any other data of Supplier or any Third Party (including Advertisers and other Publishers), and otherwise use any Publisher Data and any Visitor Data (as received from Customer) to provide the Services; to generally enhance, improve, and optimize the Services for all customers; for statistical purposes; for market research and benchmarking of Supplier, including the right to provide and sublicense (i) any such Publisher Data and Visitor Data to Advertisers for their advertising purposes, and (ii) anonymous, aggregated Publisher Data and Visitor Data in form of statistics about the Services to customers, potential customers and the general public. Supplier will process Personal Data in accordance with the Data Processing Addendum attached hereto as **Appendix A**.

(d) Subject to the rights granted under Section 6(c) hereof, nothing contained in this Section 6 shall transfer any right, title, or interest in or to the Target Sites, the Inventory, the Publisher Data or the Visitor Data (provided by Customer to Supplier), which are all retained by Customer and its Associated Publishers (as applicable).

7. Confidentiality; Privacy

(a) Confidentiality.

(i) Confidentiality. Neither Party shall disclose Confidential Information, including but not limited to the terms or conditions of the Agreement, to any Third Party, except as permitted by the Agreement. Notwithstanding anything to the contrary stated in the Agreement, Supplier may communicate the general nature of the Agreement and identify or announce Customer as participating in the Services to Third Parties, including in communications to existing and potential customers and for promotional and press materials.

(ii) Handling Confidential Information. The receiving Party of any Confidential Information from the disclosing Party will use the same degree of care to protect the disclosing Party's Confidential Information as it uses for its own information of similar nature, but in no event less than reasonable care, and will use such Confidential Information only for the purpose of exercising its rights or fulfilling its obligations under this Agreement. The receiving Party will promptly return or destroy the disclosing Party's Confidential Information upon request of the disclosing Party or upon termination of this Agreement (whichever occurs earlier), provided that the receiving Party shall have the right to retain a copy of the Confidential Information if and to the extent required (i) by applicable mandatory law for the required record retention period, or (ii) for the enforcement of any claims against the other Party that may arise under this Agreement until such claims become time-barred. In this event, the receiving Party shall return, destroy, or delete (as applicable) such copy upon the expiration of the applicable record retention or limitation period. Except as otherwise provided for in the Agreement, the receiving Party shall not disclose any Confidential Information to any person or entity other than to its employees, 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.

(iii) Notwithstanding the obligations set forth in Section 7(a)(i) the confidentiality obligations of the Parties shall not extend to information that is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority order, whereupon the receiving Party shall (where reasonably practicable and without breaching statutory or regulatory requirements) provide prompt written notice to the disclosing Party prior to such disclosure, so that the disclosing Party may seek a protective order or other appropriate remedy.

(iv) Injunctive Relief. The Parties acknowledge that any breach of a Party's obligations arising under this Section 7(a) may give rise to irreparable harm to the other Party and that such breach may be inadequately compensable in monetary compensation. Accordingly, either Party may seek and obtain injunctive relief or other equitable remedies against such breach or threatened breach, in addition to any other legal remedies that may be available. The Parties acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests of the owners of the Confidential Information and are reasonable in scope and content.

(b) COPPA; Protection of Minors.

(i) To the extent Customer makes Inventory 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 that Inventory or any content relating thereto is made available to these children, this Section 7(b) shall apply. Customer represents and warrants that (i) Customer will comply with all applicable laws and regulations related to the Children's Online Privacy Protection Act and its rules, as amended from time to time (collectively, "COPPA") and with all laws, regulations, co-regulations, 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 Target Sites are not directed at children under the age of thirteen, and Customer does not have actual knowledge that the Target Sites collect personal information from children under the age of thirteen or under any other age applicable in the relevant country; and (iii) Customer shall not collect or pass to Supplier any personal information for any purpose not permitted under COPPA or under the laws applicable to minors in any such other relevant country.

(ii) Customer may access a designated area in its Account allowing it to flag its Inventory as directed at children under the age of thirteen. In case Customer does not flag its Inventory accordingly, Supplier may rely on Customer's representation and reasonably assume that the Inventory is not directed at children under the age of thirteen so that Ads delivered to such Inventory do not need to comply with any COPPA requirements.

(c) Privacy.

(i) 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 Visitor Data or otherwise relating to privacy rights; (b) any written agreements with non-governmental certification bodies that do not conflict with the Agreement, 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 (e.g., opt-out) procedures that may be required under applicable laws in light of the activities contemplated by the Agreement. Where any content (including any Inventory 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 during its Term.

(ii) Customer further represents and warrants that, in addition to the foregoing provisions, Customer and the respective Associated Publisher (if applicable) adhere to a privacy policy at any time that (i) is included in each Target Site and on any site from which the Target Site is available for download; (ii) complies with all applicable laws and regulations; (iii) fully and completely discloses to Visitors of the Target Site the practices of Customer, the Associated Publisher (if applicable), Supplier, Advertisers, or other Third Parties with respect to the collection, use, and transfer of Visitor 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 Inventory; (iv) discloses that Publisher allows third parties, such as Supplier and Advertisers, to target Visitors and to serve Ads in the Inventory; (v) obtains consent of the Visitors for the collection, use and transfer of Visitor Data on the Inventory by Customer, the Associated Publisher (if applicable), Supplier, or Advertisers if and in the form required by applicable law; and (vi) include a conspicuous link to or description of the mechanism by which Visitor may opt out of, or withdraw granted consent for (as the case may be), the collection, use, and transfer of his or her Visitor Data for online behavioral advertising purposes.

8. Term and Termination

(a) Term. This Agreement shall become effective as of the Effective Date and, unless terminated earlier as set forth in Section 8(b) hereof, shall continue in full force and effect for an initial term of twenty-four (24) months from the Effective Date, if not otherwise expressly agreed in the Supplier Agreement (the “**Initial Term**”). Unless terminated earlier as set forth in Section 8(b) hereof, the Agreement shall automatically renew for additional time periods of twelve months each, if not otherwise expressly agreed in the Supplier Agreement (each a “**Renewal Term**,” the Initial term and any Renewal Terms jointly the “**Term**”).

(b) Termination. The Agreement may be terminated as follows:

(i) By either Party without cause upon at least two (2) months’ prior written notice to the other Party with effect as of the end of the Initial Term, or the then current Renewal Term;

(ii) By either Party for any material breach of this Agreement by the other Party with immediate effect (i) upon written notice to the other Party, or (ii) in the case of a remediable breach of the Agreement, if the breaching Party fails to remedy such breach within thirty (30) days of receipt by the breaching Party of a written notice from the terminating Party specifying the breach and requiring its remedy;

(iii) By either Party with immediate effect upon written notice to the other Party if the other Party suffers from a significant deterioration of its financial situation;

(iv) By Supplier with immediate effect upon written notice to Customer if Supplier has a justified suspicion that Customer’s activities (either pre-bid with regard to the Ad Requests submitted or post-bid with regard to the delivered Ad Impressions) under the Agreement are subject to a significant level of Fraud; or

(v) By either Party on other important grounds with immediate effect upon written notice to the other Party.

(c) Effect of Termination. Termination under this Section 8 is without prejudice to any other rights or remedies a Party may have against the other Party. Upon termination of the Agreement, whether with or without cause, all rights and licenses granted to Customer shall immediately terminate. Customer shall discontinue any use of the Services, deactivate and delete the Tags on the Target Sites, and shall have no right, interest, or title in or to any Account Data (other than Publisher Data and Visitor Data provided by Customer), which shall, as between Customer and Supplier, be the exclusive property of Supplier. For clarity, Customer may continue to use Account Data to the extent required for settling any open amounts payable by or to Supplier. Customer shall pay without delay any and all due and payable charges or fees incurred as a result of Services performed prior to the effective date of termination. Termination of the Agreement will not release the Parties of any obligation accruing prior to such expiration or termination.

(d) Surviving Provisions. Sections 3, 4, 5, 6, 7, 8(c) and (d), 9, 10, and 11(f) of these Supplier General Terms and Conditions shall survive termination or expiration of the Agreement together with any other Section of the Agreement that is expressly or impliedly intended to survive.

(e) ANY TAX-RELATED CLAIMS PURSUANT TO SECTIONS 4(a)(ii), 4(a)(iii), 4(b), AND 11(f) 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.

9. Indemnification

(a) By Customer. Customer shall indemnify, defend and hold harmless Supplier, and its directors, officers and employees, including their successors, heirs, and assigns (the “**Supplier Parties**”) against any liability, damage, loss including any disallowance of input VAT deductions or expense (including reasonable attorneys’ fees and costs) incurred by the Supplier Parties in connection with any third-party claim arising out of or relating to (i) any alleged or actual breach of its representations, warranties or covenants under this Agreement; (ii) Customer’s unauthorized use of the Services (not including claims for which Supplier is indemnifying Customer); (iii) the Target Sites containing any Prohibited Content; or (iv) a Target Site or users’ downloads, installations or uses thereof violating any law or infringing upon or misappropriating any Intellectual Property Right.

(b) By Supplier. Supplier shall indemnify, defend and hold harmless Customer and its directors, officers, employees and agents, including their successors, heirs and assigns (the “**Customer Parties**”) against any liability, damage, loss or expense (including reasonable attorneys’ fees and costs) incurred by the Customer Parties in connection with any Third-Party claim that the Services, in the form provided by Supplier, infringe on any Intellectual Property Right of a Third Party, unless such infringement arises from Customer’s use of the Services in violation of this Agreement. In the event of any such threatened or actual claim under this provision, Supplier shall have the right to either (a) take legitimate measures to remove or satisfy the Third Party claim; (b) replace or modify the infringing or allegedly infringing components of the Services in such a manner, that they no longer infringe the Intellectual Property Rights of the Third Party, provided and to the extent that this does not substantially impair the agreed functionality of the Services; or (c) immediately terminate the Agreement upon written notice to Customer.

(c) 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 obtaining 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. Modifications; Disclaimers; Limitation of Liability

(a) Modifications; Quality; Availability of Services.

(i) The Services, by their nature, need to be updated and developed continuously over time. Supplier 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 Customer taking into account its interests. A modification is, in particular, reasonable for the Customer if it is necessary to adapt the Services to changed circumstances with regard to technological developments, market requirements, and any changes of applicable law, and in case of any new features, functions, or services added to the Services. Therefore, the Customer 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 Customer, Customer has the right to terminate the Agreement effective immediately upon notice. Customer shall have no other claims against Supplier due to changes in and to the Services under this Section 10(a).

(ii) Supplier provides the Services in accordance with the state of the art and the care of a prudent business person.

(iii) Customer acknowledges that the Services may be subject to technical limitations. This applies specifically to the maximum memory capacity or maximum size of data. Supplier is entitled to delete data and/or refuse storage of data if the technical limits are exceeded. Supplier will notify the Customer prior to deleting the data to the extent such actions affect the Customer.

(iv) Customer should adequately document and report in writing to Supplier any incident identified in use of the Services. Prior to reporting any incident, Customer should consult the Services instructions and possibly any other support for troubleshooting provided by Supplier (particularly lists with frequently asked questions,

discussion forums about problems, or the like). Customer will provide all necessary cooperation and assist Supplier in its efforts to resolve any incident with the Services.

(v) If Supplier cannot supply the Services to Customer for reasons beyond the control of Supplier (“**Non-availability of Service**”), Supplier will inform Customer without undue delay, at the same time indicating – if possible – when Supplier will be able to continue the supply of the Services. If the Non-availability of Service has continued for four weeks, Supplier may terminate the Agreement upon written notice to Customer with immediate effect. It is also deemed a case of Non-availability of Service within the meaning of the above sentence in case the timely provision of the Services is prevented through force majeure, i.e., events which cannot be reasonably foreseen and averted by Supplier 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 the functioning of which Supplier is not responsible and failure of communications networks or systems of a third party for which Supplier is not responsible (this also applies when such a case of force majeure occurs at one of Supplier’s subcontractors or suppliers). The statutory rights of termination of each Party in the case of such a Non-availability of Service remain unaffected.

(b) Limitation of Liability.

(i) Subject to subsections (ii) and (iv) of this Section 10(b), Supplier shall be liable pursuant to statutory law for damages and futile expenses (jointly the “**Damages**”) caused to Customer.

(ii) Supplier’s liability for Damages of Customer (irrespective of the legal nature of the claim, whether under contract, tort, or otherwise)

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

(iii) A material contractual obligation of Supplier according to the meaning of the foregoing subsection (ii) 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 Customer regularly relies and may rely.

(iv) TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS APPLYING IN THE COUNTRY WHERE THE CUSTOMER HAS ITS SEAT, EXCEPT FOR DAMAGES CAUSED BY WILLFUL INTENT OR GROSS NEGLIGENCE OF SUPPLIER, (i) SUPPLIER 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 SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (ii) THE TOTAL LIABILITY OF SUPPLIER FOR ALL DAMAGES CAUSED BY A DAMAGING EVENT OR SERIES OF CONNECTED DAMAGING EVENTS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO (i) THE AGGREGATE CUSTOMER REVENUES PAYABLE TO CUSTOMER FOR THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE DAMAGING EVENT OR THE FIRST DAMAGING EVENT IN CASE OF A SERIES OF CONNECTED DAMAGING EVENTS OCCURRED; OR (ii) SIX TIMES THE MONTHLY AVERAGE OF THE CUSTOMER REVENUES PAYABLE TO CUSTOMER SINCE THE EFFECTIVE DATE OF THE AGREEMENT IF THE DAMAGING EVENT OR THE FIRST DAMAGING EVENT IN CASE OF A SERIES OF CONNECTED DAMAGING EVENTS OCCURRED IN THE FIRST SIX MONTHS DURING THE INITIAL TERM OF THE AGREEMENT.

(v) Notwithstanding subsections (ii) and (iv) of this Section 10(b), nothing said in the Agreement shall limit Supplier’s liability for Damages arising from death or personal injury, from breach of a contractual guarantee as to the quality of goods or services 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 Sec. 1 German Product Liability Act).

(vi) The above-mentioned limitations to liability also apply to the liability of employees, executive officers, legal representatives and vicarious agents of Supplier.

11. Special Provisions for Ad Server Services

(a) Supplier may provide Customer with the Ad Server as agreed between the Parties from time to time. In this case, Supplier shall provide Customer with access to a separate account (“**Ad Server Account**”) that facilitates Customer’s administration and self-serving (i) within a given Target Site (such as a mobile application or a website), of advertisements for another Target Site (“**Cross-Promotion**”), and (ii) within a given Target Site, of advertisements received from independent, Third Party demand sources (“**Direct-Sold**”).

(b) The Supplier Ad Server is a publisher tool enabling publisher integration of various sources of demand. The tool enables Customers to integrate demand sources additional to Supplier and set up Direct-Sold and Cross-Promotion campaigns without needing to integrate additional software element. Customer acknowledges and agrees that Customer shall not use the Ad Server for serving advertisements from Third-Party demand sources that are Supplier’s direct partner unless explicitly approved by Supplier in writing (email suffices).

(c) Supplier is not a party to advertising contracts and other legal relationships between Customer and Direct-Sold independent demand sources. Supplier does not assume any responsibility and is not subject to any liability regarding Customer’s relationships with independent demand sources; and Supplier does not assume any responsibility and is not subject to any liability with regard to advertising agreements to which Supplier is not a party.

(d) Customer 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(d), Customer represents and warrants that:

(i) It shall not use the Ad Server to serve any advertisement that contains any Prohibited Content.

(ii) In case an advertisement contains Prohibited Content in certain countries or regions of the world only (“**Restricted Countries**”), Customer shall apply the Ad Server Account features to block, de-select, or otherwise exclude Restricted Countries for advertisements in which they are unlawful.

(e) Payment.

(i) Customer will be charged a fee for the use of the Ad Server in accordance with Schedule A of the Supplier Agreement. The applicable fees are due and payable within 30 days after submission of the respective bill by Supplier.

(ii) The billing period for the calculation of Ad Server fees is the calendar month unless otherwise agreed between the Parties. Customer shall bear the costs of the wireless transfer of the Ad Server fees to Supplier’s bank account with a bank in the European Economic Area (EEA) set out in the applicable invoice. Supplier 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 Supplier issues for the subsequent billing period.

(iii) Customer hereby authorizes Supplier to deduct Ad Server fees from Customer payments owed to Customer under the Agreement for the same billing period. Upon Supplier’s request, Customer shall sign a netting agreement with Supplier for additional confirmation of Supplier’s entitlement to set-off or transfer funds owed to Customer as Customer Revenue to cover Ad Server Services charges.

(iv) The Supplier’s tracking and reporting shall be decisive for tracking billable activities over the Ad Server Account as set out in Section 4(a)(i) above.

(v) Supplier will not bill Customer for Cross-Promotion campaigns (i.e., serving advertisement for one Target Site on another Target Site where both are owned by the same Publisher).

(f) Taxes.

(i) 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 Server fees and, if Supplier is the tax debtor of such VAT amounts, paid together with the agreed Ad Server fees by Customer to Supplier.

(ii) IF CUSTOMER IS REQUIRED BY ANY LAW OR REGULATION TO MAKE ANY WITHHOLDING OR DEDUCTION FROM PAYMENTS OF AD SERVER FEES TO SUPPLIER ON THE ACCOUNT OF TAXES, THE CUSTOMER SHALL, TOGETHER WITH THE RELEVANT PAYMENT, PAY SUCH ADDITIONAL AMOUNT AS WILL ENSURE THAT SUPPLIER RECEIVES AN AMOUNT EQUAL TO THE SUM IT WOULD HAVE RECEIVED IF NO SUCH WITHHOLDING OR DEDUCTION HAD BEEN REQUIRED. IN SUCH CASE, UPON CUSTOMER’S REQUEST, SUPPLIER SHALL PROVIDE CUSTOMER 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 CUSTOMER ON THE ACCOUNT OF TAXES UNDER THE APPLICABLE TAX JURISDICTION.

12. General Provisions

(a) **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 Customer, with or without Supplier's consent, will relieve Customer 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; Supplier may also assign the Agreement to a company affiliated with Supplier within the meaning of Sec. 15 German Stock Corporation Act (*Aktiengesetz - AktG*). 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.

(b) **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 Supplier's representative managing directors, authorized signatories, and other persons authorized to represent Supplier, who are named as Supplier's authorized representatives with respect to the corresponding business relationship with Customer, Supplier's employees are not authorized to enter into verbal or other agreements with Customer or make verbal or other commitments which deviate from Supplier'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 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, with a valid and enforceable provision that the Parties would have agreed on in good faith, taking into consideration the purpose of the Agreement, had they been aware of the invalid or unenforceable provision or the omission when entering into the Agreement.

(c) **Applicable Law and Jurisdiction.** **Except for the limitations of liability set out in Section 10(b)(iv), which shall be exclusively governed by the laws applying in the country where Customer 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 laws 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. Customer and Supplier 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.

(d) **Independent Contractor.** The relationship of the Parties is that of independent contracting entities and nothing in the Agreement is intended or shall be construed to create an employer/employee relationship, a principal/agent relationship or a partnership or joint venture relationship, or to allow either Party 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.

(e) **Third-Party Beneficiaries.** It is not the intention of this Agreement to create any third-party beneficiary rights in any third-party individual or entity that is not a Party to this Agreement.

(f) **Modifications to Supplier General Terms and Conditions.**

(i) Supplier reserves the right to change or amend these Supplier General Terms and Conditions at any time effective prospectively. Any change will be announced to Customer in a suitable manner (including but not limited to email to the email address of Customer set out in the Supplier Agreement or by display of the notice in the Account) at least two (2) weeks prior to its effective date.

(ii) Customer has the right to object to any change or amendment of the Supplier General Terms and Conditions within two (2) weeks after the date of the notification of the Supplier General Terms and Conditions. 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 Customer does not object within the objection period, then the change or amendment shall be deemed accepted by Customer and become an integral element of the Agreement.

(iii) In its notification, Supplier will inform Customer of Customer'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.

(g) **No Waiver.** No failure or delay of either Party hereto in exercising any right, power, or privilege hereunder (and



no course of dealing between the Parties) shall operate as a waiver of any such right, power or privilege. No such waiver in case of any default on any one occasion shall constitute a waiver of any subsequent default. No single or partial exercise of any such right, power, or privilege shall preclude the further or full exercise thereof.

(h) Notices. 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 Supplier Agreement, or such different address as a Party may designate in writing vis-à-vis the other Party during the Term; such notices must be signed by the respective Party. 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".

(i) Non-Exclusivity. Nothing in this Agreement shall be read to prevent Supplier from entering into similar arrangements with other entities, provided, however, this is done without breach of Customer's Confidential Information or any exclusivity afforded to Customer in any Supplier Agreement.

(j) Customer Identification. Customer agrees that Supplier may use the name, identify and logo of Customer in advertising, publicity, or similar materials distributed to prospective customers.

(k) Section Headings. Section headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

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Appendix A

Data Processing Addendum

This Data Processing Addendum (“**DPA**”) supplements and forms part of any existing and currently valid agreement (“**Agreement**”), either previously or concurrently made between Fyber GmbH or Fyber RTB GmbH or any of the foregoing affiliates (“**Fyber**”, “**we**” or “**us**”) and you regarding the processing of Personal Data, as defined hereunder, as part of the service(s) provided by Fyber to you under the Agreement (“**Service(s)**”). In any conflict between this DPA and the Agreement, the terms of this DPA shall prevail.

Any capitalized terms not defined herein will have the meaning as set forth in the Agreement.

1. Definitions. Unless when otherwise stated in this DPA, the following words and expressions shall have the following meaning:

- 1.1 “**Data Subject**” shall mean the identified or identifiable natural person whose personal data are the subject of the Processing under this DPA. The categories of Data Subjects whose Personal Data are subject to Processing under this DPA are listed in this DPA.
- 1.2 “**Law**” shall mean applicable data protection and privacy laws, rules and regulations, including without limitation the EU Regulation 2916/679 (“**General Data Protection Regulation**”);
- 1.3 “**Personal Data**” shall mean any information relating to an identified or identifiable natural person as defined in Art 4 Nr.1 of the General Data Protection Regulation. The categories of Personal Data subject to Processing under this Agreement are listed in this DPA.
- 1.4 “**Processing**” shall mean any operation or set of operations which is or are performed on Personal Data, whether by automated means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, duplication, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- 1.5 “**Purposes**” shall mean the limited, specific and legitimate purposes of the Processing, as described in this DPA and/or the Agreement.

2. Data Processing.

- 2.1 Within the scope of the Service(s), you hereby engage Fyber to collect, process and/or use Personal Data on your behalf. In respect of any Personal Data supplied by you to Fyber in relation with your use of the Service(s) and to the extent that EU data protection laws apply to the processing of the Personal Data, you are considered as the Data Controller and Fyber is considered the Data Processor. You acknowledge and agree that you have the sole responsibility on the lawfulness of the Processing and warrant to Fyber that you are legally allowed to engage Fyber for processing the Personal Data on your behalf and have provided all necessary notices and obtained all required consents from the Data Subjects for the Processing described in this DPA.
- 2.2 Neither party shall do, nor cause or permit to be done, anything which may knowingly or intentionally result in a breach of the applicable Law.
- 2.3 Fyber will only Process Personal Data on your behalf of and in accordance with your instructions. You instruct Fyber to Process Personal Data for the following purposes: (i) Processing in accordance with this DPA, the Agreement and pursuant to the features and limitations of the applicable Service(s) which Fyber provides you under the terms of the Agreement; and (ii) Processing to comply with other reasonable instructions provided by you, where such instructions are consistent with the terms of the Agreement. Fyber will be under no obligation to comply with instructions that Fyber deems as

violating applicable Laws. Processing outside the scope of this DPA (if any) will require prior written agreement between Fyber and you on additional instructions and terms for processing.

- 2.4 To the extent required under the applicable Law, you will provide an appropriate notice to the Data Subjects about the Processing of their Personal Data under this DPA and to Fyber's Privacy Policy, which is available at: <http://inner-active.com/privacy-policy/> and to the extent required under the applicable Law, you will receive and document the Data Subjects' consent thereof.
- 2.5 Fyber only collect information that you have authorized it to collect. Fyber may process the following information:
- Information about an end user's device, such as device type and model, network provider, browser type, language, device IP address, operation system, network connection type, device GPS location (only if user provides permission) mobile advertising identifier such as the Advertising ID (Apple IDFA or Google AAID),
 - Information about your mobile app, such as package name, key words, version.
 - Additional user Information we may receive from you, such as users' age, gender, zip code and GPS location.
 - Information we may receive from you or from third parties engaged on your behalf by Fyber as non-precise device location based on IP address, device specifications and user's interest's information.
- 2.6 Data Subjects affected by the Processing under this DPA are the end users of your mobile app and/or website or service(s). Fyber uses the Personal Data solely for providing the Service(s). Processing operations by Fyber include the Processing of the aforementioned Personal Data to serve end users with contextual ads and/or targeted ads that are relevant to the end users and may interest the end users, to produce advertising reports on the performance of the campaigns on your mobile app and/or website and to improve the advertising performance on your mobile app and/or website. In that context Fyber will also combine on your behalf Personal Data from different sources to improve Fyber's Service(s). Fyber also processes your Personal Data for fraud prevention, bot detection, rating, analytics, viewability, geo location services, ad security & verification services and problem & fault management.
- 2.7 Fyber imposes appropriate contractual obligations upon its personnel who engage in the Processing of Personal Data, including relevant obligations regarding confidentiality, data protection and data security. Fyber ensures that its applicable personnel were informed of the confidential nature of the Personal Data, have received appropriate training and have executed written confidentiality agreements. Fyber will further ensure that such confidentiality agreements survive the termination of the employment or engagement of its personnel.
- 2.8 Organizational and technical measures. Fyber shall take appropriate technical and organizational measures to ensure a level of security appropriate to the risk involved in Processing your Personal Data. These measures are aimed at ensuring that your Personal Data is reasonably protected against accidental or unauthorized destruction, accidental loss, as well as against unauthorized alteration of, disclosure of and access to your Personal Data -all, as specified at www.Fyber.com/securitypolicy (the "Data Security Addendum"). To the extent that the technical and organizational measures taken by Fyber do not fulfil your requirements, you must notify Fyber in written or in text form thereof prior to the start of any Processing of your Personal Data. In that case, both parties will negotiate in good faith an adjustment of the technical and organizational measures and the compensation for those required adjustments. The technical and organizational security measures may be adjusted by Fyber

at any time insofar as long as the security level does not fall below the security level of the technical and organizational security measures set forth in the current security measures provided by Fyber.

3. Cooperation

- 3.1 Fyber shall use commercially reasonable efforts to provide in a prompt manner such co-operation as is reasonably necessary to enable you to ensure compliance with applicable Law. In particular, Fyber will notify you without undue delay of, unless prohibited under the applicable Law:
- 3.1.1 any violation which has taken place during the Processing of your Personal Data by Fyber of (i) any provisions of the terms in this DPA, and/or (ii) any instructions issued by you pursuant to the terms of this DPA;
 - 3.1.2 any official competent supervisory proceedings regarding the Processing of your Personal Data conducted by data protection authorities vis-à-vis Fyber, as well as support and cooperation which may be required from you in such inspections/proceedings conducted vis-à-vis you upon your request;
 - 3.1.3 any legal or factual circumstances preventing Fyber from executing any of your instructions under the terms of this DPA; and
 - 3.1.4 any material changes impacting the technical and organizational security measures implemented by Fyber which cause such measures to fall short of Fyber's data security obligations under this DPA.
- 3.2 In the event that Fyber detects or in the event that facts justify the assumption that (i) personal data processed by Fyber on your behalf has been unlawfully transmitted or (ii) third parties have unlawfully gained access to such data or (iii) the integrity or confidentiality of your Personal Data has been compromised in any other way (data security incident), Fyber shall give you without undue delay written notification specifying the date and time, nature, and extent of the incident. The notice will also include a description of potential consequences and potential adverse effects of the incident. Furthermore, Fyber will inform you about the measures it has taken in order to remediate the risks involved with the incident, to mitigate potential adverse effects and to prevent the occurrence of a similar incident in the future.
- 3.3 To the extent Fyber receives complaints and/or inquiries from Data Subjects or third parties requesting information regarding the Processing of your Personal Data, Fyber shall forward such complaints and/or inquiries to you without undue delay. Fyber will not provide any information to any Data Subjects or third parties, unless (i) Fyber is statutorily obligated to provide such information or (ii) you have given Fyber instructions to do so. To the extent that Fyber shall be obliged to provide to third parties information regarding your Personal Data on the basis of statutory provisions, Fyber shall inform you in due time prior to providing the information, of the recipient, the date and time, the content of the information to be issued, and the legal basis thereof.
- 3.4 Fyber will support you and assist in handling Data Subjects' requests to exercise their rights to access, rectify, erase or such other rights afforded to Data Subjects under the applicable Law, in relation to their Personal Data, by taking reasonable measures based upon your instructions. Should you be obligated to any Data Subject or third party to provide information regarding the Process of your Personal Data by Fyber, Fyber will use commercially reasonable efforts to support you in the provision of such information.
- 3.5 Audit right. To the extent that the applicable Law requires you to be in a position to monitor Fyber's Processing of your Personal Data adequately, you, as the Controller, will have the right to request Fyber for an audit, at any time, to the extent necessary to check whether the following are being

complied with by Fyber, as the Processor, and its sub-processors: (i) any provisions of the Law, (ii) the terms of this DPA, and (iii) your instructions as the Controller. However, Fyber may provide to you a copy of its most recent third-party audits or certifications by an independent, third-party auditor, as applicable, or any summaries thereof in order to fulfil your audit rights. If an audit is required by Law, which requirements cannot be fulfilled by the provision of such a certification, you may conduct, either by yourself or through a third party independent contractor selected by you at your expense, an on-site audit of Fyber's architecture, systems and procedures relevant to the security and integrity of your Personal Data. Such audit may be conducted subject to the following terms: (i) the audit will be pre-scheduled in writing with Fyber, at least 30 days in advance and will be performed not more than once a year; (ii) all your personnel who perform the audit, whether employed or contracted by you, will execute Fyber's standard non-disclosure agreement prior to the initiation of the audit, and a third party auditor will execute a non-competition undertaking as well; (iii) you will take all necessary measures and verify that the auditors do not access, disclose or compromise the confidentiality and security of Personal Data other than Your Personal Data on Fyber's information and network systems; (iv) you will take all necessary measures to prevent any damage or interference with Fyber's third party service providers' information and network systems; (v) you will bear all costs and assume responsibility and liability for the audit and for any failures or damage caused as a result thereof; and (vi) any audit activities on Fyber third-party service providers' information systems will be pre-scheduled and agreed with the applicable providers; (vii) you will keep the audit results in strict confidentiality, will use them solely for the specific purposes of the audit under this section 3.4, will not use the results for any other purpose, or share them with any third party, without Fyber's prior explicit written confirmation; (viii) If you are required to disclose the audit results to a competent authority, you will provide Fyber with a prior written notice, explaining the details and necessity of the disclosure and further provide all necessary assistance to prevent such disclosure.

4. Sub-processing

- 4.1 Fyber engages sub-processors to perform certain Processing of your Personal Data on your behalf. Prior to an engagement with a sub-processor, Fyber requires or receives adequate assurances that the sub-processor complies with obligations substantially similar to the obligations as set out in this DPA.
- 4.2 Upon the execution of this DPA, you hereby give Fyber your consent to engage the companies detailed at <http://www.fyber.com/subprocessors> as sub-processors.
- 4.3 Where a sub-processor fails to fulfill its data protection obligations or statements, Fyber will remain fully liable to you for the performance of the sub-processor's obligations to the same extent that Fyber would be liable to you directly under the terms of this DPA, except as otherwise set forth in the Agreement, if Fyber would have performed the obligations of the sub-processor.
- 4.4 Fyber will inform you of its engagement with a new sub-processor. You may object to the use of new or additional sub-processor by promptly sending Fyber a written notice. If you object to the new sub-processor, Fyber will make commercially reasonable efforts to provide you the same level of Service(s) without the use of such sub-processor. Notwithstanding, your objection and the results thereof will not amend, alter or reduce your obligations under the Agreement.
- 4.5 Notwithstanding the provisions here above (e.g. prior consent by you), you hereby authorize Fyber to sub-contract the Processing to service providers based outside of the European Economic Area (EEA), to the extent necessary, at Fyber sole discretion, to duly perform the Service(s) on condition that the service providers provide sufficient guarantees in relation to required level of data protection, e.g. through a Privacy Shield certification according to EU Commission Decision 2016/1250, or a sub-contracting agreement which is based on the standard contractual clauses



launched by virtue of the EU Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC (the “Model Contract Clauses”), or based on such other applicable trans-border data transfer mechanisms. Any such Model Contract Clauses concluded by Fyber shall be treated as if concluded in the name and on behalf of you. You shall be responsible to obtain regulatory approvals from the relevant data protection authorities, when required by Law.

5. Anonymized Data. Fyber may process data based on extracts of Personal Data on an aggregated and non-identifiable forms, for Fyber’s legitimate business purposes, including for testing, development, controls and operations of the Services, and may share and retain such data at Fyber’s discretion.
6. Term. This DPA shall become effective upon its execution by the Parties. It shall terminate upon the end of the Processing of Personal Data by Fyber in accordance with the Agreement unless otherwise provided in this DPA. After the termination of this DPA or earlier upon request of you, Fyber will depending on your instructions, permanently delete all your Personal Data and copies thereof in its possession within 30 days.
7. Notices. If you wish to make any inquiries about this DPA, please contact Fyber’s legal team at: Legal@fyber.com.