FYBER MASTER SERVICE AGREEMENT FOR SUPPLY PARTNERS

Preamble

This Master Service Agreement for Supply Partners ("**MSA**") applies to your usage of the Service(s) (as defined in the applicable Service Order entered between Fyber and you).

This MSA includes the following documents which, together with this MSA, form an agreement (the "**Agreement**") between the entity providing the Service and signed the applicable Service Order ("**Fyber**") and the entity whose details are set forth in such service order ("**Supply Partner**"):

> The Service Order(s) for the respective Service.
> The Fyber Data Processing Addendum attached as **Appendix B** ("**DPA**").
> The Local Addenda to the MSA that are applicable according to Section 11.8.1 to 11.8.3 and attached as **Appendix C**.
> Any guidelines, policies or other terms, including content policies, as mentioned or referenced in the Service Order, DPA or this MSA.

Before using any Service, we ask that you read the Agreement carefully, as by using and/or accessing the Service, you hereby agree and accept the Agreement in full. We recommend that you print out or save a local copy of the Agreement for your records. Capitalized terms used but not defined elsewhere in the Agreement will have the meaning ascribed to them in **Appendix A** attached hereto.

IF YOU DO NOT ACCEPT THE AGREEMENT IN ITS ENTIRETY, YOU MAY NOT ACCESS OR USE ANY SERVICE. IF YOU ARE AN INDIVIDUAL WHO CONSENTS TO THE AGREEMENT ON BEHALF OF A BUSINESS, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT BUSINESS TO THE AGREEMENT, AND THAT YOUR CONSENT TO THE AGREEMENT WILL BE TREATED AS THE CONSENT OF THE BUSINESS. IN THAT EVENT, THE TERMS "BUSINESS", "YOU" OR "YOUR" WILL REFER AND APPLY TO YOU AND TO THAT BUSINESS. YOU ALSO CONSENT TO THE USE OF: (A) ELECTRONIC MEANS TO CONSENT TO AND COMPLETE THE AGREEMENT, AND TO PROVIDE YOU WITH ANY NOTICES GIVEN PURSUANT TO THE AGREEMENT; AND (B) ELECTRONIC RECORDS TO STORE INFORMATION RELATED TO THE AGREEMENT AND YOUR USE OF ANY SERVICE.

FROM TIME TO TIME WE MAY CHANGE THIS MSA. WE WILL MAKE REASONABLE COMMERCIAL EFFORTS TO NOTIFY YOU OF ANY UPDATES TO THIS MSA BY MAKING SUCH UPDATES AVAILABLE ON THE FYBER WEBSITE AND/OR THE RESPECTIVE FYBER DASHBOARD. NOTWITHSTANDING THE FOREGOING, YOUR CONTINUED USE OF ANY SERVICE WILL BE DEEMED ACCEPTANCE TO ANY AMENDED OR UPDATED MSA.

1. General

1.1. <u>Scope.</u> Subject to the terms and conditions of the Agreement, Fyber will provide to Supply Partner the Service(s), as they are described in the applicable Service Order.

1.2. <u>Conflict resolution clause</u>. In the event of a conflict between a provision of this MSA and a provision of the applicable Service Order, the provision of the Service Order shall prevail.

2. Registration & Set Up

2.1. <u>Registration</u>. Supply Partner shall establish an Account by completing the registration process on the Fyber website and providing Fyber with accurate and complete information. Supply Partner will keep all Account information up-to-date.

2.2. <u>Login Data</u>. Supply Partner agrees to keep access data, such as user names and other login data, passwords, and other data required to access the Service(s) and the Account, strictly confidential, and will not disclose such data to any Third Party without Fyber's prior written (email suffices) approval or as otherwise agreed in the Agreement. The Supply Partner must inform Fyber immediately upon becoming aware that any unauthorized Third Party has gained access to any such data or to Supply Partner's technology, systems, equipment, and/or property. Fyber reserves the right at its sole discretion to either change any access data or to block any Account, at Fyber's own discretion and without prior notification. In such cases, Fyber will inform the Supply Partner without undue delay, and will provide any such new access data upon request within a reasonable time.

2.3. <u>Information and Filters</u>. Supply Partner is solely responsible for submitting to Fyber its Property's characteristics, including but not limited to the Store ID or the domain and the name of the application, and for keeping such information up-to-date, including activating or deactivating filters available on the applicable Fyber dashboard, and applying various blacklisting and tagging features to screen out certain categories of Ads from being served on Supply Partner's Property.

3. Licenses and proprietary rights

3.1. <u>License to use the Service(s)</u>. During the term hereof and subject to Supply Partner's compliance with the Agreement, Fyber will provide Supply Partner with a limited, non-exclusive, royalty-free, non-transferable, non-assignable, non-sub-licensable, revocable license to: (a) access and use the applicable Service solely for the purposes of: (i) selling Ad Inventory on the Property to Demand Partners, and (ii) allowing Ads provided by Demand Partners to be delivered and placed on the Property via the SDK, API or Tag (as applicable to Supply Partner's integration with the Service); (b) download, install and/or use Fyber's proprietary Software Developer Kits ("**SDK**"), solely for the purposes of using the Service as provided in this Agreement in which case Supply Partner agrees to be bound by the SDK License, currently available at https://www.fyber.com/legal/sdklicense which may be amended from time to time; (c) use Fyber's proprietary Application Programming Interface ("**API**") solely for the purposes of using the Service as provided in this Agreement in which case Supply Partner agrees to be bound by the API License, currently available at https://www.fyber.com/legal/apilicense which may be amended from time to time; and (d) access and use the Fyber dashboard for the purpose of reviewing Supply Partner's activity and use of the Service under the Agreement.

3.2. <u>License limitation</u>. Nothing contained in this Section 3 or otherwise in the Agreement shall transfer any right, title, or interest in or to any Service to Supply Partner. Except as expressly stated in Section 3.1 above, as between Fyber and Supply Partner, Fyber and its Affiliates retain all right, title, and interest in and to the Service(s). Except as expressly permitted under this Agreement, Supply Partner will not access, use, reproduce, reverse-engineer, modify, lend, distribute or otherwise make available or exploit the Services, the SDK or the API.

3.3. <u>Supply Partner's License to Fyber for the Ad Exchange Service</u>. Supply Partner hereby grants to Fyber and its Affiliates a non-transferable and non-assignable (except pursuant to section 11.3), perpetual, non-exclusive, royalty free, worldwide right and license to: (a) use the Ad Request, solely (i) for providing the Service(s), and (ii) in accordance with the Data Processing Addendum attached hereto as Appendix B; and (b) enable Demand Partners to (i) deliver and place Ads on the Property through the Service, and (ii) exchange the Demand Partner Data required for providing the Service with Demand Partners on Supply Partner's behalf.

3.4. <u>Supply Partner's License to Fyber for the Fyber Direct Service</u>. For the duration of the Term, Supply Partner hereby grants to Fyber and its Affiliates a non-exclusive, royalty-free, and worldwide right and license to (a) use the Ad Request, solely (i) for providing the Service(s), and (ii) in accordance with the Data Processing Addendum attached hereto as <u>Appendix B</u>; (b) select and serve Ads on the Supply Partner Properties in Fyber's reasonable discretion and in accordance with Supply Partner's reasonable instructions; (c) promote, market, and sell to Demand Partners the Ad Inventory for the placement of Ads, in Fyber's sole discretion; and (d) access the Property, including any password-protected area thereof, for the purpose of serving Ads.

3.5. <u>Supply Partner's License to Fyber for the Offer Wall Service</u>. For the duration of the Term, Supply Partner hereby grants to Fyber and its Affiliates a non-exclusive, royalty-free, and worldwide right and license to (a) integrate into the Property an opt-in user-initiated scrollable list of offers of individual ads offered by Demand Partners and use any information derived from the provision of the Service for: (i) providing the Service(s), and (ii) solely in accordance with the Data Processing Addendum attached hereto as <u>Appendix B</u>; and (b) provide technical support to Users of the Offer Wall Service on behalf of Supply Partner.

3.6. <u>Supply Partner's License for the Mediation Service and Programmatic Mediation Service</u>. Supply Partner hereby grants to Fyber and its Affiliates a non-exclusive, royalty-free, worldwide right and license to use the Ad Request, solely (a) for providing the Service(s), and (b) in accordance with the Data Processing Addendum attached hereto as <u>Appendix B</u>.

3.7. <u>No Implied License</u>. Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, license, sale or other rights upon Supply Partner or Fyber (as applicable) by implication, estoppel or otherwise, as to any Intellectual Property Rights of the other party or any Third Party.

3.8. <u>Open Source Software License.</u> The Service may include open source software ("**OSS**"). To the extent so provided by the license that governs the applicable OSS ("**OSS License**"), each such OSS is subject to its respective OSS License, not this Agreement. If, and solely to the extent, an OSS License requires that this Agreement effectively impose, or incorporate by reference, certain disclaimers, provisions, prohibitions or restrictions, then such disclaimers, provisions, prohibitions or restrictions shall be deemed to be imposed, or incorporated by reference into this Agreement, as required, and shall supersede any conflicting provision of this Agreement, solely with respect to the corresponding OSS which is governed by such OSS License, available under https://www.fyber.com/legal/opensource.

3.9. <u>Open Source Disclaimer</u>. Fyber does not make any representation or warranty with respect to any OSS or free software that may be included in or accompany the Service. Fyber hereby disclaims all liability to you or any third party related to any such software that may be included in or accompany the Service.

4. Representations and Warranties

4.1. <u>Mutual Representations and Warranties</u>. Each party represents and warrants that: (a) it has all requisite power and authority to execute and enter into the Agreement and perform its obligations therein and hereunder, and that the Agreement is a valid and binding agreement by such party; (b) the execution of the Agreement, and its performance under it, will not constitute a breach or default of, or otherwise violate, any agreement to which it is a party, or violate any right of any third party arising therefrom; and (c) the Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms.

4.2. <u>Supply Partner Representations and Warranties</u>. Supply Partner represents and warrants that:

4.2.1. all Supply Partner Property and Ad Inventory complies with all applicable laws and regulations, including criminal code, data protection laws, consumer laws, youth protection provisions, and industry self-regulatory guidelines, such as the Digital Advertising Alliance ("**DAA**") Self-Regulatory Principles or similar self-regulatory guidelines for mobile advertising in countries in which Users of the Property are situated, that such Property does not contain or promote any illegal content and/or any Prohibited Content, and that Supply Partner is solely and exclusively responsible for the Property and Ad Inventory;

4.2.2. it shall not, and shall not permit, assist, or encourage any Third Party to, 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;

4.2.3. it shall not, and shall not permit, assist, or encourage any Third Party to, engage in Fraud; and

4.2.4. it will not issue Ad Requests for any Inventory and/or Property containing Fraud or violating Fyber's Content Guidelines published on the Fyber website at https://www.fyber.com/legal/supply-content-guidelines/, as may be amended by Fyber from time to time.

4.3. <u>COPPA; Protection of Minors</u>. To the extent Supply Partner makes Ad Inventory or any content relating thereto available to children under the age of thirteen (13) in the United States, or under any other age relevant under the laws of any other country where that Ad Inventory or any content relating thereto is made available to these children, this Section shall apply. Supply Partner represents and warrants that: (i) Supply Partner will comply with all applicable laws and regulations related to providing behavioral advertising to Children, including 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, such as the General Data Protection Regulation ("**GDPR**") in Europe; (ii) except as specifically set forth in a notice described in this Section, the Property is not directed at children under the age of thirteen (13) and Supply Partner does not have actual knowledge that the Property collects personal information from children under the age of thirteen (13) or under any other age applicable in the relevant country; and (iii) Supply Partner shall not collect or passes to Fyber any personal information for any purpose not permitted under COPPA, GDPR or under the laws applicable to minors in any such other relevant country. Supply Partner may access a designated area in its Account allowing it to flag the Ad Inventory as directed at children under the age of thirteen (13). In case Supply Partner does not flag its Ad Inventory accordingly, Fyber will rely on Supply Partner's representations and reasonably assume that the Ad Inventory is not directed at children under the age of thirteen (13) so that Ads delivered to such Inventory do not need to comply with any COPPA, GDPR or other applicable legislation's requirements.

4.4. <u>Ads.txt</u>. Supply Partner will ensure that the Fyber ads.txt identifier, as provided to Supply Partner by Fyber at the time of registration of the Account, is included in the respective ads.txt of the Ad 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. Fyber shall, in no event, be obligated to pay to Supply Partner any proceeds, fees or revenue share under this Agreement (as applicable), if Supply Partner fails to fully comply with the obligation set forth herein.

4.5. <u>Pre-screening of Ads.</u> If Supply Partner Seat is in China, then Supply Partner further represent and warrants that it will verify the Ad content and decide on the publishing of an Ad on its Property in compliance with the Interim Measures for the Administration of Internet Advertisements.

4.6. <u>Fyber representation and warranty</u>. Fyber represents and warrants that: (a) the Service shall, in all material aspects, operate as set out in its respective Service description set forth in the applicable Service Order; and (b) the Service shall be and is in compliance with any laws applicable to Fyber's provision of the Service, and does not infringe any third-party Intellectual Property Rights.

5. Fees & Payment / Taxes / Netting clause

5.1. <u>Tracking</u>. Fyber's tracking and reporting regarding Ad Impressions and other payable activities under the Agreement (if applicable), shall calculate the Ad Impressions for the purpose of this Agreement, if not otherwise agreed between the Parties in the Service Order. Supply Partner shall duly examine the Account data and the amounts due to it when provided by Fyber, and shall notify Fyber, in writing (email suffices) and without undue delay (but in no event later than no later than fourteen (14) days upon receipt of the applicable report from Fyber), of any inaccuracy of the Account data or the amounts due to it that could be reasonably identified in such examination. If Supply Partner fails to notify Fyber of any such identifiable inaccuracy within such time period, the Account data and the amounts due to Supply Partner shall be deemed correct with regard to such identifiable inaccuracy. Supply Partner further agrees and acknowledges that the determinations of Fyber with respect its reporting and invoices are final where the difference between the evidence provided by Supply Partner 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.

5.2. <u>Payout Threshold</u>. In the case that the balance of amount(s) payable to Supply Partner is less than US$1,000 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 US$1,000 or the equivalent thereof in the applicable currency, or (b) within sixty (60) days after the end of the month in which the Agreement is terminated. Notwithstanding the foregoing sentence, Fyber will pay out any accrued due amount to Supply Partner by the end of each calendar year if the US$1000 or the equivalent thereof in the applicable currency threshold is not reached by the end of such calendar year.

5.3. <u>Payment Terms</u>. Subject to Section 5.2 above, any amounts due and payable to Supply Partner shall be paid within sixty (60) calendar days after the end of each calendar month, in US$, if not otherwise agreed between the Parties in the Service Order. Fyber may deduct from the payable amounts the costs (if any) of the wireless transfer of the payable amounts to Supply Partner's bank account or of such other payment method as may be agreed between the Parties.

5.4. <u>Tax and VAT</u>. Each party shall bear its own expenses (including but not limited to any tax obligations) relating to the activities and payments received under the Agreement. All sums payable under the Agreement are exclusive of any applicable tax.

5.5. <u>Fraud</u>. Notwithstanding anything to the contrary stated anywhere else in this Agreement, Fyber reserves the right, where it has reason to believe in good faith that Fraud actually took place, to withhold or suspend payment or any other associated revenues, unless and until Supply Partner provides evidence satisfactorily establishing the validity of the Ad Impressions or other payable Users' activities (if applicable). In addition, Supply Partner will promptly notify Fyber of any actual or suspected Fraud, and cooperate with Fyber in good faith to investigate, prevent and remedy any Fraud.

5.6. <u>Netting Agreement</u>. Supply Partner hereby acknowledges and agrees that Fyber shall have the right to set-off any and all amounts due by Supplier Partner to Fyber or any of its Affiliates, from any amount payable by Fyber or Affiliates to Supply Partner.

6. Modification of Service

Modification of Service. The Service(s), by their nature, may 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 Supply Partner considering its interests. A modification is reasonable for the Supply Partner if it is necessary to adapt the Services to changed circumstances regarding technological developments, market requirements, and any changes of applicable law, and in case of any new features, functions, or services added to the Services. Accordingly, Supply Partner's right to use the Services under this Agreement is limited to the then-current version of the Services. If a modification of a Service is not reasonably acceptable for Supply Partner, Supply Partner has the right to terminate the Agreement with respect to such Service effective immediately upon notice. Supply Partner shall have no other claims against Fyber due to changes in and to the Services.

7. DISCLAIMERS; LIMITATION OF LIABILITY

7.1. SERVICE DISCLAIMER. FYBER PROVIDES THE SERVICES AND/OR ANY FYBER DASHBOARD AND/OR ADS "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, REASONABLE CARE AND SKILL, OR ANY WARRANTIES ARISING OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE FOREGOING, FYBER DOES NOT WARRANT THAT SUPPLY PARTNER'S USE OF THE SERVICE AND/OR ANY FYBER DASHBOARD WILL BE UNINTERRUPTED, ERROR-FREE, OR VIRUS-FREE, NOR DOES FYBER MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICE AND/OR ANY FYBER DASHBOARD. FURTHER, SUPPLY PARTNER ACKNOWLEDGES THAT AD(S) ARE PROVIDED BY DEMAND PARTNERS AND THAT FYBER DOES NOT ENDORSE NOR MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO THE ACCURACY, TRUTH, QUALITY, SUITABILITY OR RELIABILITY OF ANY PROMISE, CLAIM OR STATEMENT CONTAINED IN ANY AD. FYBER IS NOT RESPONSIBLE FOR ANY ERRORS, OMISSIONS, OR INACCURACIES CONTAINED IN ANY AD. SUPPLY PARTNER ACKNOWLEDGES THAT IT HAS RECEIVED NO ASSURANCES FROM FYBER THAT IT WILL EARN ANY PARTICULAR AMOUNT OF MONEY OR THAT IT WILL RECOUP ANY EXPENDITURE MADE IN FULFILLMENT OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR THAT FYBER SHALL FILL ANY PERCENTAGE OF AVAILABLE AD SPACE FOR ANY PROPERTY.

7.2. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL 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 A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR ALL CLAIMS RELATED TO THIS AGREEMENT NEITHER PARTY'S TOTAL AGGREGATE LIABILITY SHALL EXCEED THE AMOUNT OF US$ 10,000.00 (OR, IF GREATER, THE AMOUNT OF ANY UNDISPUTED PAYMENTS DUE BY FYBER TO SUPPLY PARTNER UNDER SECTION 5, TO THE EXTENT APPLICABLE). NOTWITHSTANDING ALL THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL LIMIT THE LIABILITY FOR BREACHES OF SECTIONS 8 AND 9.

7.3. <u>Content Disclaimer</u>. Fyber is not responsible for and does not provide any representation or warranty with respect to any Ad content that is connected or related to any Service. Fyber does not have any obligation to monitor the Ad content and is not responsible for the accuracy, completeness, appropriateness, legality or applicability of the Ad content. WHILE FYBER IS UNDER NO OBLIGATION TO DO SO, WITHOUT LIMITING ANY OTHER TERMS OF THIS AGREEMENT, FYBER RESERVES THE RIGHT TO REMOVE ANY AD CONTENT AND PERMANENTLY SUSPEND PROVISION OF ITS SERVICE TO SUPPLY PARTNER WITHOUT NOTICE IN THE EVENT THE THAT ANY PROPERTY CONTENT IS IN VIOLATION OF THIS AGREEMENT.

7.4. <u>Mediation Disclaimers</u>. In the case that Supply Partner uses the Fyber Mediation Service, the following shall apply: Fyber is not a party to advertising contracts and other legal relationships between Supply Partner and Demand Partners. Fyber merely offers the Service on an "AS-IS" and "AS-AVAILABLE" basis. Fyber does not assume any responsibility and is not subject to any liability regarding Supply Partner's relationships with Demand Partners, including under any agreement to which Fyber is not a party.

8. Indemnification

8.1. <u>By Fyber</u>. Fyber (for purposes of this Section 8.1, the "**Indemnifying Party**") shall indemnify, defend and hold harmless Supply Partner and its directors, officers, employees and agents (collectively, the "**Supply Partner Indemnified Parties**") against any liability, damage, loss or expense, fines, penalties and interests (including reasonable attorneys' fees and costs) incurred by the Supply Partner Indemnified Parties as a result of any third-party claim, suit or other proceeding (collectively, "**Claims**") alleging that the Service, as provided by Fyber to Supply Partner under the Agreement, infringes any Intellectual Property Right of a Third Party, except and to the extent such infringement arises from Supply Partner's use of the Service in violation of this Agreement, or from any modification of the Service, or any combination of the Service with any other component or material. In the event of any such threatened or actual Claim, in addition to its indemnification obligations herein, Fyber will have the right, in its discretion, to either (a) replace or modify the infringing or allegedly infringing components of the Service, or (b) immediately terminate this Agreement upon written notice to Supply Partner.

8.2. <u>By Supply Partner</u>. Supply Partner (for purposes of this Section 8.2, the "**Indemnifying Party**") shall indemnify, defend and hold harmless Fyber and its Affiliates, and its and their directors, officers and employees (collectively, the "**Fyber Indemnified Parties**", and together with the Supply Partner Indemnified Parties, each shall be referred to hereunder as an "**Indemnified Party"**) against any liability, damage, loss or expense, fines, penalties and interests (including reasonable attorneys' fees and costs) incurred by the Fyber Indemnified Parties as a result of any Claim brought or made against any of the Fyber Indemnified Parties in connection with, arising out of or relating to (a) any alleged or actual breach of Supply Partner's representations, warranties or covenants under Sections 3, **Error! Reference source not found.** and 9 of this MSA; (b) an allegation that the Property's content breached the Content Guidelines, contains any illegal content or facilitates Fraud; (c) an allegation that the Property, or users' downloads, installations or any use thereof, violates any law or infringes upon or misappropriates any Intellectual Property Right, publicity or privacy right; and/or (d) an allegation that Supply Partner has breached the Data Processing Addendum, attached hereto as <u>Appendix B</u>.

8.3. <u>Indemnification Process and Conditions</u>. The Indemnified Party shall: (a) give the Indemnifying Party prompt written notice of the relevant Claim; (b) provide the Indemnifying Party, at the Indemnifying Party's expense, with reasonable information, assistance and cooperation in the defense of such Claim; and (c) give the Indemnifying Party the right to control the defense and settlement of any such Claim, except that the Indemnifying Party 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, and provided further that the Indemnified Party shall not be required to allow the Indemnifying Party to assume the control of the defense of a Claim to the extent that the Indemnified Party determines (i) any relief other than monetary damages is sought against Indemnifying Party, (ii) there may be a conflict of interest between the Indemnifying Party and Indemnified Party in the conduct of the defense, or (iii) settlement of, or an adverse judgment with respect to, such claim could reasonably be expected to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnifying Party, and in such events the costs of defense will be considered "Claims" as defined above. The Indemnified Party will have the right to participate in the defense of such Claim with counsel of its choice at its own expense.

9. Confidentiality

9.1. <u>Confidentiality</u>. Except as provided herein, 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, Fyber may communicate the general nature of the Agreement and identify or announce Supply Partner as a customer of Fyber to Third Parties by name and logo, including in communications to existing and potential customers.

9.2. <u>Handling Confidential Information</u>. 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 Confidential Information of similar nature, but in no event less than a reasonable degree of 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 duration of 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 and its Affiliates and their employees, professional advisors and auditors who have a strict business need to access such Confidential Information and who are bound by non-disclosure obligations as restrictive as the confidentiality obligations in this MSA regarding the protection, use, and confidentiality of such Confidential Information.

9.3. Confidentiality Exception. Notwithstanding the obligations set forth in Section 9.1, each party may disclose the other party's Confidential Information to the extent that such disclosure is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority order, provided that 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.

9.4. Injunctive Relief. The Parties acknowledge that any breach of a party's obligations arising under this Section 9 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.

10. Term & Termination

10.1. Term. The Agreement will enter into effect either upon (i) Fyber accepting Supply Partner's Account registration (whereby such registration includes the acceptance of the Agreement by Supply Partner); or (ii) the signing of a Service Order between the Parties, which shall incorporate this MSA (the "**Effective Date**"). The Agreement shall continue in force thereafter, until terminated as provided herein (the "**Term**").

10.2. Termination for Convenience. Unless otherwise agreed in the applicable Service Order, either party may terminate the Agreement at any time for any reason and without liability upon thirty (30) days prior written notice of termination (email shall suffice) to the other party. Notwithstanding the foregoing, upon mutual written agreement of the Parties (email suffices), such termination may be postponed until the date on which all Ads scheduled to be delivered through the Service have been delivered.

10.3. Termination for Cause. Fyber may suspend Supply Partner's access to and use of all or any part of the Service immediately, with or without notice, if Fyber believes in good faith that Supply Partner materially breached any part of this Agreement. Fyber may terminate this Agreement for breach if Supply Partner fails to cure such breach within five (5) business days after receiving written (email sufficing) notice of such breach. 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.

10.4. Effect of Termination. Upon termination of the Term of this Agreement, all rights and licenses granted under the Agreement shall immediately terminate. Supply Partner shall discontinue all access to and use of the Service and shall have no rights in or to any Account data, which shall, as between Supply Partner and Fyber, be the exclusive property of Fyber and must be deleted by Supply Partner after settling any open amounts payable by or to Fyber. Termination of the Agreement will not release the Parties of any obligation accruing prior to such termination, or any amounts due to Supply Partners for Ads delivered up to the termination date.

10.5. <u>Surviving Provisions</u>. The rights and duties of the Parties under Sections 7.2, 8, 9 and 11of this MSA will survive the termination of the Agreement.

11. Miscellaneous

11.1. <u>Entire Agreement; Amendment; Severability</u>. The Agreement supersedes all previous agreements between the Parties relating to the subject matter hereof. No provision of the Agreement will be deemed amended or modified by either party, unless such amendment or modification is made in writing and signed by both parties. If any provision of the Agreement is found by a competent authority to be unenforceable or invalid under the applicable law, the enforceability and validity of the remaining provisions will not be affected. Such provision will be interpreted and enforced so as to best accomplish the objectives of the Parties within the limits of applicable law, including applicable court decisions.

11.2. <u>No Waiver.</u> Fyber's failure to act with respect to a breach by Supply Partner does not waive Fyber's right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by Fyber under the Agreement shall be deemed effective unless delivered in writing and signed by a duly appointed representative of Fyber.

11.3. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will constitute one signed agreement between the Parties. Signatures may be transmitted by facsimile or electronic mail in PDF or another similar format and will be deemed original.

11.4. <u>Assignment</u>. Supply Partner will not assign or otherwise transfer this Agreement or any right or interest thereunder to any Third Party without the prior written consent of Fyber, except if such assignment occurs (a) pursuant to a merger or a sale of all or substantially all its assets or capital stock; or (b) to any successor or assignee of all or substantially all its business. Fyber may assign or otherwise transfer this Agreement without consent. 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, delegation or other transfer will be null, void and of no effect.

11.5. <u>Force Majeure</u>. Neither party will be liable to the other party for failure or delay in performing its obligations due to causes beyond its reasonable control, including without limitation acts of God, terrorism, war, riots, fire, earthquake, flood or degradation or failure of third-party networks or communications infrastructure.

11.6. <u>Marketing.</u> Supply Partner agrees that Fyber may identify Supply Partner, including by using Supply Partner's name(s) and logo(s), as a customer of Fyber, including in Fyber's website(s), newsletters, case studies, emails or promotional posts in social media; in the event that Supply Partner wishes to be excluded from a specific promotion/publication of Fyber, Supply Partner may notify Fyber in writing and Fyber will cease using Supply Partner's name(s) and logo(s) in such publication, on a going-forward basis, provided that Fyber will not be required to cease such use in any printed material that has already been printed or ordered. Unless otherwise agreed by Parties, you will not be entitled to any compensation as a result of any such publication.

11.7. <u>Arbitration</u>. The Parties agree to arbitrate any dispute arising out of or relating to this Agreement or any Service, except that nothing in this Agreement will prohibit either Party from seeking temporary or preliminary injunctive or other equitable relief in any court of competent jurisdiction with respect to any alleged unlawful use of Intellectual Property Rights. THE PARTIES AGREE THAT THIS ARBITRATION PROVISION PREVENTS SUITS IN COURT OR A JURY TRIAL. Fyber and Supply Partner agree: (a) to notify each other, in writing, of any dispute within thirty (30) days of when it arises; (b) to attempt informal resolution prior to any demand for arbitration; (c) that any arbitration will occur in New York County, New York State, USA; and (d) that arbitration will be conducted confidentially by a single arbitrator in accordance with the Rules of JAMS. The state or federal courts in New York County, New York State, have exclusive jurisdiction over any appeals of an arbitration award. Other than with respect to class procedures and remedies as discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. Any dispute between the Parties will be governed by this Agreement and the laws of the State of New York and applicable United States law, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, THE PARTIES WILL NOT COMMENCE AGAINST THE OTHER OR PARTICIPATE IN ANY CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING.

11.8. <u>Governing Law and Jurisdiction; Local Addenda</u>. Unless otherwise stated in Sections 11.8.1 to 11.8.3 or otherwise agreed to by the parties, this Agreement is governed by the laws of the State of New York, USA, excluding its conflict of laws principles, and the laws of the United States (including the Federal Arbitration Act). To the extent the arbitration provision in Section 11.7 does not apply, Supply Partner and Fyber agree that the courts located in New York County, New York State, USA shall have exclusive jurisdiction over any dispute between the Parties arising out of or relating to this Agreement, and the parties hereby consent to the personal jurisdiction and venue of these courts.

11.8.1. <u>Germany</u>. If Supply Partner has its Seat in the Federal Republic of Germany, the following shall apply:

(a) The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, <u>the laws of the Federal Republic of Germany</u>, without regards to their conflict of laws rules. To the extent the arbitration provision in Section 11.7 does not apply, Supply Partner and Fyber agree that the courts located in Berlin, Germany shall have exclusive jurisdiction over any dispute between the parties arising out of or relating to the Agreement, or any non-contractual obligations arising out of or in connection with it, and the parties hereby consent to the personal jurisdiction and venue of these courts.

(b) The terms and conditions of the <u>Local Addendum to the Master Service Agreement for Supply Partners – Germany</u> in <u>Appendix C</u> shall be effective as an integral part of the Agreement and shall replace and supersede any conflicting provisions, except for conflicting terms individually agreed upon between the parties in the applicable Service Order, which shall take precedence over the terms thereof.

          11.8.2. <u>Europe</u>. If Supply Partner has its Seat in the European Economic Area (other than the Federal Republic of Germany) or otherwise within Europe (including Armenia, Cyprus, Greenland, and the entire territory of Azerbaijan, Georgia, Kazakhstan, Russia, and Turkey), the following shall apply:

             (a)   The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of <u>England and Wales</u>, without regards to its conflict of laws rules. To the extent the arbitration provision in Section 11.7 does not apply, Supply Partner and Fyber agree that the courts in England shall have exclusive jurisdiction over any dispute between the parties arising out of or relating to the Agreement, or any non-contractual obligations arising out of or in connection with it, and the parties hereby consent to the personal jurisdiction and venue of these courts.

             (b)   The terms and conditions of the <u>Local Addendum to the Master Service Agreement for Supply Partners – Europe</u> in <u>Appendix C</u> shall be effective as an integral part of the Agreement and shall replace and supersede any conflicting provisions, except for conflicting terms individually agreed upon between the parties in the applicable Service Order, which shall take precedence over the terms thereof.

          11.8.3. <u>Asia</u>. If Supply Partner has its Seat in Mainland China, Hong Kong, Macau, Taiwan, Indonesia or Singapore the following shall apply:

             (a)   The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, <u>Hong Kong law</u>, without regards to its conflict of laws rules.

             (b)   The terms and conditions of the Local <u>Addendum to the Master Service Agreement for Supply Partners – Asia</u> in <u>Appendix C</u> shall be effective as an integral part of the Agreement and shall replace and supersede any conflicting provisions, except for conflicting terms individually agreed upon between the parties in the applicable Service Order, which shall take precedence over the terms thereof.

11.9.   <u>Independent Contractors</u>. The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create any agency, partnership or joint-venture relationship between the parties. Neither party shall be deemed to be an employee or legal representative of the other, nor shall either party have any right or authority to create any obligation on behalf of the other party.

11.10. <u>Third-Party Beneficiaries</u>. 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, and no such rights will be deemed to have been created.

11.11. <u>Notice</u>. Notices must be in writing and will be deemed given when (a) delivered personally; (b) delivered by recognized overnight courier (established by written verification of personal, certified or registered delivery from a courier or the postal service); ; (c) sent by fax (established by a transmission report); or (d) sent by email to the recipient at the most up-to-date email address provided by the other party, provided that (i) the sending party can confirm that the email was apparently sent successfully according to its ordinary technical records, and that the party did not receive an error notice, and (ii) the email includes in the subject line "LEGAL NOTICE". If sent by email from Supply Partner to Fyber, the following address must be copied: legal@fyber.com. Notices to a party shall be sent to the postal and electronic mail addresses set forth in this Agreement, or such different address as a party may designate in writing to the other party from time to time.

Appendix A

Definitions

"**Account**" means an online, password-protected account provided by Fyber allowing Supply Partner to access and use the Services in accordance with the Agreement.

"**Ad**" means promotional content and creatives, including text, graphics, video or rich media, provided by Demand Partners to Fyber or to the Service for placement on the Inventory of the Property via the Service.

"**Ad Impression**" means when an Ad is fetched from its source and is countable.

"**Ad Inventory**" means the Ad space(s) available via the Service for sale by Supply Partner on its Property for the placement of Ads.

"**Ad Request**" means an electronic request for an Ad, and any parameter or information transmitted and/or sent by Supply Partner to Fyber in connection with the Property.

"**Affiliates**" means, with respect to a party, any and all entities which, directly or indirectly, control, are being controlled by, or are under common control with such party.

"**Bid**" means the price offer for a specific Ad Impression and an Ad received by Demand Partners via the Service in response to an Ad Request of a Supply Partner.

"**Confidential Information**" means any proprietary, confidential and/or trade secret information of a disclosing party and/or its Affiliates, and/or others possessed by disclosing party, whether furnished before or after the Effective Date, regardless of the manner in which it is furnished. Such information includes without limitation, the following: (a) any information, artwork, designs, ideas, concepts, know-how, data, products, services, processes, techniques, drawings, programs, code, inventions, computer program, formulae or test data, work in progress, engineering, manufacturing, marketing, financial, sales, suppliers, customers, investors and/or business information, whether in oral, written, graphic, or electronic form; and/or (b) any document, diagram, drawing, computer program and/or code or other communication; and/or (c) the terms and conditions of this Agreement. Any information disclosed by the disclosing party whether it is conspicuously marked "confidential", is known or should have been reasonably known by the receiving party to be confidential in nature, shall be considered as Confidential Information. For purposes of the Agreement, Confidential Information shall not include any information that: (a) is, or subsequently becomes, publicly available without the receiving party's breach of any obligation owed to the disclosing party; (b) became known to the receiving party prior to the disclosing party's disclosure of such information to receiving party; (c) became known to the receiving party from a source other than the disclosing party by means other than by a breach of an obligation of confidentiality owed to the disclosing party; or (d) is independently developed by the receiving party without the use of any of the disclosing party's Confidential Information. If a particular portion or aspect of the Confidential Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain confidential and subject to all of the provisions of the Agreement.

"**Costs**" means Fyber's costs and fees related to the operation, maintenance, and security that are directly associated with providing the Service to Supply Partners, 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 and credit risk assessment management, all up to a maximum 10% of the Revenue.

"**Demand Partners**" means third parties that have entered into a contract with Fyber to buy Ad Inventory via the Service from Supply Partner, to serve Ads on that Property. Such Demand Partners may be advertisers, Ad agencies, Ad networks, Exchanges and demand side platforms (DSPs).

"**Demand Partner Data**" means: (i) all data Demand Partner submits to Fyber in an Bid for a single Ad Impression, including the Ad content, and (ii) all data Demand Partners collect following the purchase of such impression (i.e. post Bid-win) by using its own technology independently of Fyber, excluding the Ad Request.

"**Fraud**" includes, among others and without limitations: (a) any action taken by any person that is intended to inflate, either directly or indirectly, the Supply Partner Revenue Share; and/or (b) the generation of User activities through a mechanism not approved by or acceptable to Fyber, including but not limited to (i) the use of unsolicited email (SPAM) to promote Supply Partner Properties; (ii) applying automatic redirecting of Users, blind text, or misleading links, forced and/or artificial 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 Ad Inventory on Property that displays no content for the sole purpose of generating User Activities; (v) implementation of 1x1 pixels to deliver invisible advertisements; (vi) impersonating or misappropriating the identity of a Supply Partner and/or any other Third Party.

"**Fyber API**" means Fyber's application programming interface that specifies patterns of interaction between certain software components.

"**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 Attributions**" means any attributes in connection with an inventory source that are available via the Programmatic Mediation Technology. Such information does not and will not include any information that identifies a particular User (e.g. mobile device identifiers, e-mails, names).

"**Net Revenue**" means the gross revenue received by Fyber from Demand Partners for the delivery of Ads on the Property via the Service less any taxes, rebates, charge-backs, make-good, less all applicable advertising agency commissions, , refunds, Costs, including but not limited to any risk fees, , bad debts and any other uncollected amounts.

"**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 or defamatory; (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 illegal 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) 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 (h).

"**Programmatic Mediation Technology**" means Fyber's proprietary technology for enabling Supply Partners and Demand Partners to use a programmatic auction for the sale and purchase of Ad Inventory on the Property. The Programmatic Mediation Technology includes Inventory Attributions.

"**Property**" means any website or an application, including a mobile application or a mobile website, owned, controlled and/or developed by Supply Partner.

"**Revenue**" means all amounts received by Fyber from Demand Partners for Ads delivered and placed on the Property via the Service.

"**Seat**" means the address provided for Supply Partner in the applicable Service Order. If no address is provided in the applicable Service Order then the Seat will be deemed to be in New York City, New York, USA, for the purposes of this agreement.

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

"**User**" means a human end-user accessing a Property.

Appendix B

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 and its Affiliates ("Fyber", "we" or "us") and you regarding the processing of Personal Data, as defined hereunder, as part of the service(s) provided to you by Fyber under the Agreement ("**Service(s)").** In any conflict between this DPA and any 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:

"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.

"Law" shall mean applicable data protection and privacy laws, rules and regulations, including without limitation the EU Regulation 2016/679 ("General Data Protection Regulation");

"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.

"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;

"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: https://www.fyber.com/privacypolicy-en.html 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 via Fyber's SDK or tag which is integrated with the mobile application and/or mobile app you own or manage, or via an API integration between your server and Fyber's server or via a Third Party's tracking tools, that Fyber implement on your behalf. Fyber may process the following information:

1.1.1 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),

1.1.2 Information about your mobile app, such as package name, key words, version.

1.1.3 Additional user Information we may receive from you, such as users' age, gender, zip code and GPS location.

1.1.4 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)u. 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 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. <u>Audit right</u>. 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 and Fyber 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 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 an Fyber's 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.

Appendix C

Local Addenda to the Master Service Agreement for Supply Partners

Local Addendum – Germany

This Local Addendum to the Master Service Agreement for Supply Partners ("**Addendum**") shall only become effective as an integral part of the Agreement between Fyber and Supply Partner (i) to the extent the parties explicitly agree upon its applicability in the applicable Service Order or (ii) if Supply Partner has its Seat in the Federal Republic of Germany, as stated in Section 11.8.1of the MSA. In either case the provisions of this Addendum shall replace and supersede any conflicting provisions in the remaining Agreement, except for conflicting terms individually agreed upon between the parties in the applicable Service Order, which shall take precedence over the terms of this Addendum.

Capitalized terms used in this Addendum will have the meaning ascribed to them in the MSA unless otherwise defined herein.

1. Interpretation of "Warranty"

For the avoidance of doubt, the parties agree that the words "to represent/representation", "to warrant/warranty" shall be understood as referring to an ordinary German law contractual representation (*Zusicherung*) and not to a German law guarantee with strict liability (*Garantie*).

2. Tax and VAT

Any legally owed German VAT for services supplied by Supply Partner in Germany shall be added to the due amounts in the respective statutory amount.

3. Disclaimers; Limitation of Liability

3.1. Section 7.1 of the MSA shall be deleted and replaced with the following:

"7.1 Quality; Availability of Service(s).

7.1.1 Fyber provides the Service(s) in accordance with the recognized state of the art and the care of a prudent service provider.

7.1.2 If Fyber cannot supply the Service(s) to Supply Partner for reasons beyond the control of Fyber ("**Non-availability of Service**"), Fyber will inform Supply Partner without undue delay, at the same time indicating – if possible – when Fyber will be able to continue the supply of the Service(s). If the Non-availability of Service has continued for two (2) weeks, Fyber may terminate the Agreement upon written notice to Supply Partner 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 Service(s) is prevented through force majeure, i.e., events which cannot be reasonably foreseen and averted by taking reasonable precautions by Fyber, 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 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). Statutory rights of termination of each party in the case of such Non-availability of Service remain unaffected.

3.2. Section 7.2 of the MSA shall be deleted and replaced with the following:

"7.2 Limitation of Liability.

7.2.1 Subject to Section 7.2.2, Fyber shall be liable for damages and futile expenses caused to or incurred by Supply Partner (collectively the "**Damages**") pursuant to applicable statutory law.

7.2.2 Fyber's liability for Damages of Supply Partner (irrespective of the legal nature of the claim, whether under contract, tort, or otherwise)

(a) 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 conclusion of the Agreement that typically arise in transactions of this nature;

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

(c) caused by a defect of the Service(s) that already existed at the conclusion of the Agreement shall be excluded, provided that such Damages were not caused with negligence or willful intent of Fyber or a person for whose behavior Fyber is vicariously liable.

7.2.3 A material contractual obligation of Fyber according to the meaning of the foregoing Section 7.2.2 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 Supply Partner regularly relies and may rely.

7.2.4 Notwithstanding Section 7.2.2, nothing 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 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 of the German Product Liability Act).

7.2.5   The above limitations to liability also apply to the liability of employees, executive officers, legal representatives and vicarious agents of Fyber."

4. Modifications to the MSA

4.1. Fyber reserves the right to change or amend the MSA at any time effective prospectively. Any change or amendment will be notified to Supply Partner in a suitable manner (including but not limited to by email or by display of the notice in the Account) at least four (4) weeks prior to its effective date

4.2. Supply Partner has the right to object to any change or amendment of the MSA within two (2) weeks after the date of the notification of the intended change or amendment. In case of a timely objection, each party shall be entitled to terminate the Agreement for cause upon notice to the other party, such termination to become effective upon the date that the intended change or amendment was to take effect. If Supply Partner does not object within two (2) weeks after the date of the notification, the change or amendment shall be deemed accepted by Supply Partner and become an integral part of the Agreement.

4.3. In its notification, Fyber will inform Supply Partner of Supply Partner's right to object within two (2) weeks, both party's right to terminate the Agreement in case of objection, and the legal consequences of non-objection.

5. Arbitration

Section 11.7 of the MSA shall be deleted and replaced with the following:

"11.5 Arbitration. All disputes between the parties arising out of or relating to the Agreement, including any non-contractual obligations arising out of or in connection with it, shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Berlin, Germany. The arbitral proceedings shall be held in the English language."

6. Governing Law and Dispute Resolution

6.1. Governing Law. The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany, without regards to their conflict of laws rules.

6.2. Jurisdiction. To the extent the arbitration provision in Section 11.7 of the MSA (as modified by Section 4 of this Addendum) does not apply, Supply Partner and Fyber agree that the courts in Berlin, Germany shall have exclusive jurisdiction over any dispute between the parties arising out of or relating to this Addendum, the Agreement, or any non-contractual obligations arising out of or in connection with them, and the parties hereby consent to the personal jurisdiction and venue of these courts.

Local Addendum – Europe

This Local Addendum to the Master Service Agreement for Supply Partners ("**Addendum**") shall only become effective as an integral part of the Agreement between Fyber and Supply Partner (i) to the extent the parties explicitly agree upon its applicability in the applicable Service Order or (ii) if Supply Partner has its Seat in European Economic Area (other than the Federal Republic of Germany) or otherwise within Europe (including Armenia, Cyprus, Greenland, and the entire territory of Azerbaijan, Georgia, Kazakhstan, Russia, and Turkey), as stated in Section 11.8.2 of the MSA. In either case the provisions of this Addendum shall replace and supersede any conflicting provisions in the remaining Agreement, except for conflicting terms individually agreed upon between the parties in the applicable Service Order, which shall take precedence over the terms of this Addendum.

Capitalized terms used in this Addendum will have the meaning ascribed to them in the MSA unless otherwise defined herein.

1. Disclaimers; Limitation of Liability

1.1. Section 7.1 of the MSA shall be deleted and replaced with the following:

"7.1 <u>Service Disclaimer.</u> Except as otherwise expressly provided in the Agreement and except for any implied warranties or conditions or terms that cannot be excluded as a matter of law, Fyber does not make any representations, covenants, conditions or warranties to the Supply Partner, whether express or implied, including warranties of title or implied warranties of merchantability, satisfactory quality or fitness for a particular purpose, non-infringement, accuracy, availability, or error or malware-free or uninterrupted operation."

1.2. Section 7.2 of the MSA shall be deleted and replaced with the following:

"7.2 <u>Limitation of Liability.</u>

7.2.1 Neither party excludes or limits its liability to the other party pursuant to the indemnities detailed in Section 8 or in respect of (i) death or personal injury arising as a result of a party's negligence or that of its employees, agents or sub-contractors (as applicable), (ii) fraudulent misrepresentation by Fyber, or (iii) any other liability that cannot be excluded or limited as a matter of law.

7.2.2 In respect of losses not covered by Section 7.2.1 and subject to Section 7.2.3, to the extent permitted by law, Fyber's aggregate liability to the Supply Partner, whether arising in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty, contribution or otherwise pursuant to this Agreement in respect of all claims, losses, or damages suffered by the Supply Partner, shall not exceed an amount equal to €2,500.

7.2.3 To the extent permitted by law, Fyber shall not be liable to the Supply Partner for the following loss and damage (including costs and expenses relating to or arising out of such loss and damage) whether arising from contract, tort (including negligence), breach of statutory duty, contribution or otherwise:
   a. indirect loss, incidental loss, collateral loss or consequential loss;
   b. exemplary, punitive or special damages;
   c. lost revenue, profits, contracts or business;
   d. lost anticipated savings;

e. lost goodwill or reputation;

f. loss of or damages to, and restitution of, records or data; and/or

g. lost management time,

even if Supply Partner has been advised of the possibility of such damages or loss. Fyber shall be excused from the performance of, and shall not be held liable for, any failure or delay in performing any of its obligations under the Agreement to the extent that such non-performance or delay is caused by any acts and omissions of Supply Partner or any party acting for or on behalf of Supply Partner."

2. Rights of Third Parties

Section 11.10 of the MSA shall be deleted and replaced with the following:

"11.8 <u>No Third Party Rights.</u> 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, and no such rights will be deemed to have been created.

11.8.1 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any part of the Agreement. This shall not affect any right or remedy of a third party which exists or is available apart from that Act.

11.8.2 The right of the parties to terminate, rescind or agree any variation, waiver or settlement relating to the Agreement is not subject to the consent of any person that is not a party to the Agreement."

3. Governing Law and Dispute Resolution

3.1. <u>Governing Law.</u> This Addendum, the Agreement, and any non-contractual obligations arising out of or in connection with them shall be governed by, and construed in accordance with, the laws of England and Wales, without regards to their conflict of laws rules.

3.2. <u>Jurisdiction.</u> To the extent the arbitration provision in Section 11.7 of the MSA does not apply, Supply Partner and Fyber agree that the courts in England shall have exclusive jurisdiction over any dispute between the parties arising out of or relating to this Addendum, the Agreement, or any non-contractual obligations arising out of or in connection with them, and the parties hereby consent to the personal jurisdiction and venue of these courts.

Local Addendum – Asia

This Local Addendum to the Master Service Agreement for Supply Partners ("**Addendum**") shall only become effective as an integral part of the Agreement between Fyber and Supply Partner (i) to the extent the parties explicitly agree upon its applicability in the applicable Service Order or (ii) if Supply Partner has its Seat in Mainland China, Hong Kong, Macau, Taiwan, Indonesia or Singapore as stated in Section 11.8.3 of the MSA. In either case the provisions of this Addendum shall replace and supersede any conflicting provisions in the remaining Agreement, except for conflicting terms individually agreed upon between the parties in the applicable Service Order, which shall take precedence over the terms of this Addendum.

Capitalized terms used in this Addendum will have the meaning ascribed to them the MSA unless otherwise defined herein.

1. Arbitration

Section 11.7 of the MSA shall be deleted and replaced with the following:

"11.5 <u>Arbitration</u>. Any dispute, controversy or claim arising out of or relating to the Agreement, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("**HKIAC**") under the HKIAC Administered Arbitration rules in force when the a Notice of Arbitration is submitted. The seat of arbitration shall be Hong Kong. The arbitration proceedings shall be conducted in English. The arbitral award made by HKIAC shall be final and binding upon the parties.

The arbitration tribunal shall consist of three (3) arbitrators. The claimant shall select one arbitrator, and the respondent shall select one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be jointly appointed by the claimant and the respondent. If either the claimant or the respondent fails to select an arbitrator or the parties fail to agree on the choice of the third arbitrator, HKIAC shall make the appointment on their behalf.

Notwithstanding this Section 11.5, any party may apply for a preservation order or seek other interim relief in any court of competent jurisdiction."

2. Rights of Third Parties

Section 11.10 of the MSA shall be deleted and replaced with the following:

"11.8 <u>No Third Party Rights.</u> 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, and no such rights will be deemed to have been created. The terms of the Agreement shall not be enforceable under the Contracts (Rights of Third Parties) Ordinance (Cap. 632 of the laws of Hong Kong) by any person other than the parties stated in the Agreement. Notwithstanding any term of the Agreement, the consent of any person who is not a party is not required to rescind or vary the Agreement at any time."

3. Governing Law and Dispute Resolution

3.1. <u>Governing Law.</u> This Addendum, the Agreement, and any non-contractual obligations arising out of or in connection with them shall be governed by, and construed in accordance with, Hong Kong law, without regards to its conflict of laws rules.

3.2. <u>Jurisdiction.</u> The second sentence of Section 11.8 of the MSA shall not apply.