

The Trade Desk OpenPath Publisher Terms and Conditions

TD may modify these Terms and Conditions at any time by providing thirty (30) days' prior written notice to Company. During such thirty (30) day period ("**Notice Period**"), Company may terminate this Agreement by providing TD with prior written notice thereof. If not so terminated by the end of the Notice Period, such modifications will become part of these Terms and Conditions. Any capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement.

1. OVERVIEW.

TD allows its customers ("**Ad Partners**") to purchase digital inventory through the TD platform for the purpose of displaying such Ad Partners' digital ads (the "**Ads**"). Company provides an impression auction service that enables buyers (e.g., TD's Ad Partners) to purchase digital inventory (e.g., advertising space on websites, apps and other online properties) (the "**Inventory**") of publishers that are owned and operated by Company, or that Company exclusively represents (e.g., publishers and/or media companies in Company's network) (collectively, "**Inventory Suppliers**") for the purpose of displaying Ads via real time bidding. For purposes of clarification, (a) Company agrees that the only Inventory it will make available pursuant to this Agreement is Inventory that is owned and operated by Company ("**O&O Inventory**") or Inventory that is owned and operated by Inventory Suppliers but is only available when transacted through Company ("**Exclusive Inventory**"); (b) in all cases where the Inventory provided by Company pursuant to this Agreement is O&O Inventory, all references herein to "Inventory Supplier(s)" shall be read as references to "Company" (i.e., Inventory Supplier and Company shall be regarded as one and the same); and (c) in all cases where the Inventory provided by Company pursuant to this Agreement is Exclusive Inventory, Company will be fully responsible and liable for its obligations hereunder as well as for the actions and inactions of the Inventory Suppliers as if Company had taken such actions or inactions itself. All references to Company's Inventory Suppliers in this Agreement apply if and to the extent there is an Inventory Supplier. Each party represents and warrants that it has all rights and permissions necessary to enter into this Agreement and perform the acts required of it hereunder.

2. INVENTORY ACCESS & OWNERSHIP.

2.1. Inventory Access. Company grants to TD a non-exclusive, non-transferable (except in connection with a permitted assignment of the Agreement), non-sublicensable right to access the Inventory as described in this Agreement. This Agreement applies to TD's access to the Inventory for itself or its affiliates, and on behalf of any TD Ad Partners.

2.2. Display of Ads. TD grants to Company a limited, revocable, sublicensable (solely to the extent necessary to the applicable Inventory Supplier), worldwide license to copy, encode, publish and display Ads in real time to the end user (i.e., not cached or locally stored to be displayed to the end user at a later time). For each Ad, the foregoing license is solely for Inventory purchased for such Ad by or on behalf of the Ad Partner. For native advertising, see Annex C.

2.3. Modifications to Ads. Neither Company nor its Inventory Suppliers shall modify any Ad or publish or display less than the full Ad. For native advertising, see Annex C.

2.4. Ownership. As between TD and Company, (a) Company owns all right, title and interest in the Inventory, including Company's impression auction service and any future developments and enhancements thereto, and (b) TD owns all right, title and interest in its technologies, platform, Ads provided hereunder and all elements of such Ad. Aside from the licenses granted in Sections 2.1 and 2.2 and in Section 6 (with respect to data ownership) of these Terms and Conditions, neither party grants the other any other license, express or implied, and each party reserves all rights not expressly granted hereunder.

3. USER PRIVACY.

3.1. Company will (if and to the extent it provides O&O Inventory pursuant to this Agreement), and each party's standard agreement with its partners (e.g., Inventory Suppliers of Company; Ad Partners of TD) will require such partners to, have User Notice included in a clear and conspicuous privacy notice available prominently where data is collected and used for the purposes provided for herein. "**User Notice**" means (i) a description of the collection and use of data from and about users for advertising purposes by third parties; and (ii) access to an

opt in or opt out choice with respect to such data collection for the uses contemplated herein, including with respect to cookies and similar technologies as is required by law or otherwise in accordance with industry self-regulatory principles. Each party will, and Company will contractually require its Inventory Suppliers to, take reasonable steps to ensure that each of their respective User Notices accurately describe data collection and use associated with the provision of the Inventory and, at a minimum, include the information required and meet the standards for notice to users required by applicable law and Self-Regulatory Requirements (as defined below).

3.2. Each party will, and Company will contractually require its Inventory Suppliers to, in all applicable respects, comply with its respective obligations under applicable privacy law and any self-regulatory principles such as the Network Advertising Initiative's Code of Conduct ("**NAI Code**"); the DAA Self-Governing Principles in the US (currently found at aboutads.info); the EDAA European Principles in Europe (currently found at edaa.eu); or the DAAC principles in Canada (currently found at youradchoices.ca) (collectively, the "**Self-Regulatory Requirements**").

3.3. In the event Company uses or passes Precise Location Data in connection with its provision of the Inventory, Company will obtain, or will contractually require its Inventory Suppliers to obtain, opt-in consent for the use of such Precise Location Data. "**Precise Location Data**" means the precise geographic location of a device derived through technology that is capable of determining with reasonable specificity the actual physical location of an individual or device. Such opt-in consent will be based on disclosing to the end-user in an interstitial notice and then obtaining lawful consent from such end-user regarding: (a) the purposes for which the Precise Location Data will be used; and (b) how such Precise Location Data will be shared with third parties. Company or the Inventory Supplier, as applicable, shall disclose in its privacy policy the categories of third parties with which such opted in data will be shared.

3.4. Without limiting Company's obligations under applicable law, neither Company nor its Inventory Suppliers shall provide to TD or cause TD to process: (a) any information regarding an individual user's specific health condition or any information or inference regarding health that would be considered sensitive under Self-Regulatory Requirements; (b) any information (i) associated with a persistent identifier that is from or about individuals Company knows or should know are children (children being individuals less than the greater of 13 years of age or the age defined by law in any applicable jurisdiction), or (ii) from inventory that Company knows or should know is directed to children; or (c) any other information that would be considered sensitive, special, or similar under applicable local law or local Self-Regulatory Requirements.

3.5. Company will at its own expense promptly give such co-operation as TD may reasonably request from time to time in relation to TD's and Ad Partners' compliance with applicable data protection and privacy laws. Each party will promptly notify the other in writing of any actual or suspected subject access request or regulatory investigation/enquiry in relation to data processed under this Agreement and where legally permissible will allow the other party such opportunity as is reasonable in all the circumstances to comment on any proposed action in response before such action is taken.

3.6. Company acknowledges that data may be processed in jurisdictions other than the jurisdiction in which it was collected, including in the United States, and will ensure that all such transfers are compliant with applicable privacy laws. If any applicable privacy law requires that additional measures be taken to permit the transfer of data under this Agreement to TD, Company will ensure that all such additional measures have been taken, including by executing any necessary data transfer agreements (e.g., standard contractual clauses) or alternative solutions to ensure that appropriate safeguards are in place for such transfer.

4. COMPLIANCE.

4.1. Applicable Law. Each party, and Company will also ensure that its Inventory Suppliers, will comply with all laws, rules, regulations, and the Self-Regulatory Requirements, applicable to its respective activities related to this Agreement (including but not limited to the collection of data and tracking of web users), and the parties shall reasonably cooperate with each other to ensure compliance.

4.2. Auction. In an effort to create a level playing field so as to enable evolution toward a more efficient marketplace, the parties agree that all Inventory provided to TD and/or TD's Ad Partners hereunder shall be provided pursuant to a Fair Auction. As used herein, a "**Fair Auction**" means an auction in which, where

technologically possible: (i) the rules of the auction are equally transparent; (ii) price floors are provided to TD in the bid stream; and (iii) the dynamics of the auction on a given impression opportunity will not change based on the bid TD places for that impression. All Company auctions shall be run as a single auction per format, per user and per impression (auctions will not be run as “multi-auctions”) and shall not utilize cached bids. Company shall certify (by any executive authorized to do so) to all of the mechanics of the auction service and confirm compliance by Company (and its Inventory Suppliers) of this Section within fifteen (15) days after TD’s written request (email to suffice). TD may not request such certification more than once per six (6) month period; provided that, if TD believes in good faith that Company or an Inventory Supplier may be in violation of this Section 4.2 of these Terms and Conditions, TD may request such certification more frequently. Company will use commercially reasonable efforts to provide sufficient detail for TD to confirm compliance by Company (and each Inventory Supplier) of this Section.

4.3. Inventory Specs. The Inventory and related information and signals will meet the Trade Desk Bidder Params set forth at <https://api.thetradedesk.com/v3/portal/ssp/doc/InventoryOpenPath> (the “**Specs**”). For any Inventory that is not covered by the Specs, TD will, in its discretion, either (a) provide the applicable specifications to Company, or (b) work with Company to determine the specifications for such Inventory, in which event the parties agree to work together in good faith.

4.4. Inventory Standards. Company will ensure compliance, on its own behalf and on behalf of its Inventory Suppliers, with the inventory standards set forth in Annex A, attached hereto and incorporated herein by reference, as well as any Ad Partner standards provided to Company in writing, as each may be amended from time to time upon prior written notice (collectively, “**Inventory Standards**”). TD may, in its sole discretion, determine whether Inventory meets the Inventory Standards, and reject or exclude any Inventory that does not meet the Inventory Standards.

4.5. Steps to Reduce Invalid Inventory. Invalid Inventory (as defined herein) engenders mistrust and inefficiency in the marketplace. In order to help create a more trustworthy and efficient marketplace, Company agrees to take active steps to combat fraudulent Inventory. As a step in that direction, Company consents to the use of reporting from Media Rating Council-accredited third party services utilized by TD and/or its Ad Partners to reduce Inventory from sites or users with invalid inventory, including but not limited to zero viewability, inventory or sites that are purposefully misrepresented or mislabeled (e.g., “referrer” inventory), SIVT (as defined by the Media Rating Council), and fraudulent inventory (collectively, “**Invalid Inventory**”). The parties agree that such reports are deemed conclusive and will be used in calculating fees owed by TD hereunder. TD shall have no obligation to pay for any fees associated with Invalid Inventory and, if already paid for, Company shall refund all such amounts within 30 days after TD notifies Company thereof. In the event TD notifies Company of Invalid Inventory from a particular Inventory source and thereafter a bid request is sent to TD for Invalid Inventory from the same Inventory source, in addition to the foregoing remedy, TD reserves the right to charge, and Company agrees to pay TD, 1% of the amount paid or otherwise payable to Company for the corresponding month.

4.6. Changes to Inventory Supply. If Company intends to materially change the amount of Inventory made available in terms of daily impressions (e.g., a change of more than 20% in total impressions sent daily, on a sustained basis), it must provide at least 10 business days’ notice to TD. If there is a material change in the amount of Inventory made available in terms of daily impressions and Company does not provide TD with the foregoing notice, then TD may reject traffic in its sole discretion.

4.7. Accurate and More Succinct Bid Requests. In order to minimize confusion and repetition in bid requests, Company agrees that:

(i) bid requests for each impression shall contain valid and accurate: publisher ID (if applicable), device ID, video placement signals, publisher-specified slot identifier, transparent floors, transparent site domains or site/bundle IDs that are not masked in any way, user agent strings, and any other signals reasonably requested by TD; and

(ii) Neither Company nor its Inventory Suppliers will make available to TD or TD’s Ad Partners any Inventory that has been purchased or arbitrated from another exchange service or supply side platform.

4.8. No Misuse of Ads; No Change to Bids. Neither Company nor its Inventory Suppliers shall utilize any Ad in any manner not permitted under this Agreement. Neither Company nor its Inventory Suppliers shall modify (e.g., increase or decrease) TD’s or an Ad Partner’s clearing price as part of any impression auction. For example, if

an Ad Partner bids \$1.00 for an impression, then \$1.00 is the clearing price that will be used in the impression auction. For clarity, Company may modify bid amounts in the ad server to prioritize a bid based on preferences determined by Company, so long as the clearing price of the auction is never modified (i.e., always matches to TD's or the Ad Partner's bid amount) and where technologically possible the correct clearing price is always passed to TD in the bid feedback (i.e., bid won data).

4.9. Supply Chain Transparency. Company and its Inventory Suppliers will comply with any reasonable requirements for supply chain transparency provided by TD, including but not limited to:

- (i) Only send Ads.txt or App-Ads.txt authorized inventory.
- (ii) Post a sellers.json file and pass supply object signals per IAB specifications (if applicable).
 - a. Sellers.json files must be listed on a secure link (https).
 - b. Publisher IDs (if applicable) must be listed on sellers.json file including name and business domain in order to transact.
 - c. Complete schain objects in bid requests, ending with the publisher are required.
 - d. Sellers.json files need to be found at the domain passed in the Supply Chain (schain) node.

5. REPORTING; BILLING AND PAYMENTS.

5.1 Reporting. TD shall be the server of record for all impressions. TD will provide Company with daily reporting and TD may send a final monthly report for each month within five (5) business days after the end of such month. All reporting will include Net Media Cost (defined below) and impressions won for the respective period. Company will invoice TD monthly (as set forth in Section 5.2 below) and Company's monthly invoice will be based on and may not deviate from TD's reporting, and if TD has provided a monthly report for such month, Company's invoice must be based on TD's monthly report. Although billing will be based on TD's reporting, Company will provide reporting to TD daily for troubleshooting purposes and such Company reports shall comply with the reporting requirements set forth on Annex B attached hereto and incorporated herein by reference. If there is a discrepancy of more than 10% between Company's impression counts and TD's impression counts for any given day, Company must report such discrepancy to TD within five (5) calendar days following receipt of TD's reporting. In the event of a timely reported discrepancy, the parties will work together in good faith to resolve such discrepancy; provided, in the event both parties have been troubleshooting in good faith and a resolution is not reached by the end of the current month, then at TD's option, such discrepancy shall be resolved in favor of TD's reporting. As used herein: (a) "**Media Cost**" shall mean the media spend associated with all impressions purchased by or on behalf of TD's Ad Partners through Company's impression auction service as determined in accordance with this Section 5.1; and (b) "**Net Media Cost**" shall mean the Media Cost minus the Support Cost.

5.2. Invoicing. Subject to the remainder of this Section, each month Company will invoice TD within ten (10) business days from the end of such month for the Net Media Cost. Company shall bill TD for all Inventory purchased, whether on an open auction (RTB) basis or on a DealID basis. In the event TD is notified by its Ad Partner that it or its advertiser paid Company (or the Inventory Supplier) directly, then Company shall refund such amounts to TD within 30 days of such notification.

5.3. Payments. TD will pay Company all undisputed amounts within 90 days of receipt of each invoice. Notwithstanding anything to the contrary in this Agreement, Company will only hold TD liable for payments solely to the extent that TD has received the corresponding payments from its Ad Partners. TD shall not be responsible for payment of any amounts invoiced more than fifteen (15) business days after the end of the month in which the Inventory was purchased. Reporting, invoicing and payment will be made in US dollars based on the daily exchange rate; provided, that, if there is Inventory from outside the United States, TD may request reporting, invoicing and payment in a different currency, and Company shall accommodate such request to the extent reasonably practicable, in which case the reporting and invoicing must be in the same currency as the agreed upon transaction currency. If an Ad Partner requires a refund or imposes a deduction due to Company's breach (determined in TD's sole discretion) of Section 4 of these Terms and Conditions after TD has already made payment or after the Term has ended, Company will promptly reimburse TD for any such refund or deduction. TD will not be obligated to pay for any Inventory that does not comply with the applicable Inventory Standards or this Agreement. In addition, if Company or an Inventory Supplier breaches Section 4 of these Terms and

Conditions, TD reserves the right to charge Company 1% of the amount paid or otherwise payable to Company for the corresponding month to defray TD's administration costs associated with Company's breach. The foregoing is not TD's sole remedy under any circumstances. All fees and other amounts due under this Agreement are exclusive of value-added tax and any similar taxes (collectively, "**Transaction Taxes**"). Where applicable, TD shall provide to Company all information necessary for Company to issue a tax invoice to TD, and Company shall include and itemize separately on invoices any Transaction Taxes at the then-prevailing rate. If TD shall at any time be required by law to withhold any present or future tax, assessment, or other governmental charge (collectively, "**Withholding Taxes**") imposed upon any payment due under this Agreement, then TD shall withhold and timely remit any such Withholding Taxes to the relevant government authority and shall provide Company with documentary evidence of such remittance. TD may hold any payment until the cumulative amount owed to Company totals at least \$100.

6. DATA.

6.1. Company Data. As between TD and Company and except for the licenses explicitly granted in this Agreement, Company holds all right, title and interest in any data in Company's impression auction service, excluding any TD Data and Bidstream Data therein ("**Company Data**"). TD may use such Company Data solely related to its purchase of Inventory. Company acknowledges that Ad Partners may have access to information about Company and Inventory Suppliers.

6.2. TD Data. As between TD and Company and except for the licenses explicitly granted in this Agreement, TD holds all right, title and interest in (a) all data TD imports into Company's impression auction service or otherwise sends to Company in response to a bid request or otherwise, and (b) any derivative output from TD's use of Bidstream Data (defined below), (collectively, "**TD Data**"). Company may use TD Data solely to provide the Inventory to TD under this Agreement. TD acknowledges that Company may have access to detailed information about Ad Partners, including but not limited to, their bidding activity (which, as between the parties, is confidential to TD), and in such cases, Company will only permit Company employees who are directly involved in providing the Inventory to access such information, will only use this information for the purpose of providing the Inventory, and will treat such information as TD Confidential Information.

6.3. Bidstream Data. "**Bidstream Data**" means all bid request data and, where applicable, post-request data (e.g., win notice, billing notice, loss notice, etc.) generated by the impression auction service in connection with Inventory provided under this Agreement. Company may use Bidstream Data for any business purpose, provided that Company may not disclose Bidstream Data that identifies TD or any Ad Partner to any third party (other than to the Ad Partner who purchased the Inventory) except service providers who are under confidentiality restrictions applicable to such Bidstream Data. TD may use Bidstream Data for any business purpose provided that (a) TD does not disclose Bidstream Data that describes or reflects the performance of Company's impression auction service to third parties except service providers who are under confidentiality restrictions, and (b) TD does not use Bidstream Data to create segments by publisher.

7. INSURANCE.

7.1. Company shall have and maintain in place, with reputable insurers having AM BEST ratings of at least A-VII, the following insurance policy minimum limits, with TD included as an additional insured party:

(a) Commercial General Liability: US\$1,000,000 per occurrence / US\$2,000,000 annual aggregate (including Bodily Injury & Property Damage, Premises/Operations, Products/Completed Operations, Personal and Advertising Injury);

(b) Tech E&O or Cyber Liability: US\$3,000,000 per occurrence / US\$3,000,000 annual aggregate (including Errors & Omissions, Media Liability, Privacy and Network Security); and

(c) Umbrella Liability: US\$5,000,000 per occurrence / US\$5,000,000 annual aggregate.

7.2. Company's insurance: (i) may not be cancelled without thirty (30) days' prior written notice to TD; (ii) shall not carry a deductible larger than USD \$50,000; and (iii) shall be primary and not contributing to or in excess of any insurance maintained by TD. Company's Commercial General Liability and Umbrella Liability coverage shall provide a waiver of subrogation in favor of TD.

7.3. Upon request, Company shall provide a valid certificate of insurance (satisfactory in form and substance to TD) evidencing the existence of the required insurance coverage.

8. DISCLAIMER.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, REPRESENTATIONS OR COVENANTS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. TD RESERVES THE RIGHT TO EXCLUDE ANY INVENTORY FROM THE TD PLATFORM AT TD'S SOLE DISCRETION.

9. LIMITATIONS ON LIABILITY.

EXCEPT FOR VIOLATIONS OF SECTIONS 3 (USER PRIVACY), 4 (COMPLIANCE) AND/OR 11 (CONFIDENTIALITY), AND EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT: (A) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF; AND (B) NEITHER PARTY'S MAXIMUM AGGREGATE LIABILITY SHALL EXCEED THE TOTAL AMOUNT PAID BY TD TO COMPANY DURING THE SIX MONTH PERIOD PRIOR TO THE DATE THE LIABILITY FIRST AROSE. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, FOR FRAUD OR FOR ANY OTHER MATTER WHERE LIABILITY MAY NOT AS A MATTER OF LAW BE LIMITED OR EXCLUDED.

10. INDEMNIFICATION.

TD shall indemnify, defend and hold harmless Company and its directors, officers, employees and agents, its and their respective successors, heirs and assigns (the "**Company Parties**") against any liability, damage, loss or expense (including reasonable attorneys' fees and costs) incurred by the Company Parties in connection with any third-party claim arising out of or relating to any allegation that would constitute TD's breach of Sections 3 (User Privacy) or 4 (Compliance) of these Terms and Conditions. Company shall indemnify, defend and hold harmless TD and its directors, officers, employees and agents (and successors, heirs and assigns) and customers (the "**TD Parties**") against any liability, damage, loss or expense (including reasonable attorneys' fees and costs) incurred by the TD Parties in connection with any third-party claim: (a) that the technology Company uses to provide the Inventory (or any portion thereof) or TD's use (or its Ad Partner's use) thereof infringes any patent or other third party intellectual property right, (b) arising out of or relating to any allegation that would constitute Company's breach of Sections 3 (User Privacy) or 4 (Compliance) of these Terms and Conditions, or (c) arising out of or relating to any Inventory or other related materials which Company provides pursuant to this Agreement, including but not limited to any claim that the Inventory on which an Ad appeared was not the Inventory identified by Company. The indemnified party will provide the indemnitor with prompt notice of any claim (provided that the failure to promptly notify shall only relieve the indemnitor of its obligations to the extent it can demonstrate material prejudice from such failure) and at the indemnitor's expense, provide assistance reasonably necessary to defend such claim. Without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed, the indemnitor will not enter into a settlement or compromise that: (i) would not fully absolve and release the indemnified party of liability, (ii) would contain any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the indemnified party, or (iii) would result in liability to the indemnified party or obligate the indemnified party to perform or refrain from performing any action. With respect to any data privacy or other governmental or regulatory investigation or claim, the indemnified party shall have the option to have sole control of the defense and any settlement negotiations at the indemnitor's expense.

11. CONFIDENTIALITY.

"**Confidential Information**" means any information relating to or disclosed in the course of this Agreement, which is or should be reasonably understood to be confidential. The terms of this Agreement are the Confidential Information of each party (not to be disclosed by a party without the written consent of the other). As between TD and Company, (a) any Company Data is Company's Confidential Information; and (b) any TD Data and information, TD reporting, or data regarding TD and Ad Partner bidding activity pursuant to this Agreement is TD's Confidential Information. The disclosing party's Confidential Information may not be disclosed by the receiving party to any third party (including any Ad Partner) unless approved in writing by the disclosing party.

The receiving party will use the same care to protect Confidential Information as it uses for its own similar information, but in no event less than reasonable care, and will use Confidential Information only for the purpose of fulfilling its obligations under this Agreement. The receiving party will promptly return or destroy the other party's Confidential Information upon request of the other party. "Confidential Information" does not include information that (a) is or becomes part of the public domain through no fault of the receiving party; (b) was already in possession of the receiving party; or (c) was independently developed by the receiving party without violation of this Section. The receiving party may disclose Confidential Information if required to do so by law, if the receiving party, unless legally prohibited, provides the disclosing party with prompt notice and complies with any protective order imposed on such disclosure.

12. MISCELLANEOUS.

12.1. This is the entire agreement of the parties relating to this subject and it supersedes all other commitments, negotiations and understandings. This Agreement cannot be assigned without written consent of the non-assigning party except that either party may assign this Agreement: (a) to an acquirer of substantially all of that party's assets, stock or business by sale, merger or otherwise, or (b) to a corporate affiliate. If any provision of this Agreement is unenforceable, that provision shall be re-interpreted to be as close to the parties' intent as legally possible and the validity of the remaining provisions will not be affected. The parties are independent contractors, acting as principals at law rather than one party being agent for the other, and there are no third-party beneficiaries. Provisions that by their terms are expected to survive, including without limitation, Sections 2.4 (Ownership), 3 (User Privacy), 6 (Data), 8 (Disclaimer), 9 (Limitation of Liability), 10 (Indemnification), 11 (Confidentiality) and 12 (Miscellaneous) of these Terms and Conditions, as well as any reporting and payment obligations with respect to Inventory purchased prior to the expiration or termination of this Agreement, will survive expiration or termination of the Agreement.

12.2. A party's failure or delay to exercise any right will not operate as a waiver, nor will any single or partial exercise of any such right preclude any other exercise or the exercise of any other right, power or remedy.

12.3. All notices, demands and other communications provided for or permitted under this Agreement will be made in writing by personal delivery or by email, if to TD to the contact address set forth on its website and to legal@thetradedesk.com, and if to Company, to the contact information set forth on the first page of the Agreement.

12.4. Neither party will make any public statement relating to the Agreement without the prior written approval (email sufficing) of the other, except that TD may include Company's name and logo in marketing, promotional materials and partner lists.

12.5. Governing Law; Jurisdiction.

a. If Company is domiciled in the United States, the following will apply: This Agreement is governed by California state law, excluding its conflicts of law principles. Any action arising under or related to this Agreement will be resolved in the state or federal courts (and the parties hereby consent to personal jurisdiction) in the County of Los Angeles, CA. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.

b. If Company is domiciled outside the United States, the following will apply: This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the law of England without regard to its conflicts of law principles. Each party agrees that the courts of London, England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.

Annex A
Inventory Standards

1. **Prohibited Sites.** Company and its Inventory Suppliers will not serve Ad Partner's Ads (or allow Ads to be placed) on a Prohibited Site. As used herein, "**Prohibited Site**" means any site or digital property containing ad inventory that contains, involves, facilitates, advocates, promotes or otherwise meets one or more of the following: (a) discrimination on the basis of race, national origin, language, ethnicity, gender, religion, sexual orientation, age or disability; (b) libel, deception, defamation, obscenity, nudity, pornography, adult content, sexually explicit or abusive activities; (c) illegal gambling or illegal substances; (d) sedition or illegal activities; (e) MP3, MPEG and/or copyrighted materials for download, sale or otherwise, in any case without the permission of the copyright owner or otherwise in violation of copyright law, or that induces infringement or misappropriation of a copyright, trademark, trade secret or patent of another party; (f) a conflict or violation of any law, regulation, governmental guidelines or court order, or any intellectual property or other rights of any person or entity (for purpose of clarification, "intellectual property" includes public performance rights if the site or digital property includes music (or may include music) or includes audio or video ad inventory (i.e., such site or digital property shall be required to have the requisite public performance licenses)); or (g) user generated content, sites aggregating/distributing user generated content, personal homepages, or "free" web pages, except for forums, which shall not be prohibited.
2. **Prohibited Inventory Content.** Neither Company nor its Inventory Suppliers shall provide Inventory:
 - a. that depicts, contains, or provides access to violent content or threats of physical harm to a particular individual or group, or hate speech;
 - b. from sites intended for the sole purpose of garnering ad impressions, without providing any material content or service to users;
 - c. from sites or applications that do not provide notice or do not obtain necessary user consent for data collection;
 - d. that obscures, replaces, modifies, or otherwise interferes with another party's ads or ad inventory;
 - e. that causes interference with user navigation (e.g., preventing a user from leaving a page, by popping dialogs, pop-ups, new windows, etc.) or distributes or contains viruses or other malware;
 - f. that simulates or artificially initiates clicks or impressions, including by automatically refreshing tags or pages; and/or
 - g. on websites/properties that appear on infringing or banned lists provided by applicable governmental authorities (e.g., the Police Intellectual Property Crime Unit (PIPCU) Infringing Website List in the United Kingdom).
3. If Company operates news media properties, TD acknowledges that such properties may at times report on topics related to those mentioned in this Annex A.

Annex B
Reporting & Invoicing Requirements

1. Subject to the additional requirements set forth below, Company shall provide TD with reporting that includes: date, time zone, currency, all impressions won, and media cost.
2. In all reporting, Company shall list separately for each day (i) all impressions won, and (ii) to the extent applicable: media cost for each of the open market, Variable Price PMP, Fixed Price PMP, and fixed price programmatic guaranteed impressions.
3. In addition to the daily reporting (which shall include, for purposes of clarification and not of limitation, (i) weekends and holidays, and (ii) the above information for all inventory bid or won on each day), Company shall provide a 31-day look-back window (i.e., the end of the month shall include that day's daily reporting, plus the prior 30 days).
4. Company shall provide daily reporting to TD via a designated S3 bucket in the format specified by TD.

Annex C

Native Ads

As used herein, “Native Ad” means an Ad that is harmonious with the surrounding content and has been designated in the bid request as “Native.” For Native Ads supplied by Company, the Terms and Conditions are amended as follows:

1. In Section 2.2 of the Terms and Conditions (Display of Ads), the following sentence is added: “TD grants to Company a limited, revocable, sublicensable (solely to the extent necessary to the applicable Inventory Supplier), worldwide license for Native Ads provided by TD and/or its Ad Partners, to copy, store, modify (solely as set forth in Section 2.3 of these Terms and Conditions) and display all elements of the Native Ad together. For each Native Ad, the foregoing licenses are solely for Inventory purchased for such Ad by or on behalf of the Ad Partner.
2. In Section 2.3 of the Terms and Conditions (Modifications to Ads), the following sentences are added: “In the event Company or an Inventory Supplier requires the elements of any Native Ad to be sent in advance so that it may be customized for the “look and feel” of the surrounding content, upon TD’s request (made on behalf of an Ad Partner), prior to displaying any Native Ad, Company will provide, or will ensure that the Inventory Supplier provides, a mockup of each modified Native Ad to TD or, at TD’s direction, a third party (e.g., the advertiser or its agency) for final approval. With respect to Native Ads, Company represents and warrants that it will not, and it will ensure the Inventory Supplier does not, (a) format or display such Ads in a manner that is potentially misleading (e.g., that a Native Ad is editorial or other non-advertising content), (b) run the Ad prior to securing final approval from TD or the applicable Ad Partner, as required, or (c) remove or diminish the prominence of any disclaimer or Ad Choices icon that is included in the Native Ad creative provided by TD or the Ad Partner.”
3. In Section 4.1 of the Terms and Conditions (Applicable Law), the following sentences are added: “Company shall include, and shall ensure its Inventory Suppliers include, any legally required disclosures applicable to any native advertising (e.g., FTC endorsement disclosures). In addition, to the extent that a Native Ad contains such a disclosure, Company shall not remove or obscure such disclosure.”
4. In Section 4.3 of the Terms and Conditions (Inventory Specs), the following sentence is added after the first sentence: “For Inventory for Native Ads, Company’s web Inventory will meet the TD-developed protocol based on the IAB’s OpenRTB API Specification, or as otherwise updated from time to time.”