



TERMS & CONDITIONS

These Terms and Conditions and Country Schedule (“Terms”) are between Embi Media (hereinafter, “Embi”, “we”, “us”) and the Client and apply to the provision of the Embi Media Service. Embi Media enters these Terms on behalf of itself and other Embi Media affiliates, some of whom may provide certain services and invoicing as further detailed in these Terms.

1. Service

Publisher hereby engages Embi Media to provide the Embi online advertising optimization services on Publisher’s and its partners’ advertising inventory (“Publisher Inventory”) on all of its partners’ respective Websites, Internet-powered applications, mobile, smart phone, tablet and other wireless devices and any other Internet-accessible material whether existing before or after the Effective Date (the “Publisher Properties”). Embi Media creates an auction for each advertising impression from the Publisher Inventory where the “bids” are derived from multiple sources including various buying programs from each of Embi’s media buying clients (each a “Demand Partner”) such as fixed CPM campaigns, revenue share campaigns, real-time bidding campaigns.

2. Warranties; Disclaimer; Obligations

2.1 Mutual Warranties. Each party represents and warrants to the other party that (a) it has all necessary organizational rights and authority to enter into, execute and perform its obligations; and (b) the performance of their respective obligations hereunder do not and will not violate any agreement to which such party is a party or by which it is otherwise bound.

2.2 EXCEPT AS EXPRESSLY SET FORTH, EACH PARTY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS RESPECTIVE SERVICES OR PRODUCTS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EMBI MEDIA SHALL NOT BE LIABLE FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE EMBI MEDIA SERVICE DIRECTLY CAUSED BY THE FAILURE OF THE INTERNET OR A TELECOMMUNICATIONS SYSTEM, OR COMPUTER ERROR OR OTHER TECHNICAL MALFUNCTION BEYOND ITS REASONABLE CONTROL.

2.3 Use of the Embi Services. Publisher agrees that it will not transfer or (unless expressly and specifically approved by Embi in advance and in writing) allow third-party access to any Embi Media Service. To the extent such access is so permitted, Publisher will be responsible hereunder for the acts and omissions of the applicable third party in connection with such access. Publisher is responsible for maintaining the confidentiality of its users’ passwords and usernames and will promptly notify Embi Media in writing of any unauthorized use of its account or any other breach of security that is known or suspected by Publisher. Embi Media will ensure that each Website, device, or application for which our Service is engaged contains or is linked to a privacy policy that governs its data collection and use practices. Publisher has and will maintain all consents that are required to allow Embi Media to provide the Embi Services to Publisher as set forth in the applicable Contract, including without limitation to send to us the Publisher Data. Publisher will not permit any PII (Personal-Identifiable Information) to be sent to Embi. For more information about PII you may visit <http://www.embi-media.com/privacy-policy>

3. Fee; Payment

3.1 Definitions.

For the purpose of this clause 3:

3.1.1 "Publisher Revenue" means all revenue paid or payable by Demand Partners to Embi Media in respect of our Service, less (i) the commission for that service, as stated on the IO; (ii) any applicable value added tax or other sales tax payable by either Embi or Publisher regarding the collected revenue.

3.1.2 "Bad Debt" means any Publisher Revenue that has not been received by Embi Media before the date on which such Publisher Revenue becomes payable to Publisher pursuant to clause 3.3 below.

3.1.3 "Bad Debt Allowance" means a sum of up to 3% (three per cent) of the Publisher Revenue due to Publisher in any month that Embi Media may deduct from the sums payable to Publisher pursuant to clause 3.3 below, provided that Embi (a) promptly notifies Publisher of the details of such Bad Debt, including but not limited to the amount of the bad debt and the identity of the Demand Partner(s) from which such debt is owing; and (b) can show that it has used best efforts to collect the Bad Debt.

3.2 Collection of Publisher Revenue.

Unless otherwise instructed by Publisher, Embi Media shall collect Publisher Revenue from its Demand Partners on Publisher's behalf.

3.3 Payment of Publisher Revenue.

For each calendar month of the Term, Embi Media shall, by no later than fifteen (15) days after the end of such calendar month, provide Publisher with a monthly statement stating the number of impressions served, the Publisher Revenue and our Fee applicable for that calendar month ("Monthly Statement").

Once received that Revenue information, Publisher shall invoice Embi Media for the balance of the Publisher Revenue (net of the Embi fee) within thirty (30) days following the end of the calendar month in which the Monthly Statement is received. Embi Media shall pay all invoices based on the net of the products that each Publishers work with, detailed on the IO. Save in respect of the Bad Debt Allowance, Embi Media acknowledges and agrees that it shall be jointly and severally liable for all Publisher Revenue due to Publisher under this Contract. Embi Media agrees to promptly reimburse Publisher in respect of any deductions made for its Bad Debt Allowance in the event that the Bad Debt to which it relates is later recovered.

In any case, Embi Media reserves the right to adjust, on a monthly basis, the Publisher Revenue to cover any unexpected financial costs which include but are not limited to the reconciliation adjustments with the DSP, the exchange differences, the financial costs, etc.

3.4 Late payment.

Where Embi Media fails to pay any sum due to Publisher on time, we shall pay interest on such late payments at a rate of three per cent (3%) until such payment is received.

3.5 Tax.

Where, under this Contract, a party (the "Payor") agrees to pay to the other party (the "Payee") any sum or to furnish to the Payee consideration which (in either case) is consideration for a taxable supply, that sum or consideration shall be exclusive of VAT, sales tax or goods and services tax (collectively "VAT") payable on it and the Payee of the supply shall pay VAT in addition to any sum or consideration if applicable. The Payor shall provide a valid VAT invoice in respect of the supply.

3.6 Publisher Reporting. Embi Media shall provide Publisher with a password-protected web page on the Embi Media website where Publisher, through our proprietary user interface, shall be able

to access records of Demand Partners delivering advertising to the Publisher Inventory including impression reports, revenue reports, reports on eCPM (i.e., effective CPM), should Publisher purchase the respective Programs from Embi Media (collectively, these reports are the "Publisher Reporting"). Publisher acknowledges that any and all numbers displayed in Publisher Reporting are estimated and do not represent actual numbers for billing purposes until the End of the Month.

4. Term, Termination

4.1 Term & Renewal.

The initial term of each Contract shall begin as of the Effective Date of the applicable Contract and shall continue as set forth in such Contract (the "Initial Term"). Following the Initial Term, the term of each Contract shall automatically renew for consecutive twelve (12) month periods (each, a "Renewal Term") unless either party provides the other party with written notice of cancellation of the next Renewal Term no less than thirty (30) days before the start of such Renewal Term. The Initial Term and any Renewal Term(s) shall be the "Term."

4.2 Termination for Cause.

Either party may terminate any Contract for material breach by written notice, effective in thirty (30) days, unless the other party first cures such breach.

5. Use of Marks & Publicity

During the Term, Embi Media may identify Publisher as a customer or user of the Embi's Service and the Publisher Properties solely in connection with providing our Services hereunder. Any other use of Publisher's name, logos, or other marks by Embi shall be subject to Publisher's prior approval. Neither party may issue a press release announcing the business relationship between the parties, upon approval of the other party.

6. Exclusivity

Publisher agrees that during the Term of each Contract, it shall direct all advertising impressions that are not sold by Publisher's direct sales force through the applicable Embi Media Service(s) for delivery to end users and that it shall not during such Term contract with, engage, or otherwise do business with any third party that operates an online advertising service substantially similar to such Embi Media Service(s).

