

# The Trade Desk Platform Terms and Conditions

## Exhibit A

### 1. CERTAIN DEFINITIONS.

1.1 **“Audience Tools”** means the functionality provided in the Platform that enables advertising campaigns to be targeted to particular types of users (e.g., avid golfers). Audience Tools may utilize audience data provided by Company (i.e., first party data), third parties (e.g., BlueKai) or TD.

1.2 **“Direct Bill Inventory”** means the cost of all ad inventory purchased by or on behalf of Company through the Platform that, the parties have mutually agreed, will be paid directly by Company to the applicable Inventory Partner.

1.3 **“Directly Identifying Information”** means data that directly identifies or reasonably can be used to directly identify an individual, including name, raw (unhashed) email address, postal address, phone number, or government identifier. For the avoidance of doubt, Directly Identifying Information does not include (a) cookie identifiers; (b) advertising identifiers assigned by mobile devices; (c) IP addresses; (d) other forms of device identifiers generally accepted for use in relation to advertising; and (e) demographic, interest, or browsing behavior data associated with such identifiers.

1.4 **“Fees”** means the fees shown in this Agreement and the fees shown in the Platform user interface for any additional optional features and services that Company uses.

1.5 **“Inventory Partners”** means the third parties who make inventory available for purchase through the Platform.

1.6 **“Media Spend”** means the cost of all ad inventory purchased and data licensed by or on behalf of Company through the Platform.

1.7 **“Platform”** means the TD hosted software platform including Audience Tools and other functionality.

1.8 **“Services”** means the services and functionality provided by the Platform, any campaign management services, tags and pixels, APIs, and any other services provided by TD from time to time.

1.9 **“Sites”** includes websites, apps, video or audio programs, or other content and media from which ad inventory is made available by Inventory Partners or from which data is collected or used in association with the Services.

1.10 **“Total Cost”** means Media Spend plus any applicable Fees.

### 2. SERVICES.

2.1 **Self-Serve Usage.** Subject to this Agreement and as long as Company is not in breach of its obligations herein, TD grants Company a non-exclusive, non-transferable right to access and use the Platform on a self-serve basis solely to purchase advertising for its or any third party on whose behalf Company is acting (each a **“Client”**) advertising campaigns. Company will obtain and maintain throughout the Term (and hereby grants to TD) all rights and permissions reasonably necessary to buy inventory on Company’s behalf (and on behalf of any Client), perform tracking and analytics, and store and serve ads. Company is solely responsible for all activity and payments owed under its account(s). To the extent that Company requests TD’s help to use the Services, Company consents to the actions that TD performs on its behalf. Company retains sole responsibility for such assisted use of the Services.

2.2 **Managed Services.** In addition to self-service use of the Platform, Company may engage TD to manage campaigns or provide other managed services, including for TD to purchase advertising on behalf of Company for Company’s or its Clients’ advertising campaigns (collectively, **“Managed Services”**). The details of Managed Services will be agreed to in writing and signed by the parties (the **“Insertion Order”**).

2.3 **Reporting.** Company will have access to TD’s online reporting interface. All information from the interface is solely for the internal use of Company and its Clients.

2.4 **Campaign Analytics.** If Company requests campaign analytics such as click and conversion tracking, TD may append certain parameters to the URL associated with Company’s ad to enable the campaign

analytics (“**Campaign Analytics Code**”). Company may not edit or delete any Campaign Analytics Code without TD’s prior written consent and must promptly remove all Campaign Analytics Code upon termination of this Agreement.

2.5 **Audience Tools.** Fees for use of Audience Tools will be as shown in the Platform or agreed in advance in writing. Company may use the Audience Tools solely for the purpose of managing campaigns through the Platform and shall not attempt to extract or recreate the data underlying the Audience Tools or assemble similar data or audience segments itself (directly or indirectly through a third party).

2.6 **APIs.** TD may make application program interfaces or client-side software (“**APIs**”) available to Company for additional fees which will be set forth in an Order Form. If Company or a Third Party (as defined below) implements the APIs, they agree to use the most recently released version of the APIs (no later than within 6 months following the release date of such version). Company may not create (and shall not permit any Third Party to create) more than a single API or share its API key or access information with another party without TD’s prior written consent.

2.7 **Beta Features.** TD may offer to Company the right to use certain experimental features from time to time (“**Beta Features**”). All Beta Features are provided on an “as is” and “as available” basis, without any representations, warranties, covenants or obligations of any kind, and may be terminated by TD at any time. Any use by Company of Beta Features is solely at Company’s own risk.

2.8 **Direct Tags.** To facilitate campaigns agreed upon directly between Company and publishers, at Company’s request, TD will provide to the publishers TD tags to be implemented on the publisher’s Sites and technical specifications for their implementation. Company shall be solely responsible for obtaining written permission from the publishers to implement the TD tags.

2.9 **Direct Bill to Company by Inventory Partner.** In the event that Company enters into an agreement with an Inventory Partner for Direct Bill Inventory, Company will provide written notification (email sufficing) to TD along with documentation (or written acknowledgement by the Inventory Partner) of the Direct Bill Inventory arrangement. If and to the extent that the Inventory Partner releases TD from all payment obligations with respect to such Direct Bill Inventory, TD will not look to Company for payment of such Direct Bill Inventory. Company acknowledges that the Direct Bill Inventory DealIDs shall be marked as “direct bill” by the Inventory Partner. For the avoidance of doubt, with respect to Direct Bill Inventory, any costs of data licensed by or on behalf of Company through the Platform and any Fees will be invoiced in accordance with the Agreement.

2.10 **Direct Seats.** In the event Company holds its own seat on an exchange and desires for TD to provide payment services to such exchange, the parties shall work together to set up such seat and payment mechanism, and TD shall charge Company a fee which shall be set forth in an Order Form.

2.11 **Ad Tags.** If Company uses the TD ad server, Company is responsible for inputting ad tags so that they are functional. Each ad tag may relate to one advertiser only (but can be related to multiple ads/creative for that advertiser).

2.12 **Connected TV.** Purchases of connected TV inventory may be subject to additional terms and conditions, which TD will provide to Company in writing (email sufficing). Creatives intended to be served on connected TV inventory must be provided to TD at least two full business days in advance of any campaign launch.

2.13 **Additional Features and Services.** TD may roll out additional features or services from time to time, which may require additional fees and terms and conditions as set forth in the Platform or by separate agreement between the parties.

2.14 **Third Party Access.** Company is responsible for all activity under its account, including maintaining the confidentiality of its account logins and passwords and ensuring that all reporting and data usage complies with this Agreement. Company may grant its Clients access to its account, data, or reporting (via the Platform, APIs or otherwise) (collectively “**Account Access**”) and may request in writing or via the Platform that TD approve and grant Account Access to non-Client third parties. TD reserves the right to reject Account Access to any non-Client third parties. Clients and TD approved non-Client third parties are collectively referred to

herein as “**Third Parties.**” Company shall ensure that all Third Parties (a) use Company’s account information solely for Company’s benefit and solely as required to provide services to Company (or if such Third Party is a Client, then for such Client’s internal use) and for no other purpose, and (b) are aware of, and comply with, all restrictions for use of the Services, Platform, and data described in this Agreement. Company shall be liable for any breach of this Agreement by any Third Party, as if Company committed such breach itself. Additional terms, conditions, and fees for Account Access may apply.

2.15 **Adding Affiliates.** TD may enter into affiliate adopting agreements (“**Adopting Agreements**”) with affiliates of Company that Company controls, is controlled by or is under common control with (“**Affiliate**”). Such Adopting Agreements will be substantially in the form shown in Schedule 3. Company will remain responsible to TD for the actions and obligations of any such Affiliate.

3. **RESTRICTIONS.** Company will use the Services only for its own use or for a Client or for a direct agent with which Company has a direct relationship. Company will not directly or indirectly (a) circumvent or attempt to circumvent any TD security measure or interfere with or attempt to interfere with the proper functioning or performance of the Platform or Services, (b) share its Platform login with, or otherwise grant access to the Platform or Services to, any third party without express notification to and approval by TD in compliance with Section 2.14, (c) reproduce, distribute, modify, prepare derivative works of, translate, reverse engineer, reverse compile or disassemble any TD-provided tag, the Platform, Audience Tools (other than Company Data), or any portion thereof, (d) use or authorize the use of the Platform or Services for any purpose not permitted under this Agreement, (e) copy, sell, transfer, lease, lend, syndicate, or sub-syndicate the Platform or any Service, or use the Platform or Services for co-branding, timesharing, arbitrage (e.g., reselling), service bureau or other unauthorized purposes, (f) utilize rotating ad tags or otherwise violate the Ad Standards, (g) violate the provisions in Section 7, (h) distribute viruses or other malware (through the ads or any other mechanism), (i) create targeting profiles or segments on the basis of the publisher Sites that a user has visited, the content on the publisher’s page or site, or the general interest area(s) covered by the publisher (e.g., Company may not create an “ESPN Audience” segment based on any information obtained during a prior campaign on ESPN properties), (j) use the Platform or Services for gathering competitive intelligence, or (k) create an activated Ad Group (which is a feature of the Platform that specifies the targeting strategy for a campaign) that spend less than \$1.00 per day. TD may immediately suspend Company’s access or terminate this Agreement upon its reasonable belief that Company has breached any provision of this Section 3. In the event that Company’s breach of this Section 3 is attributable to its intentional misconduct or gross negligence and results in a termination or suspension of TD’s ability to conduct business with a third party partner (e.g., an Inventory Partner), without limiting any rights or remedies available to TD and notwithstanding any other provision in this Agreement to the contrary, Company shall be liable to TD for all lost profits resulting from such suspension or termination.

#### 4. **PAYMENT AND TAXES.**

4.1 **Credit, Invoices and Payments.** Company shall be subject to a credit check prior to initiating any campaigns in the Platform and from time to time during the Term. TD reserves the right to determine the amount of credit that it extends to Company at any time. Each month, TD will provide Company its invoice for all amounts owed for the previous calendar month. Unless the parties agree otherwise in writing, TD will invoice and Company will pay in US dollars. For any invoice that is not paid in full within 45 days of the invoice date, TD reserves the right to (a) charge interest of 2% per month (or the maximum allowed by law, whichever is lower), and (b) if Company does not pay an overdue invoice in full within 5 days of receiving a notice of nonpayment, suspend Services or terminate this Agreement. If Company chooses to pay its invoice via credit card, a 3% convenience fee shall be added to such amounts. All payments due under this Agreement shall be made without setoff or deduction.

4.2 **Taxes.** All fees and other amounts due under this Agreement are exclusive of sales, service, use, business and any similar taxes (collectively, “**Transaction Taxes**”). Company shall self-assess any applicable Transaction Taxes to the extent required or allowed under applicable law. In the event that Company does not self-assess any such Transaction Taxes, Company shall indemnify and hold harmless TD against such Transaction Taxes and any applicable interest or penalties. If self-assessment is not required or allowed and TD is required to charge applicable Transaction Taxes to Company, Company shall pay to TD the total amount due on TD’s invoice, including any Transaction Taxes, in accordance with the

payment terms set forth in this Agreement. In the event that TD does not charge such Transaction Taxes at the time of initial invoicing, but the relevant government authority determines that TD should have charged such Transaction Taxes, TD shall charge to Company, and Company shall pay to TD, any such Transaction Taxes as soon as practicable after such determination.

**4.3 Creative Approval Fees.** If creative approval is required, TD may pass on the creative approval fee to Company.

**5. COUNTING.** TD will have sole responsibility for calculating and reporting metrics on media or data bought and sold through the Platform and such metrics shall be used for calculating payments. TD will make such metrics available to Company through the Platform. All Company-trafficked ads will be counted as impressions. Additionally, TD will make reasonable technological and auditing efforts to ensure TD end of the month figures, Platform wide, are within 10% of the end of the month totals of Inventory Partner counts. In the event that there is a discrepancy of more than 10% between the reported cost of inventory or data, based on a calendar month, and Company and TD are unable to resolve the discrepancy, TD will be responsible for the amount of the total supply discrepancy above 10%. Company will raise any discrepancies within thirty (30) days of the date of the applicable invoice. In the event of a discrepancy between Company's records and TD's metrics raised by Company in accordance with the previous sentence, Company may inspect the applicable log files up to twice per calendar year, provided that any requests for inspection shall be timely made, at reasonable times, and on reasonable notice. Company may not inspect the log files for the same time period more than once. Any data (except for Company Data) made available to Company during an inspection is TD's Confidential Information and Company will not disclose such data to any third party or use such data for any purpose other than verifying TD's accounting. TD may update numbers if there is delay in reporting affecting month-end invoicing.

## **6. OWNERSHIP AND DATA USAGE.**

**6.1 Company Data.** As between TD and Company, Company owns all right, title and interest in (a) all data Company imports into the Platform, including but not limited to information about advertising campaigns and Company's account ("**Company Data**"), and (b) the ads Company provides. TD may use Company Data solely to provide the Services available under this Agreement.

**6.2 TD Data.** As between TD and Company, TD owns all right, title and interest in (a) the data residing in the Platform and Services that does not constitute Company Data, Business and Campaign Data (defined below) or third party data underlying the Audience Tools ("**TD Data**") and (b) the Services. Company may use TD Data solely in connection with its use of the Platform and Services.

**6.3 Business and Campaign Data.** Each party may use the data generated by Company's use of the Services ("**Business and Campaign Data**") as follows. Company may use Business and Campaign Data for any internal business purpose provided that (a) it complies with its privacy policy, (b) it complies with the terms of this Agreement, and (c) it does not disclose data that describes or reflects the performance of the Platform (or any other Services), or any publisher or Inventory Partner, to other parties except Company's Third Party service providers who are under confidentiality restrictions, and subject to the terms of this Agreement. TD may use Business and Campaign Data (i) to provide the Services, (ii) internally for any other business purpose (e.g., fraud detection or financial reporting), and (iii) externally if such data is aggregated with other data such that third parties cannot attribute the data to Company (e.g., publishing industry trends on average CPMs). Company acknowledges that Inventory Partners and their publishers have access to Company Data and other information in connection with the purchase of their inventory.

**6.4 Feedback.** Any suggestions, comments, improvements, ideas, enhancement requests or feedback provided by Company to TD relating to the Platform, the Services or any other services or products of TD (collectively, "**Feedback**") are provided voluntarily. Company agrees that all Feedback may be used by TD without compensation, accounting or attribution to Company, and Company grants a perpetual, irrevocable, fully paid up right and license to the Feedback.

**6.5 Reservation of Rights.** Aside from the rights granted herein, neither party grants the other any other right, express or implied, and each party reserves all rights not expressly granted hereunder.

## **7. USER PRIVACY.**

7.1 Each party will take measures to ensure that users are provided User Notice on Sites where data is collected and used in association with the Services. Each party will have, and will make commercially reasonable efforts to contractually obligate their partners who may provide or use data in association with the Services (i.e. advertisers and other demand partners of Company, and Inventory Partners of TD) to have, User Notice included in a clear and conspicuous privacy notice available prominently from its Site. “**User Notice**” means (i) a description of the collection and use of data from and about users for advertising purposes by third parties such as TD, and (ii) access to an opt in or opt out choice with respect to such data collection that applies to TD, 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 take reasonable steps to ensure that all User Notices accurately describe data collection and use associated with Company’s use of the Services and, at minimum, include the information required and meet the standards for notice to users set by the Network Advertising Initiative (“**NAI**”) in the NAI Code of Conduct and associated guidance, including as relevant to the circumstances, the guidance on Viewed Content Advertising, Cross-Device, Non-Cookie Technologies, and any superseding, additional, or supplementary guidance (“**NAI Code**”). Additionally, each party will, in all applicable respects, follow the requirements of the applicable local self-regulatory program such as the DAA Self-Governing Principles in the US (currently found at [aboutads.info](http://aboutads.info)), the EDAA European Principles (currently found at [edaa.eu](http://edaa.eu)) in Europe, or the DAAC principles (currently found at [youradchoices.ca](http://youradchoices.ca)) in Canada.

7.2 Without limiting Company’s obligations under any applicable law, Company shall not cause TD or the Platform 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 the NAI Code; (b) any information associated with a persistent identifier that is: (i) 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), (ii) any information from inventory that Company knows or should know is directed to children, or (iii) any user or audience segments directed at or identifying children; (c) any Directly Identifying Information; or (d) any other information that would be considered sensitive, special, or similar under applicable local law or local self-regulatory program. Company shall not combine any TD Data or Business and Campaign Data with any Directly Identifying Information or use any TD Data or Business and Campaign Data to, or attempt to, directly identify an individual. Company shall not use the Platform or any TD Data or Business and Campaign Data for any non-marketing purposes, including without limitation decisions relating to eligibility for, or pricing of, employment, credit, health care, insurance, housing, or education. TD may restrict the data that it allows or makes available on the Platform in its reasonable discretion to protect user privacy.

7.3 For any data that Company or its clients collect using the Platform or upload into the Platform, or direct to be collected or uploaded, such as by using Platform features like pixels, tags, cookies, or APIs, Company will ensure that all necessary rights and permissions are established for the use of such data in the Platform and in association with the Services, and that such use of the data is strictly in compliance with all applicable laws and applicable self-regulatory requirements. If Company implements the Campaign Analytics Code, User Notice must be included on the Sites where the Code is used and must identify TD specifically. In addition, TD reserves the right to place the AdChoices icon (or a similar icon) on the ads provided by Company via the Platform that do not already include such icon and pass through such fees, not to exceed \$0.01 CPM.

7.4 The parties agree that certain jurisdictions may impose data privacy requirements that are additional to those contained in this Agreement. To the extent that TD processes data on Company’s behalf that is from or about individuals in regions where these additional requirements are prescribed, Company hereby agrees to abide and be bound by the terms and conditions of, as applicable: (i) the TD Data Processing Agreement (the “**TD DPA**”) as published at <https://www.thetradedesk.com/general/dpa> (or a successor URL) and updated by TD from time to time; and/or (ii) the TD Privacy Addendum (the “**Privacy Addendum**”) as published at <https://www.thetradedesk.com/general/privacy-addendum> (or a successor URL) and updated by TD from time to time. As applicable to the parties based on the data being processed hereunder, the TD DPA and/or the Privacy Addendum shall be incorporated herein by reference.

7.5 If Company becomes aware that it provided to TD or caused TD to process any information in breach of this Section 7, Company shall, at Company’s sole cost, immediately notify TD in writing and take all necessary steps to assist TD in responding to the breach by removing the data and doing anything else necessary to come into compliance.

## 8. COMPLIANCE.

8.1 Each party will comply with all applicable laws, rules, regulations and government guidance (TD in its provision of the Platform and Services in the form provided, and Company as to the ads it provides and its use of the Platform and the Services), which shall include, for purposes of clarification and not of limitation, Federal Trade Commission guidance on sponsorships and native advertising and, if applicable, Federal Communication Commission rules, regulations and guidelines. Company will comply with TD's Ad Content Guidelines located in the TD Wiki (or successor URL), TD's security requirements and any applicable Inventory Partner ad standards and technical requirements (all of the foregoing, "**Ad Standards**"). To the extent Ad Standards conflict with terms in this Agreement, the Ad Standards shall govern. Company will not use the Platform in connection with any ads (or the targeting thereof) or other digital content that are obscene or pornographic; depict illegal activity; violate any law, regulation or third party right (including intellectual property and privacy rights); or that are deceptive or defamatory. TD may immediately reject ads, suspend any campaign, or suspend Company's use of the Platform and Services if TD reasonably determines that Company is in violation of any of the foregoing.

8.2 All information provided by Company to TD regarding itself and its Clients (including its and their identity and operations), ads and ad campaigns shall be truthful and correct.

8.3 The Platform (or portions thereof) may be subject to U.S. export control laws and regulations and may also be subject to import and export laws of the jurisdiction in which it was obtained, if outside the U.S. Company shall abide by all applicable export control laws, rules and regulations applicable to the Platform. Company agrees that it will not export, re-export, or transfer the Platform, in whole or in part, to any country, person, or entity subject to U.S. export restrictions.

9. **TERMINATION/SUSPENSION.** To terminate this Agreement, the terminating party shall serve the required notice on the other party as set forth in this Agreement. Upon notice of termination, any minimums fees shall continue to apply through the calendar month of the effective date of termination. TD may suspend access to the Platform and use of the Services if TD reasonably believes that Company's continuing use of the Platform or Services may cause risk of litigation or otherwise be harmful to TD.

10. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, REPRESENTATIONS, OR COVENANTS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. TD MAKES NO REPRESENTATIONS REGARDING THE BENEFITS TO COMPANY FROM THE PLATFORM, OR THAT THE PLATFORM OR ANY INFORMATION PROVIDED BY INVENTORY PARTNERS AND/OR DATA PROVIDERS WILL BE ERROR-FREE, ALWAYS AVAILABLE OR OPERATE WITHOUT LOSS OR CORRUPTION OF DATA OR TECHNICAL MALFUNCTION.

11. **LIMITATIONS ON LIABILITY.** EXCEPT FOR VIOLATIONS OF SECTIONS 3, 13, AND INDEMNIFIED OBLIGATIONS SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS, LOSS OF BUSINESS, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND (B) IN NO EVENT WILL EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES HEREUNDER EXCEED THE TOTAL AMOUNT OF PLATFORM SHARE FEES PAID OR PAYABLE BY COMPANY TO TD DURING THE SIX MONTH PERIOD PRIOR TO THE DATE THE LIABILITY FIRST AROSE. IN NO EVENT SHALL A PARTY BE ENTITLED TO RECOVER MORE THAN ONCE FOR THE SAME CATEGORY OF LOSS OR DAMAGE FROM THE SAME INCIDENT UNDER BOTH THIS AGREEMENT AND THE TD DPA, OR OTHERWISE. FURTHERMORE, COMPANY ACKNOWLEDGES THAT TD AND ITS AFFILIATES ARE NOT LIABLE FOR TRANSACTIONS EXECUTED BY THE PLATFORM AS A RESULT OF ERRORS MADE IN ENTERING INFORMATION INTO THE PLATFORM BY COMPANY OR ON COMPANY'S BEHALF, INCLUDING INCORRECT PRICING, TARGETING OR BUDGETING INFORMATION. NOTWITHSTANDING ALL OF THE FOREGOING, NOTHING HEREIN SHALL LIMIT COMPANY'S OBLIGATION TO PAY FOR MEDIA SPEND AND FEES INCURRED.

## 12. MUTUAL INDEMNIFICATION.

12.1 TD shall indemnify, defend and hold harmless Company and its directors, officers, employees and agents (and their respective successors, heirs and assigns) (“**Company Parties**”) against any claim, liability, damage, loss or expense (including reasonable attorneys’ fees and costs) (“**Liabilities**”) incurred by the Company Parties in connection with any third party claim that TD’s proprietary technology that provides the Services, in the form provided by TD, infringes any US patent or other third party intellectual property right. Company shall indemnify, defend and hold harmless TD and its directors, officers, employees and agents, its and their respective successors, heirs and assigns (“**TD Parties**”) against any Liabilities incurred by the TD Parties in connection with any third party claim arising out of or relating to (a) Company or any Third Party’s use of the Platform or Service in contravention of any terms of this Agreement; or (b) any advertisement or other material with which Company or any Third Party uses on or in connection with the Platform (including the ads, landing pages and other materials of Company and its Clients). The indemnified party will provide the indemnitor with prompt notice of any claim (provided that the failure to promptly notify shall only relieve indemnitor of its obligation to the extent it can demonstrate material prejudice from such failure) and at the indemnitor’s expense, provide assistance reasonably necessary to defend such claim. Without the indemnified party’s prior written consent, which, in the case of (i) and (ii) below, shall not be unreasonably withheld or delayed, the indemnitor shall not enter into any settlement or compromise that (i) would not fully absolve 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 restrict or limit the indemnified party’s business or operations. 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.

12.2 TD shall have no obligation for any claim arising from or related to (a) compliance with Company specifications, (b) any combination of the Platform and/or Business and Campaign Data with products or services not supplied by TD, where the cause of action would not have arisen but for such combination, (c) adaptation or modification of the Platform or Business and Campaign Data, where the cause of action would not have arisen but for such adaptation or modification, (d) Company’s failure to follow instructions provided by TD which would have cured the cause of action, provided that following such instructions would not have caused Company substantial additional cost, (e) use of the Platform or Business and Campaign Data other than as described in Sections 2 and 6 above, or (f) Company’s continued use of a version of the APIs other than the most recently released version, where such cause of action would not have arisen if such most recently released version had been used. If any of the subsections above apply, Company will indemnify, defend and hold harmless the TD Parties from and against any Liabilities arising directly or indirectly out of such claims.

12.3 If the Platform or Services are held in a suit or proceeding to infringe any intellectual property rights of a third party and the use of such Platform or Services is enjoined, or TD reasonably believes that it is likely to be found to infringe or likely to be enjoined, then TD may, at its sole cost, expense and option, either (a) procure the right to continue using such Platform or Services, or (b) modify such Platform or Services so that it becomes non-infringing without affecting the basic functionality of such Platform or Services; provided, however, that if (a) and (b) are not practicable, TD may, in its sole discretion, terminate this Agreement with respect to such Platform or Services by giving Company 30 days written notice, upon which termination TD shall refund the portion of any pre-payments made by Company for services not yet rendered. TD’s obligations as stated in Section 12 are Company’s sole remedy and TD’s sole liability arising out of or relating to such infringement claims.

13. **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) and data regarding the performance of the TD systems and Services is TD Confidential Information. 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 13. The receiving party may disclose Confidential Information

if required to do so by law, if the receiving party provides the disclosing party with prompt notice and complies with any protective order imposed on such disclosure. Company shall keep confidential any third party information provided through the Platform (“**Third Party Data**”), and use such Third Party Data solely for purposes of planning and administering campaigns, including post-campaign analysis. For clarity, Company may not (i) extract Third Party Data; (ii) disclose, display, copy, transmit, reproduce, or duplicate the Third Party Data for any purposes except as expressly stated in this Section 13; (iii) make any use whatsoever, whether internally or externally and whether for commercial purposes or otherwise, of any Third Party Data or information derived therefrom except through the Platform as permitted in this Section 13; or (iv) rent, sell, sublicense, transfer, grant any rights in, modify, reverse engineer or create derivative works of (including analytics based on, except as described in this Section 13) the Third Party Data.

#### 14. MISCELLANEOUS.

14.1 Neither party will make any public statement relating to this Agreement without the prior written approval of the other, except that TD may include Company’s name and logo in its marketing, promotional materials and customer lists.

14.2 Unless otherwise expressly set forth in this Agreement or in a supplemental agreement, (a) all supplemental terms and conditions or ancillary agreements entered into between the parties for additional features or services will be subject to the terms of this Agreement, and (b) to the extent that the terms of a supplemental or ancillary agreement conflicts with the terms of this Agreement, the terms of this Agreement shall govern. Any additional terms beyond those in this Agreement that Company includes in an order form, Insertion Order, or similar document will be of no force and effect unless TD expressly agrees in writing to have such terms supersede the terms of this Agreement.

14.3 TD reserves the right to continually evolve the Platform and its services without notice. In the event TD chooses to discontinue the Platform, TD will provide Company with 30 days prior notice. TD will provide such notice of discontinuation when Company logs into the Platform, on the TD website or by email, and the notice shall be effective immediately.

14.4 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 amended except by a writing signed by both parties. This Agreement cannot be assigned without written consent of the non-assigning party, except that either party may assign this Agreement, upon written notice to the other party, (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 and there are no third party beneficiaries. Sections 3, 4 (until final payment), 6-8, and 10-14 will survive expiration or termination. Any claims (in court or arbitration) must be brought in the initiating party’s individual capacity and not as a plaintiff or member in any class action or other similar proceeding.

14.5 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.

14.6 Notices must be in writing and are effective when (a) delivered personally; (b) received from a nationally-recognized next-day courier service, or (c) sent by email. Notices to TD shall be sent to the following address:

The Trade Desk, Inc.  
42 N. Chestnut Street  
Ventura, CA 93001  
Attention: Chief Legal Officer  
Email: [Legal@thetradedesk.com](mailto:Legal@thetradedesk.com)

Notices to Company shall be sent to the Primary Contact set forth in this Agreement, to the contact information Company maintains in Company’s Platform account, or to Company’s CEO, CFO, or President. If notice is sent via email, the sending party must confirm that (x) the email was apparently sent successfully according to its ordinary technical records, (y) the sending party does not receive an error notice, and (z) the email includes in the subject line “LEGAL NOTICE”. Notwithstanding the foregoing, if the sending party receives an



error notice because the receiving party has changed its email address without formally notifying the sending party, the email notice is deemed effective if the sending party is using the last email address provided by the other party for the express purpose of receiving notices. In that case, the sending party will attempt to reach the receiving party by phone. Company is responsible for notifying TD as soon as possible of a change in the contact information for invoicing, and failure to provide the proper information shall not delay Company's obligations to timely pay invoices. Changes to contact information for invoicing should be submitted to: ar@thetradedesk.com.

14.7 This Agreement is governed by the laws of the State of California, excluding conflicts of laws principles.

14.8 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.

14.9 Multiple signature pages, signatures delivered via pdf copy or fax, and electronic signatures will all constitute originals and together constitute the same instrument.

14.10 Neither party is liable for failure or delay in performing its obligations because of causes beyond its reasonable control, including acts of God, terrorism, war, riots, fire, earthquake, flood or degradation or failure of third party networks or communications infrastructure.

14.11 Nothing in this Agreement will be construed as a binding obligation of a party until this Agreement is executed by both parties.