

# GENERAL TERMS AND CONDITIONS for Publishers participating on the Project Agora Platform

## I. INTRODUCTION

### 1. General

Pursuant to the present General Terms and Conditions and to the specific terms agreed by Publisher and the Company (“Specific Terms”) (hereinafter collectively the “**Terms**” and/or “**Agreement**”):

**The Company** grants to owners and/or operators who has representation rights of advertising inventory of websites (“**Publishers**”) registered in the Project Agora Platform (the “**Platform**”) “access rights, so as to monetize their digital advertising inventory (hereinafter “**Ad Inventory**” in the Publisher's properties (hereinafter “**Properties**”), including, without limitation, web, mobile, application and/or widget-based advertising inventory through the placement of advertisements (hereinafter “**Ad Units**”) across Properties by using a programmatic code or HTML (hereinafter “**Ad Tag**”).

These Terms shall govern the relationship between Publishers and Company for any Ad Unit placed in the Publisher's Properties pursuant to the Service Agreement (the “**Service Agreement**”) and they represent the parties' common understanding for doing business and providing the services agreed herein.

#### **Definitions:**

- **Exclusivity:** If the Company and Publisher have agreed that the Company will be Publisher's exclusive Services provider during the term then the following shall apply:
  - o Publisher will not engage any third party, including, without limitation, any of Company's competitors or their affiliates (including without limitation, AdBlade, AdNow, BroadSpring, ContentAd, Crowdignite, Dianomi, Engagya, Facebook Audience Network, Google Content Recommendations, Gravity, Inform, Media.net, Mgid, Nativo, Outbrain, Plista, Polar, Postsquare, RevContent, Sharethrough, Strossle, Teads, Tout, Virol, Vuble, Yahoo! Content Recommendations, YieldMo, ZergNet, and Zinc by Zedo) to make recommendations, play video advertisements, or provide a content recommendation service that is similar to the Services on any websites owned or operated by Publisher, including, without limitation, the Properties. Publisher acknowledges that the restrictions set forth in the above Paragraph are essential to Company's business and that any breach of the foregoing exclusivity provision will cause irreparable harm and significant injury to Company for which money damages will be inadequate. Accordingly, in addition to any other rights or remedies may have, Company shall have the right to obtain an immediate injunction to enjoin any breach

or threatened breach of this provision of this Agreement, without having to post a bond or other security, and, where it is a prevailing Party, shall be entitled to receive its reasonable attorneys' fees.

## II. BUSINESS TERMS

### 1. The Services

1.1. Company will provide the below services to the Publisher (each a "**Service**" and collectively the "**Services**").

1.1.1 **Demand Generation Activities across buyer sources:** Company will be undertaking activities to promote Publisher's Property and maximize the number of premium demand sources, including but not limited to demand side platform, ad exchanges, agencies, agency trading desks and ad networks, potentially bidding for it.

1.1.2 **Yield Optimization:** Company will be using its proprietary algorithms & processes to maximize the yield of Publisher's Property by allowing multiple demand partners to bid on Publisher Property.

1.1.3 **Creative/Context Quality:** Company will be utilizing sophisticated technology to monitor and ensure ads appearing to Publisher's Property are in accordance with Publisher's creative acceptance policy and global quality standards.

1.1.4 **Financial Clearing, Collections & Payments:** Company will be undertaking all activities related to financial clearing, collection and payment.

1.1.5 **Real time access to the Ad-Inventory Transactions Reporting via a Partner Management tool:** Company will be providing Publisher with access to a Publisher User Interface (UI) where Publisher can monitor the revenue and performance of ad inventory, manage control settings and have a centralized view of Publisher's payments history.

### 1.2 Access to Platform

1.2.1 Publisher may access certain Services through an administrative website. For access to the Platform, Company will provide Publisher with one or more logins and passwords for access to Publisher's account and corresponding administrative controls ("**Publisher's Account**") by authorized personnel of Publisher and/or Third Party User(s) ("**Publisher's Representative(s)**").

1.2.2 In order to use the Platform, Publisher will, and will procure that each of the Publisher's Representative(s) represent, warrant and covenant that they will provide Company with accurate, truthful and complete registration information and will agree to the terms of this Agreement and any other Additional Terms and Conditions for use of the Platform that Company may otherwise reasonably require.

1.2.3 Upon acceptance of any application made by Publisher, Publisher's Representative(s) will be assigned with a user name and password that will allow access to the Platform, and will become a registered user. Publisher will ensure each of Publisher's Representative(s) that is provided registered user access to

the Platform keeps their registration information accurate and up-to-date and does not share their password or registered user name with any third party except as otherwise set out in this Agreement, and Publisher agrees that any failure by any Publisher Representative(s) to do so will constitute a breach of this Agreement by Publisher, which may result in immediate termination of Publisher's Account. Publisher will immediately notify Company in writing of any change in authorization, any unauthorized use of any Publisher's Account or any other account-related security breach of which it becomes aware. Upon termination of this Agreement for any reason, Company will have the right to disable and delete each Publisher Representative(s)' access to Publisher's Account immediately and to delete all Publisher Data thirty (30) days after termination or expiration of this Agreement.

## **2. Services Rules & Policies-Parties Rights & Obligations**

### **2.1 Prohibited Acts**

#### **(a) General Prohibitions.**

Publisher will not, will not attempt to, and will not assist or knowingly permit any of its associates, employees, agents, directors and the likes or any third party to:

- (i) copy, reproduce, modify, damage, disassemble, decompile, reverse engineer or create derivative works of any Service or any portion thereof;
- (ii) breach, disable, tamper with, or develop or use (or attempt) any workaround for, or otherwise damage any Service or any security measure thereof;
- (iii) interfere or attempt to interfere (whether through a device, software, mechanism, routine or otherwise) with the proper working of any Service or any activity conducted on Company's server;
- (iv) pass personally identifiable information to Company, or otherwise associate a cookie, web beacon, or other mechanism with personally identifiable information;
- (v) use any Service to select or target Ad Units based on past visits or clicks by users on sites directed at children under the age of 13 years, or based on information generally accepted as "sensitive" pursuant to Internet advertising industry guidelines (e.g., the self-regulatory principles/code of conduct of the Network Advertising Initiative) or policies or applicable law, rule or regulation; or
- (vi) alter or tamper with any information or materials on or associated with any Service.

#### **(b) Publishers' Specific Prohibitions**

Publisher hereby further covenants that, if and when using a Service:

- (i) the Bidding Terms entered into the Service will be complete and correct in all material respects;
- (ii) the content of the Properties on which Ad Inventory appears will not violate or infringe upon the rights of any third party, and will not be obscene, deceptive or otherwise illegal; and

- (iii) it will not, will not attempt to, and will not assist or knowingly permit any third party to (a) modify any Ad Tag in such a way as to adversely impact Company's ability to serve Ad Units or count Ad Unit impressions or a user's ability to view an Ad Unit; (b) disclose Ad Unit availability, volume, bidding or pricing data obtained through the Service without written consent of the Advertiser, as applicable; or (c) collect or use data provided by, from or related to an advertiser or brand via a cookie, web beacon, log data analysis or other mechanism or method, for purposes of segmenting, re-targeting, creating or supplementing user profiles or inventory profiles, creating, supplementing or amending interest categories, or syndication or other distribution to third parties, unless such data collection and usage are authorized in writing by or on behalf of the applicable advertiser, as applicable.
- For the purpose of the present

“**Bidding Terms**” means with respect to a Buyer or Publisher, all of (a) the conditions that such party requires with respect to a particular Ad Unit or particular Ad Inventory, as applicable, (b) the specifications and features of, and rules associated with, its particular Ad Unit or Ad Inventory, as applicable, and (c) other information and data provided within a Service by or on behalf of that Buyer or Publisher with respect to a particular Ad Unit or particular Ad Inventory, as applicable.

**(c) Publisher's obligations**

a. Publishers warrants, represents and irrevocably accepts that:

- i. The use of the Service is solely at its own risk and that Publisher is the sole responsible for any action and/or omission during the use of the Platform and the Service.
- ii. The transmission of data is subject to technical limitations and delays possible attributes to the use of Telecommunication Services and related technology.
- iii. By accepting the Terms of Use, Publisher has the right to use the Services and is bound by the present terms of Use.
- iv. Publisher is the sole responsible for the accuracy of the Publisher's Data and any Publisher's Content or other data provided by Publisher, and the secure storage of the data.

b. Publisher must:

- i. Notify Company at no delay at [publisher-success@projectagora.com](mailto:publisher-success@projectagora.com) any action and/ or omission that Publisher considers to be violation of the Terms of Use of any Publisher and/or any third Party.
- ii. To proceed with any updates in relation to technology used for the operation of the Services.
- iii. Publishers represent and irrevocably declare that they have read and

understood the Terms of Use (including the Privacy Policy) are aware of the Terms and their obligations during their use of the Services.

- iv. Publisher must follow these Terms and Conditions and be familiar at any time with its amendments. Company is not by any means responsible to notify any such amendments to Publisher or any other user of the company's services.
- v.

## **2.2. Additional Service Rules and Policies**

2.2.1 Publisher will have no recourse for any transaction (e.g., any purchase or sale of Property) that does or does not occur based on erroneous Bidding Terms.

2.2.2 Company may reject, remove or deactivate Ad Unit and/or Property that do not comply with its respective policies (including, without limitation, the Service Policies), or do not comply with any applicable law, rule or regulation, or for any reasonable business reason.

## **2.3 Company's rights and obligations**

- a. Company reserves the right to remove any Ad Unit from the Service at any time, for any reason including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content, or if Company is concerned that Publisher may have violated the Terms of Use, or for no reason at all.
- b. Company will use its reasonable endeavors to publish or notify the Publisher about any planned downtime of the Services, and will use reasonable endeavors to contact the Publisher directly via email to warn Publisher prior to suspension or termination of Publisher's account on the Platform.

## **3. Service level Agreement**

Company will only provide technical support to Publisher for ordinary technical issues with the Platform, through a ticketing system mechanism.

Company will use commercially reasonable efforts to make the Platform accessible to Customer 24 hours per day, 7 days per week, subject to any downtime for maintenance, updating and repair. Notwithstanding the foregoing, Publisher acknowledges and agrees that Company will have no responsibility for Publisher's inability to use the Services or access the Platform due to Internet or other network interruption, communications failure, server downtime or other force majeure event.

### **3. Termination of this Agreement**

#### **3.1 Termination**

- 3.1.1 Each Party may terminate this Agreement immediately on notice to the other Party that it is in material breach of this Agreement with respect to a Service; provided that (a) if the breach is capable of cure, the breaching Party will have 10 days from the notice date to cure the breach to the non-breaching Party's reasonable satisfaction.
- 3.1.2 Additionally either Party may terminate this Agreement immediately if the other Party becomes insolvent or seeks protection under bankruptcy receivership, trust deed, creditors arrangements, or any such proceedings is instituted against the other party.
- 3.1.3 Notwithstanding termination of this Agreement, any provisions of this Agreement that by their nature are intended to survive, will survive termination.
- 3.1.4 Company shall have the right to immediately terminate Publisher's access to all or any part of the Platform, with or without warning upon its sole discretion and at any time, if Publisher fails to comply with these Terms of Use, or Company believes that Publisher is breaching any of the Terms of Use or has committed any crime related to the Use of the Platform and the Services . Upon such Termination Publisher shall have no right to damages since Publisher acknowledges and accepts that Company uses mainly automatic means to discover any such breach and non-compliance with the Terms, which are either based on software or third parties allegations.
- 3.1.5 Company shall have also the right to immediately terminate this agreement and withhold all payments if Publisher engage in any deceptive or fraudulent activity with respect to delivery of Impressions to the Inventory, including without limitation: use any automated, deceptive, or misleading means to create Inventory, increase Impression counts, or simulate performance metrics
- 3.1.6 Termination of the Services may result in the forfeiture and destruction of all information associated with Company's membership and will immediately terminate his/her ability to use the Service in any way. If Publisher wishes to terminate its account, Publisher may do so by ceasing use the Services (if applicable), and deleting the Platform. All provisions of the Terms of Use, which by their nature should survive termination, shall survive termination, including, without limitation, warranty disclaimers, indemnity and limitations of liability.
- 3.1.7 Additionally Company reserves the right to disrupt or stop temporarily the operation and function of the Platform and the Services for technical reasons (upgrading etc.). Is such disruption lasts more than a reasonable period of time; Company will notify Publisher about such disruption with a relevant announcement on the Platform.

**3.2 Effects of Termination.** On termination of this Agreement, the Publisher will make sure

that he deactivates any tags provided by Company for the provision of the service as soon as reasonably possible and no later than 1 week after the effective termination date.

#### **4. Payment - Payment Terms**

##### **4.1 Payment Dates and Terms.**

4.1.1 Company will give the Publisher access to a report which is going to provide analysis on the revenue and the volume impression resold by the Company

4.1.2 Invoicing is to happen by the Publisher at the amount remaining after the deduction of Company's technology service fee, using this report's data (depicting the exact amount after having deducted Company's service fee) at the end of every calendar month for the ad inventory of that specific month.

4.1.3 Company hereby states and declares that the service fee is the only fee Company is entitled to covering all kinds of its expenses, profits etc. regarding this deal and does not have (nor will in the future) any claim against Publisher for any reason whatsoever, regarding the provision of its services to it, according to the terms of this agreement .

4.1.4 In the event Advertiser invoices have not been cleared or collected by the Payment Deadline Date, Company will pay the Publisher the applicable amounts remaining due hereunder in respect thereof on the next monthly Payment Date or when these invoices will be cleared and collected.

4.1.5 Company will use all commercially reasonable efforts to collect payments as per its ordinary course collections processes in a timely manner from Advertisers. Company reserves the right to adjust Revenue to cover certain variables which include but are not limited to: reconciliation adjustments with the Demand Partners and/or technology providers in result of equal adjustments by such Partners in accordance with their collection policy, exchange rate differences, delays in payment, and bad debt.

It is explicitly acknowledged that monies not collected by Company, due to one of the aforementioned variables, within its ordinary course of collection despite its use of all means deemed necessary in its sole discretion shall be – upon the Company's undisputed decision considered non-collectable and – thus deducted from Publisher revenue.

##### **4.1.6 Additional Payment Rules**

4.1.6.1 Charges are exclusive of taxes. The amounts invoiced hereunder do not and will not include any taxes levied by or due to any duly authorized taxing authority. The parties will pay all applicable taxes and other government charges, if any, however designated, derived from or imposed on the transactions contemplated hereby, including without limitation sales, value-added, use, transfer, withholding, privilege, excise and other taxes and duties.

4.1.6.2 All executed transactions are final.

### **III. GENERAL LEGAL TERMS**

#### **1. Data and Privacy Protection**

- a. The Company and Publisher agree to be bound by the applicable Data Processing Terms & Conditions currently located at <http://www.projectagora.com/publishers-data-processing-terms-and-conditions.pdf> which are incorporated into these Terms by reference. The Data Processing Terms & Conditions amends each of the Publishers Service Agreements with the Company. If there is a conflict between the Data Processing Terms & Conditions, this Agreement and/or any other Service Agreement between the Company and the Publisher regarding the special terms applicable to Data and Privacy protection, the Data Processing Terms & Conditions shall prevail and secondly the present Terms.

#### **2. Proprietary rights**

##### **2.1 Data.**

Company will capture, retain and use Publisher data (with which Publisher shall provide it / or to which Publisher will give Company access to) solely for the following reasons:

- 2.1.1 As aggregate Service statistics.
- 2.1.2 To provide, operate, manage, maintain and enhance the Services, through the use of a limited set of Publisher data (i.e. Section Category Visits, Bidding Terms, Auction Transaction Data and User metadata like time of day, browser type, device type, frequency, sequence, location) and its consolidation and normalization with data coming from the other publishers participating in Company, data coming from buyers, and data coming from contracting third parties.
- 2.1.3 To Subcontractors and other third-party service providers (i.e., Data Management Platform partner) of Company for whom it is necessary (for the execution of this agreement) to know it and who are obligated to keep it confidential, subject to the terms and conditions hereof, and also third parties whose services Publisher has elected to use through the applicable Service(s),
- 2.1.4 to enforce its rights under this Agreement,
- 2.1.5 if and as required by court order, law or governmental or regulatory agency (after, if permitted, giving reasonable notice to Publisher and using commercially reasonable efforts to provide Publisher with the opportunity to seek a protective order or the equivalent (at Publisher's expense), and

Company will own the Intellectual Property Rights in all by-products derived from the aggregated data such as Company audience segments or optimization algorithms created by itself (Company's Data”).



### **3. Intellectual Property Rights**

- 3.1.1 As between the Parties, Company owns and will retain all right, title and interest in the Services and any API specifications (in each case, including but not limited to all software, concepts, methodologies, techniques, models, templates, algorithms, trade secrets, processes, information, materials, source codes and know-how contained therein, all modifications, updates, enhancements and derivative works thereof, all documentation and manuals related thereto and all other aspects of such technology), the name Company or any derivatives thereof, and any other trademarks and logos which are owned or controlled by Company and made available to Publisher through the Services or otherwise hereunder, and all intellectual property and proprietary rights in and to all of the foregoing. As between the Parties, Publisher owns and will retain all right, title and interest in and to its intellectual property, including, among others, the website, its content, trademarks and logos, all software and technologies related thereto and any modifications, updates, enhancements and derivative works thereof.
- 3.1.2 Company will own all right, title and interest in and to the source and object code of any software or application (in each case, including but not limited to all software, concepts, methodologies, techniques, models, templates, algorithms, trade secrets, processes, information, materials, source codes and know-how contained therein, all modifications, updates, enhancements and derivative works thereof, all documentation and manuals related thereto and all other aspects of such technology provided for the Services.
- 3.1.3 Each Party reserves any and all rights not expressly granted in this Agreement and disclaims all implied licenses, including, without limitation, implied licenses to trademarks, copyrights, trade secrets and patents.

### **4. Representation and Warranties**

#### **4.1 Publisher Representations.**

- 4.1.1 Publisher hereby represents and warrants that: (a) it has and will have all necessary rights and authority to enter into this Agreement and to perform its obligations hereunder and thereunder; and (b) it is and will be authorized to act on behalf of each of its clients, its performance under this Agreement will not breach any agreement or other obligation that it has with or to any of its clients, and it is and will be liable for its clients' acts and omissions in connection with the Services provided under this Agreement.
- 4.1.2 Publisher will: (a) be solely responsible for all use of Services hereunder (including, without limitation, the entering of all Bidding Terms into the applicable Service(s)), (b) have obtained, and be deemed to have hereby granted to Company, all rights necessary to allow Company to store, audit, optimize and serve Ad Units to Ad Inventory and otherwise provide the Services hereunder; (c) comply with the Service Policies and all applicable Laws, rules and regulations in effect and

pertaining to its obligations hereunder; [d] Publisher is solely responsible for complying with the legal responsibilities arising from the use of the Service. Publisher is therefore solely responsible for the use of a consent management solution expressly acknowledging that Company does not provide Publisher with any legal or consulting advice or direction. Publisher undertakes to use a consent management solution in accordance with the applicable legal requirements (including but not limited to the EU General Data Protection Regulation); and (e) not cause Company and/or its Affiliates to violate any applicable Laws or operate in any country or jurisdiction that could reasonably result in any violation of applicable Law.

4.1.3 Publisher shall not obligate or purport to obligate Company by issuing or making any affirmations, representations, warranties or guarantees with respect to the Service(s) and the related technology to any third party beyond the warranties appearing in this present Agreement.

4.1.4 The Publisher warrants and represents that:

4.1.4.1 Is the owner or is licensed to use Properties provided to Company;

4.1.4.2 The Publisher's Content (a) do not violate any law or regulation governing false or deceptive advertising; (b) do not contain any misrepresentations or content that is defamatory or violates any rights of privacy or publicity; (c) do not contain any child pornography or link to such content or link to software piracy or link to any form of illegal activity (i.e., how to build a bomb, hacking, etc nor do they contain any gratuitous displays of violence, obscene or vulgar language, and abusive content or content which endorses or threatens physical harm, any content promoting any type of hate-mongering (i.e., racial, political, ethnic, religious, gender-based, sexuality-based or personal); (d) do not and will not infringe any copyright, trademark, patent or other proprietary right; (e) comply with all applicable laws and regulations, Codes of Ethics and fair Practices applicable in the advertising market and the trade, provision and advertising of the advertising goods/ services;

4.1.4.3 Will obtain all required licenses to create the Ad Units/ Ad Inventory that do not violate any third party's intellectual property and other rights.

Publisher shall ensure that each of its mobile applications included as Properties complies with any applicable Apple/iOS and Android rules, guidelines and requirements, and any agreements into which Publisher has entered with such platform entities, and shall ensure that any signal or flag indicating that an end user has opted its mobile ad identifier out of cross-app or interest-based advertising (e.g., an "LMT=1" signal) is communicated to Company (except where such identifier is either not delivered to Company or obfuscated, in which case such obligation shall not apply}.

## **4.2 Company Representations and Disclaimers.**

- 4.2.1 Company hereby represents and warrants that it has and will have all necessary rights and authority (a) to enter into this Agreement and (b) to perform its obligations hereunder and there under
- 4.2.2 Company will: (a) provide Services to Publisher, and obtain all rights necessary to provide Services hereunder; (b) perform the Service(s) in a professional and workmanlike manner conforming to generally accepted industry standards
- 4.2.3 The provision of Company's representations and warranties set out in this Section and those contained elsewhere in this Agreement are solely and exclusively for the benefit of the Publisher and shall not in any way be deemed to be between the Company and any third Party, against which the Publisher is the sole responsible for any warranties as between the Company and the third Party.
- 4.2.4 Company does not warrant that the use of any technology for the provision of the Service(s) will be uninterrupted or error - free
- 4.2.5 Company further represents and warrants that the Platform will be provided in accordance with the terms set forth herein.
- 4.2.6 Company expressly states, represents and warrants that neither Company, nor any vendor used for the provision of any one of the Services provide business, legal or consulting advice of any kind. Use of the Services does not guarantee or ensure compliance with any particular legal requirement.
- 4.2.7 THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY COMPANY. COMPANY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ALL BETA FEATURES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY REPRESENTATIONS, WARRANTIES, COVENANTS, OR OBLIGATIONS OF ANY KIND. ANY USE BY PUBLISHER OF BETA FEATURES IS SOLELY AT PUBLISHER'S OWN RISK.
- 4.2.8 THE SERVICE (INCLUDING, WITHOUT LIMITATION, ANY CONTENT) IS PROVIDED "AS IS" AND "AS AVAILABLE" AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
- 4.2.9 COMPANY AND ITS DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, SPONSORS AND PARTNERS DO NOT WARRANT THAT: (A) THE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (B) THE SERVICES WILL BE PROVIDED WITHOUT ANY DELAY, UNINTERRUPTED, VIRUS OR ERROR FREE TIMELY AND SECURE (C) DEFECTS OR ERRORS WILL BE CORRECTED; (D) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH

THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (D) THE TRANSFER OF DATA WILL BE WITHOUT DELAYS, ERRORS.

4.2.10 IN ADDITION COMPANY DOES NOT WARRANT THAT: (A) THE RESULTS OF USING THE SERVICE WILL MEET PUBLISHER'S REQUIREMENTS; OR (B) THAT THE SERVICE IS EFFICIENT FOR THE PURPOSE OF USE; (C) ALL PUBLISHERS WILL USE THE SERVICE PROPERLY AND IN LINE WITH THE TERMS OF USE.

4.2.11 COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR ANY OTHER LOSS OR DAMAGE RESULTING FOR THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, WHEREAS PUBLISHER ACKNOWLEDGES THAT THE SERVICE AND ANY DATA UPLOADED BY HIM/HER MAY BE SUBJECT TO LIMITATIONS DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS.

4.2.12 NO ADVICE OR INFORMATION OBTAINED BY THE SERVICE SHALL CREATE ANY WARRANTY.

## **5. Limitation of Liability**

IN NO EVENT SHALL COMPANY BE LIABLE TO PUBLISHER FOR ANY LOST PROFITS OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES.

IN ADDITION TO ANY PROVISION TO THIS REGARD HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY (NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, CONTENT PROVIDERS, LICENSORS OR RESELLERS) BE LIABLE TO THE PUBLISHER AND ANY THIRD PARTY RELATED TO THE PUBLISHER, UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE (I) FOR ANY LOST PROFITS, DATA LOSS, LOSS OF GOODWILL OR OPPORTUNITY, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR SUBSTITUTE GOODS OR SERVICES, (II) FOR PUBLISHER'S RELIANCE ON THE SERVICE (III) FOR ANY MATTER BEYOND ITS OR THEIR REASONABLE CONTROL, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE AFOREMENTIONED DAMAGES.

IN ADDITION COMPANY SHALL NOT BE LIABLE FOR ANY KIND OF LOSS OR DAMAGE PUBLISHER MAY SUFFER (A) DUE TO LOSS OR DAMAGE TO ANY OF PUBLISHER'S DATA OR PERSONAL RECORD AND SUCH LOSS IS ATTRIBUTED TO TECHNICAL ERRORS, DELAYS OR OMISSIONS OF THE TELECOMMUNICATIONS NETWORKS (B) DUE TO MISCONDUCT AND MISUSE OF THE SERVICE BY ANY AUTHORIZED USER AND/OR ANY THIRD PARTY AND OR ANY BREACH OF APPLICABLE LAWS BY ANY SUCH PARTY, (C) DUE TO ANY EVENT, SITUATION, ACTION OR OMISSION FOR WHICH COMPANY HAS PROVIDED NO GUARANTIES. PUBLISHER REMAINS SOLELY

RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LEGAL REQUIREMENTS INCLUDING BUT NOT LIMITED TO THE EUROPEAN UNION GENERAL DATA PROTECTION REGULATION, OTHER PRIVACY AND DATA PROTECTION LAWS APPLICABLE WITHIN THE EEA AND ANY PRIVACY AND DATA PROTECTION LAWS APPLICABLE IN ANY OTHER JURISDICTION.

COMPANY ASSUMES NO LIABILITY FOR ANY DAMAGE SUFFERED BY THE PUBLISHER INCLUDING BUT NOT LIMITED TO LOSS OF DATA FROM DELAYS. NONDELIVERIES, ERRORS, SYSTEMS DOWN TIME, MISDELIVERIES, NETWORK OR SYSTEM OUTAGES, FILE CORRUPTION, SERVICE INTERRUPTIONS, CAUSED BY THE NEGLIGENCE OF COMPANY, PUBLISHER OWN ERRORS, AND/OR OMISSIONS.

## **6. Relationship of the Parties**

Nothing in this Agreement shall be construed to create a partnership, joint venture, agency, employment, or any other relationship between Publisher and Company . Except as otherwise specifically set forth herein, neither Party will (i) represent itself to be a partner, employee, representative, or agent of the other Party; or (ii) enter into any agreement on the other Party's behalf, in the other Party's name, or otherwise bind the other Party to any agreement or obligation.

## **7. Indemnification**

- 7.1 Each Party (in such capacity, the “Indemnifying Party”) will defend, indemnify and hold harmless the other Party and its officers, directors, employees and agents (each, an “Indemnified Party”) from all third-party claims or liabilities (including without limitation reimbursement for reasonable outside attorneys' fees and disbursements) arising out of or related to the Indemnifying Party's (i) breach or alleged breach of this Agreement or (ii) infringement or misappropriation of a third party's patent, trademark, trade secret or copyright in connection with (a) with respect to Company , the software and other technology used by Company to provide the Services hereunder, and (b) with respect to Publisher, the creative, technology, data or other materials provided by Publisher to Company or otherwise provided and utilized by Publisher in connection with the Services hereunder (“Company Materials”) (the indemnification obligation of each Party described in this clause (ii), the “IP Infringement Obligation”).
- 7.2 The Indemnified Party must (i) promptly notify the Indemnifying Party in writing of the third-party claims (provided that failure of the Indemnified Party to promptly notify the Indemnifying Party will not relieve the Indemnifying Party of its indemnification obligations, except to the extent it has been damaged by the failure); (ii) reasonably cooperate with the Indemnifying Party in the defense of the matter and (iii) give the Indemnifying Party primary control of the defense of the matter and negotiations for its settlement. The Indemnified Party may at its expense join in the defense with counsel of its choice. The Indemnifying Party may enter into a settlement only if it (A) involves only the payment of money damages by the Indemnifying Party and

(B) includes a complete release of the Indemnified Party; any other settlement will be subject to written consent of the Indemnified Party (not to be unreasonably withheld or delayed).

- 7.3 If a Service becomes, or in Company's reasonable opinion is likely to become, the subject of an intellectual property infringement claim, then Company will promptly notify Publisher and, at its sole option and expense, may either: (a) procure the right to continue providing the Service as contemplated by this Agreement; (b) modify the Service to render it non infringing (provided that modification does not adversely affect use of the Service); or (c) replace the Service with a functionally equivalent, non infringing service. If none of the foregoing options is commercially practicable, then each Party will have the right to terminate this Agreement.
- 7.4 The Publisher warrants and represents that he is solely responsible for any legal liability arising out of or relating to this present agreement and hereby agrees to indemnify, defend and hold harmless Company their officers, directors, agents, publishers, affiliates and employees from and against all claims, actions, liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any claims, suits or proceedings including but limited to libel, defamation, violation of right of privacy or publicity, copyright infringement, trademark infringement or other infringement of any third party right, Fraud, false advertising, misrepresentation, product liability or violation of any law, statute, ordinance, rule or regulation throughout the world in connection with the Ad Unit and Property or, arising out of any material breach by the Publisher of any duty, representation or warranty under this Agreement.

## **8. Confidentiality**

During the Term, either Party may receive (the "Receiving Party") certain information and materials concerning the other Party's business, technology, customers, and products that are confidential and of substantial value to the other Party (the "Disclosing Party"). The Receiving Party will not use or disclose to any third party, the Disclosing Party's Confidential Information (as defined below) except as necessary for the performance of this Agreement and only to those individuals who are bound by confidentiality obligations at least as restrictive as those set forth herein (provided that the Receiving Party hereby agrees that it shall be responsible for any violation of the terms of this Agreement by such third parties). The Receiving Party will protect and preserve the Confidential Information as confidential, using no less care than it protects and preserves its own confidential and proprietary information (but in no event less than a reasonable degree of care), and shall not use the Confidential Information for any purpose except as necessary to carry out its obligations under this Agreement. The foregoing obligations will not restrict the Receiving Party from disclosing Confidential Information of the Disclosing Party pursuant to a court order from a court of competent jurisdiction, an administrative agency, or other governmental body, provided that the Receiving Party, to the extent permitted by law, gives reasonable prior written notice to the Disclosing Party so that it may contest such order and, in the event that disclosure is

required, only discloses the portion of Confidential Information that its legal counsel advises is legally required. The “Confidential Information” consists of (a) any technical information or plans concerning the Services, the Platform, or any software or other technology of Company or the Properties; (b) any financial information of the Publisher; (c) other information disclosed by the Disclosing Party to the Receiving Party that is marked as confidential or should reasonably be assumed to be confidential under the circumstances; and (d) the content of this Agreement. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of or breach of the Receiving Party; (ii) is rightfully known by the Receiving Party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (iv) is rightfully obtained by the Receiving Party from a third party that has no duty of Confidentiality to the Disclosing Party.

**9. Entire Agreement - Amendments**

The Terms as agreed to herein and in the Specific Terms, constitute the full and whole expression of the agreement of the parties and supersede any other agreement, obligation, contract, written or oral between the parties.

Company reserves the right at its sole discretion to amend the Terms including cases where those amendments are obligatory by applicable Laws. Any such change - amendment will be valid from the date it is posted. The Publisher has to make regular checks of the Terms for any amendment.

**10. Waiver**

The failure of a Party to exercise any right or remedy under these Terms or enforce strict perform a waiver of any right by virtue of these Terms shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter. If any part of these Terms by any reason becomes invalid, illegal or unenforceable to any extent, this term will not affect any other provision of these Terms, or any Agreement between the Parties.

**11. Assignment**

Publisher has no right to assign any right and/or obligation derive from these terms to any third party without Company's prior written consent. In case any such assignment takes place contrary to this provision, it is acknowledged and agreed by the Publisher that he remains the sole liable to Company.

**12. Force Majeure**

Neither Party hereto shall be responsible for any failure to perform its obligations under this Agreement if such failure is caused due to unforeseen reasons such as, war, strikes, revolutions, lack or failure of transportation facilities, laws or governmental regulations

or other causes that are beyond the reasonable control of such Party. Obligations hereunder, however, shall in no event be excused but shall be suspended only until the cessation of any cause of such failure. In the event that such force majeure should obstruct performance of this Agreement for more than thirty (30) calendar days, the parties hereto shall consult with each other to determine whether this Agreement should be terminated. The Party facing an event of force majeure shall use reasonably commercial efforts to remedy that situation as well as to minimize its effects. A case of force majeure shall be notified to the other Party by facsimile or email within three (3) days after its occurrence and shall be confirmed by a letter issued by a competent body or authority (Chamber of Commerce or similar) at the occurrence place of force majeure event.

### 13. Applicable Laws and Jurisdiction

If any provision of these Terms, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of these Terms that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

These Terms shall be governed by and construed in accordance with the Laws of Cyprus and each party hereby irrevocably submits to the jurisdiction of the Courts of Limassol. Any difference between the parties concerning the application, interpretation, invalidity of the terms of the agreement, the constitution or not of rights and obligations of the parties from the contract or from tort, is interpreted according to the Laws of Cyprus and is under the sole jurisdiction of the Courts of Limassol, to which the parties are subject willingly.

Entity You Are Contracting With. The legal entity signing the Specific Terms, will be determined as follows: This Agreement is between Publisher and the Contracting Entity as set out below at the Table below. Notices: All notices will be made in writing to the applicable Contracting Entity at the corresponding address set out at the Table below.

Contracting Entity	Corporate Offices	Territory of Domicile
Project Agora LTD	Arch Makariou III, 214, IDEAL COURT, 2 <sup>nd</sup> floor, 3030, Limassol	Cyprus
Tailwind Emea LTD	Sofia city 1000, 45 Shesti Septemvri Str., fl.1, Sredets region	Bulgaria
Project Agora Media Technology S.R.L.	17C Sevastopol Street, block, entrance A, groundfloor, appt. 1, room no. 4, 1st District,	Romania



