

## General Terms and Conditions for Advertisers

### Trademob GmbH

#### 1. SCOPE OF APPLICATION

- 1.1 These General Terms and Conditions (hereinafter “**GTC**”) apply to all business relationships between Trademob GmbH (hereinafter “**Trademob**”, “**we**” or “**us**”) and its customers with regard to the Customers’ use of the mobile marketing products and services supplied by Trademob (hereinafter collectively the “**Trademob Services**”) insofar as the customer is a business (*Unternehmer* - pursuant to Sec. 14 German Civil Code (*Buergerliches Gesetzbuch – BGB*), a legal person under public law, or a special fund under public law (the “**Customer**” or “**you**”; you and us also each referred to as a “**Party**” and jointly the “**Parties**”).
- 1.2 These GTC constitute an integral part of each agreement between us and you, in particular of any Insertion Order (as defined in section 2.1 below) unless expressly agreed otherwise in writing.
- 1.3 These GTC apply in their respective version also as a framework agreement for all of our future business transactions with you, without there being the need for another separate agreement on the application of these GTC and without our having to refer to them again in each individual case. We will notify you in a timely manner of any changes to our GTC which shall apply to the conclusion of any such future individual agreements.
- 1.4 These GTC apply exclusively. General terms and conditions of the Customer apply only if and to the extent that we expressly accept them in writing. This provision also applies if we unreservedly perform the Trademob Services in the knowledge of the Customer’s own general terms and conditions, or if we make reference to a written statement that contains or makes reference to the general terms and conditions of the Customer. Individual agreements concluded with the Customer in individual cases (e.g. in an Insertion Order) have priority over these GTC.

#### 2. CONCLUSION OF INSERTION ORDERS

- 2.1 All of our offers are non-binding and subject to change, to the extent that they are not expressly identified as binding or they do not contain a specific acceptance period.
- 2.2 Our offers will set out the Trademob Services, including the software tools provided for use by the Customer (if any), the media costs and any other fees payable by the Customer to Trademob, the addressed market (e.g. users of mobile devices located in Germany), the term of the advertising campaign, any special requirements by the Publishers (as defined in section 3.2 below) or the RTB exchanges that the advertising campaigns must comply with as well as the format and other specifications of the Creatives (as defined in section 5.1 below) to be delivered by the Customer. In addition, the general specifications of the Trademob Services shall apply that are either published on the Trademob website or provided by Trademob to the Customer (the “**General Services Specifications**”).
- 2.3 An agreement between you and us on the supply of the Trademob Services shall enter into effect and become binding on both Parties (i) when you accept in writing a written and signed offer from us, or (ii) upon our acceptance of an order by you via phone or email by written and signed order confirmation (collectively the “**Insertion Order**”).

- 2.4 If the Customer solely wishes to use Trademob's performance tracking technology (the "**Trademob Software**"), the Customer must expressly accept these GTC before downloading the Trademob software development kit ("**SDK**").
- 2.5 The written contract concluded to this effect between us and you, including these GTC, the General Services Specifications and any individual agreements the contract may contain which deviate from these GTC or the General Services Specifications, fully reflect all agreements between us and you regarding the subject matter of the contract. Further verbal or written agreements, arrangements, or commitments with respect to the subject matter of the contract do not exist. With the exception of our representative managing directors, authorized signatories (*Prokuristen*), and other persons authorized to represent the company, who are named as our authorized representatives with respect to the corresponding business relationship with the Customer, our employees are not authorized to enter into verbal agreements with the Customer or make verbal commitments which deviate from our agreements and commitments concluded in writing, including these GTC.
- 2.6 Notifications of the Parties regarding the termination or rescission of an Insertion Order shall also be made in writing to be valid. Any other notifications of the Parties regarding the performance of an Insertion Order (e.g. notifications of defects, delays, etc.,) can be submitted to the other Party in text form by email to the email address communicated by the other Party for this purpose. An email notification is deemed to have been received by the addressee when it can be retrieved in its email inbox under normal circumstances.
- 2.7 For the purposes of these GTC "in writing" or "written form" shall have the meaning specified in Sec. 126 German Civil Code; however this written form requirement shall be deemed fulfilled when the respective Party transmits to the other Party a copy of a written and signed declaration by email to the email address communicated by the other Party for this purpose.
- 2.8 The Customer represents and warrants that all information and data, including any contact and financial data, provided by the Customer with regard to the conclusion of an Insertion Order with Trademob and the performance of the Trademob Services are complete and correct. The Customer is obliged to promptly inform Trademob about any changes to this data and/or to update altered data in its user account. In the event of a culpable breach of this obligation, Trademob is entitled to suspend the performance of the Trademob Services upon prior notice until the correct data are provided.

### **3. TRADEMOB SERVICES**

- 3.1 Trademob renders the Trademob Services in accordance with the terms of the respective Insertion Order, these GTC and the General Services Specifications.
- 3.2 With respect to any advertising campaign, within the scope of the media plan (if any) agreed with the Customer, Trademob selects and acquires in its free discretion and in its own name and for its own account the advertising inventory offered on third party media (such as mobile websites and mobile apps) on which the Customer's Creatives shall be displayed (the "**Ad Inventory**") from the providers or distributors of such Ad Inventory (the "**Publishers**"), except if expressly otherwise agreed between the Parties in an Insertion Order.
- 3.3 Except if expressly agreed as binding in an Insertion Order, any key performance indicators and any volumes of user activities (e.g. ad views, ad clicks, installations of apps, user registrations) set out in an Insertion Order or a media plan are only non-binding estimates. Trademob does not warrant or otherwise undertake that an advertising campaign achieves such key

performance indicators and or volumes within the term and with the budget agreed for such advertising campaign.

- 3.4 If an estimated or agreed volume cannot be reached within the agreed term, the Parties may either **(i)** mutually agree in text form (email) to extend the term of the advertising campaign until such volume is reached (provided that appropriate Ad Inventory is available for such purpose) or **(ii)** terminate the advertising campaign at the end of the term. In the latter case, the Customer is only obligated to pay the media costs for the actually delivered volume.
- 3.5 If Trademob cannot supply the Trademob Services during the agreed time period for reasons over which Trademob has no control ("**Non-availability of Service**"), Trademob will inform the Customer without undue delay, at the same time indicating – as far as possible – the expected new time period for the supply of the Trademob Services. If the provision of the Trademob Services is also not possible within such new time period (or – if such a new time period was not named – within four (4) weeks after expiration of the original time period) for reasons beyond Trademob's control, Trademob has the right to withdraw from the concerned Insertion Order entirely or partially. In this case, any payments already made by the Customer for the unavailable Trademob Services will be reimbursed by Trademob without undue delay. It is also deemed a case of Non-availability of Service within the meaning of the above sentence in the case of **(a)** the prevention of the timely provision of the Trademob Services through force majeure (*hoehere Gewalt*), i.e. events which cannot be reasonably foreseen and averted by Trademob by taking reasonable precautions, such as war, acts of terrorism, internal unrest, forces of nature, sabotage by third parties, strikes in areas for whose functioning Trademob is not responsible (this also applies when such a case of force majeure occurs at one of Trademob's subcontractors or suppliers.), as well as **(b)** when the provision of Ad Inventory to Trademob cannot be made on time, in full and/or in the agreed quality by one of Trademob's suppliers (*Vorbehalt der rechtzeitigen, vollstaendigen und richtigen Selbstbelieferung*). The statutory rights of withdrawal of both Parties in the case of such a Non-availability of Service remain unaffected.

#### **4. USE OF THE SDK**

- 4.1 If the Customer uses the Trademob performance tracking services and therefore has to implement and use the Trademob Software Development Kit ("**SDK**"), Trademob hereby grants the Customer a non-exclusive, non-transferable and non-sublicensable right to use the SDK without any modifications in connection with the agreed advertising campaigns for the agreed term.
- 4.2 The Customer shall not make the SDK available to any third parties. In addition, the Customer shall not
- modify, translate, reverse engineer, decompile, disassemble or otherwise create derivative works from the SDK or documentation. Information pursuant to Sec. 69e of the German Copyright Act (*Urhebergesetz - UrhG*) which is required to achieve interoperability with other programs created independently will be provided by Trademob upon request as part of the Trademob Services;
  - transfer, lend, rent, lease, distribute the SDK, or use the SDK for providing services to a third party, or grant any rights in and to the SDK or documentation to a third party in any form, without Trademob's express prior written; or

- remove, modify or make illegible the labels, markers or designations regarding copyrights and other intellectual property rights of the SDK or the documentation relating thereto.
- 4.3 Trademob reserves the right to modify, amend and/or update the SDK at any time, and to make available updated and/or modified SDKs to the Customer, provided that such updates and modification do not adversely affect the use of the agreed Trademob Services. In order to ensure the proper functionality of the SDK, the Customer is obliged to download and install the SDK in its latest version as made available by Trademob.
- 4.4 Trademob hereby represents and warrants (*gewaehrleistet*) that (i) Trademob holds the rights in the SDK licensed to the Customer under this section 4 and (ii) the use of the SDK by the Customer in accordance with the terms and conditions of the Insertion Order (including this GTC and the General Services Specifications) does not infringe copyrights, patents, design rights, utility models, trademarks, trade secrets and/or any other intellectual property rights (“**IP Rights**”) of third parties in Germany and/or in the market at which the respective advertising campaign is directed. Trademob shall indemnify, defend and hold the Customer harmless from and against any claims, liability, damage, loss or expense (including reasonable attorneys’ fees and legal expenses for a necessary defense against such third party claims) directly or indirectly arising from a breach by Trademob of any of Trademob’s representations and warranties made under this section 4.

Any claim by the Customer for indemnification is subject to the condition precedent (i) that the Customer notifies Trademob in writing and without undue delay of any claim by a third party relating to the foregoing representations and warranties that is brought or threatened to be brought against the Customer (“**Third Party Claims**”) and (ii) that the Customer does not make any admission with respect to the Third Party Claims, which might be prejudicial to the defense against such Third Party Claims (e.g. any acknowledgement or settlement of the Third Party Claims) without Trademob's prior written consent that shall not unreasonably be withheld, and (iii) that the Customer gives Trademob at Trademob's cost and expense full control over the defense against such Third Party Claims (e.g. to conduct any ensuing litigation and all negotiations for a settlement of such Third Party Claims). Upon Trademob's request and at its expense, the Customer shall reasonably support Trademob in the defense against such Third Party Claims.

## 5. PROVISION AND USE OF CREATIVES FOR ADVERTISING CAMPAIGNS

- 5.1. When the Customer engages Trademob to conduct an advertising campaign, including the provision of media buying services, the Customer shall deliver to Trademob appropriate advertising creatives in the form of banners and/or text that fit the industry standards (e.g. 320x50, 320x480) to be displayed on the Ad Inventory (the “**Creatives**”), unless expressly specified otherwise in the Insertion Order.
- 5.2 The Customer must provide the final Creatives, free of viruses and other harmful components, to Trademob no later than 5 business days (at Trademob’s registered office) prior to the start of the respective advertising campaign unless expressly agreed otherwise in the respective Insertion Order. If the start of a campaign is delayed due to the Customer’s delay in providing acceptable Creatives, Trademob is entitled, at its option, to (a) reduce the number of user activities (e.g. ad views, ad clicks, downloads or installations of apps) to be delivered on a pro rata basis based on the time available to Trademob after the delayed start of the advertising campaign, or (b) extend the term of the campaign.

- 5.3 The Customer hereby grants to Trademob for the term of the respective advertising campaign the non-exclusive and worldwide right to use the Creatives and all contents therein provided by the Customer for the provision of the Trademob Services. This grant of rights includes all copyrights, neighboring rights to copyright (*Leistungsschutzrechte*), trademarks, designs, rights to persons' likenesses and any other rights necessary for such use of the Creatives, including but not limited to the right to publish, to reproduce, disseminate, distribute, transmit, make publicly available and edit the Creatives and all contents therein, to the extent necessary for the provision of the Trademob Services. Trademob is entitled to grant the Publishers sublicenses to the foregoing rights in the Creatives for integration and delivery of the Creatives on their RTB exchanges and for display of the Creatives on their Ad Inventory.
- 5.4 If the Creatives as provided by the Customer do not comply with the agreed technical specifications and/or if Trademob has reason to believe that the content of the Creatives, the Customer's mobile app, the Customer's mobile site (as specified in the respective Insertion Order) and/or their use might violate applicable law, third party IP Rights and/or Publisher's requirements, Trademob is entitled to reject such Creatives and/or to discontinue a running advertising campaign. In such event, Trademob shall inform the Customer about the rejection and give the Customer the opportunity to deliver alternative Creatives. The foregoing sentence applies accordingly if a Publisher rejects Creatives and/or discontinues a running advertising campaign on its Ad Inventory or RTB exchange.
- 5.5 The Customer represents and warrants that **(i)** the Customer has the right to market and advertise the mobile app/site (as specified in the Insertion Order), **(ii)** the Customer holds the rights granted in the Creatives under this section 5, and **(iii)** the Creatives, all contents therein, its mobile app, mobile site (as specified in the Insertion Order) and/or any other material or media to which the Creatives link **(a)** do not violate the law applicable in the markets to which the advertising campaign is targeted (e.g. advertising law) **(b)** do not infringe any third party's rights, including but not limited to any third party's IP Rights, and **(c)** do not contain or promote any illegal content or activities, including but not limited to activities and contents that glorify violence or war, are deceptive or misleading, are defamatory or libelous; are pornographic or harmful to minors, are racist, contain or promote software piracy (warez, cracking, etc.), hacking, phreaking, emulators, or illegal MP3 activities or other destructive programming or devices that could impair or injure any data, computer system or software.
- 5.6 The Customer shall indemnify, defend and hold Trademob harmless from and against any claims, liability, damage, loss and/or expense (including reasonable attorneys' fees and legal costs) arising from, relating to or in connection with a breach by the Customer of any of the Customer's representations and warranties made under this section 5.

## **6. OTHER CUSTOMER OBLIGATIONS AND DUTIES**

- 6.1 The Customer is obliged make available any data and information on marketing objectives, targeted markets, etc. that are necessary to perform the Trademob Services.
- 6.2 With regard to any re-marketing campaigns to be conducted by Trademob for the Customer's mobile app (as specified in the Insertion Order), Trademob provides for the display of Creatives to users of the Customer that already have the Customer's mobile app installed. To enable Trademob to conduct a re-marketing campaign, the Customer shall **(i)** provide Trademob with a list of non-personally identifiable user information of the users to be targeted in the format to be agreed between the Parties in the Insertion Order (i.e., a user-id that Trademob cannot, or only with unreasonable efforts, use to identify a user) and **(ii)** allow and facilitate Trademob to link a

user inside the Customer's mobile app. If the Customer has the SDK installed, Trademob can generate, in dialogue with the Customer, an appropriate non-personally identifiable user list (such listed non-personally identifiable information is jointly referred to as the "**Retargeting Data**"). Trademob's real time bidding platform will ensure to only display Creatives to users that are listed accordingly. Except as expressly otherwise agreed in the Insertion Order and further provided that the Customer has acquired from the users the necessary user consent, the re-marketing campaigns do not require the submission of any personally identifiable data of user (*personenbezogene Daten von Nutzern*) within the meaning of Sec. 3 para.1 Federal Act on Data Protection (*Bundesdatenschutzgesetz – BDSG*) to Trademob and the Customer shall not make available any personally identifiable data of users to Trademob for such re-marketing campaigns.

- 6.3 If the tracking of the performance of an advertising campaign is not provided by Trademob but by the Customer or a third party provider engaged by the Customer, the Customer shall assure that Trademob receives the necessary performance-tracking data in form of callbacks during the entire term of the advertising campaign. The Customer is responsible for acquiring from the respective third party tracking provider the necessary licenses and for paying the respective license and/or service fees for the access to, and use of, the tracking data by Trademob. The Customer shall indemnify Trademob from any claims by the third party tracking provider resulting from Trademob's access to, or the use of, such tracking data, provided that Trademob has accessed and used the tracking data in accordance with the terms agreed with the Customer for this purpose.
- 6.4 The Customer agrees to keep the passwords and login data provided by Trademob for access to the Trademob Services confidential and to inform Trademob immediately as soon as the Customer becomes aware of unauthorized third parties gaining access to these passwords and/or data. If, due to the Customer's fault, unauthorized third parties use any Trademob Services or cause any interruptions, delays or other damages to the Trademob Services, the Customer is liable to Trademob for usage fees and any damages.
- 6.5 **The Customer shall duly examine the supplied Trademob Services and notify Trademob of all noticeable defects detected in such examination (so called obvious defects) without undue delay, but at the latest within two (2) weeks from either (i) receipt of the appendant performance report from Trademob or (ii), if no such report is owed for a certain Trademob Service, upon the full supply of the respective Trademob Service (as the case may be). If the Customer fails to give notice within the foregoing time period, the supplied Trademob Services will be deemed approved in accordance with the Insertion Order as regards such obvious defects. Should a defect become apparent at a later time (so called latent defects), the Customer shall give Trademob notice without undue delay, at the latest within three (3) business days (at the Customer's registered office) after discovery of the defect. If the Customer fails to give notice within the foregoing time period, the supplied Trademob Services will be deemed approved in accordance with the Insertion Order also as regards said defect.** For the observance of the aforementioned duty to report defects, it shall suffice in each case to send timely notification to Trademob. This section 6.5 does not apply to the extent that Trademob has fraudulently concealed a defect.

## **7. USE OF DATA; DATA PRIVACY**

- 7.1 Subject to the terms of this section 7, Trademob will provide the Customer with certain non-personally identifiable user data collected on the Ad Inventory and processed in rendering the

Trademob Services for the Customer's advertising campaigns. Trademob may receive certain of such non-personally identifiable user data from the Publishers and from other third party providers Trademob works with to deliver and track the advertising and to measure and analyze the performance of the advertising campaigns. The non-personally identifiable user data that Trademob collects, processes and uses in connection with the Trademob Services are described in Trademob's Privacy Policy the respective current version of which is published on Trademob's Website under <http://www.trademob.com/privacy-policy/>.

- 7.2 Both Parties hereby undertake to collect, process and use any personally identifiable (if any) and any non-personally identifiable user or use-related data for advertising purposes only in compliance with the applicable data privacy law and their respective Data Privacy Policies.
- 7.3 Unless expressly agreed otherwise in the Insertion Order, Trademob will provide the Customer only with non-personally identifiable and aggregated user data and will not combine such data with personally identifiable data or other data in a way that is capable to identify any user. The provision of non-personally identifiable but non-aggregated data, like anonymous identifiers (e.g. advertising identifiers), generated and/or provided by the Publishers or other third party providers Trademob cooperates with in rendering the Trademob Services for the Customer's advertising campaigns may depend on the Customer complying with additional requirements requested by such third party providers or may not be permitted at all by such third party provider (as the case may be). Trademob and the third party provider respectively have in particular the right to request the execution of an extra agreement by the Customer defining the scope and purposes of use of the anonymous non-aggregated data before providing such data to the Customer. Trademob will submit to the Customer any such additional requirements and data use agreements with the respective offer for the Insertion Order. **The Customer understands that, if the Customer declines to comply with such additional requirements and to execute such additional agreements, it may not be entitled to use certain data generated in connection with the respective advertising campaign. Trademob cannot be held responsible or liable for any such restrictions on data use.**
- 7.4 Except if the Customer has obtained the necessary consent from the respective users in the form required under applicable data privacy law, the Customer agrees not to enhance and/or combine any of the data that was generated, collected, aggregated and/or transferred while using the SDK and/or the Trademob Services for delivery and/or tracking of advertising campaigns (including any data that was received from the Publishers or other third party providers Trademob cooperates with in rendering the Trademob Services), with any personally identifiable data or with other data in a way that is capable to identify any user. Trademob grants to the Customer a non-exclusive, worldwide, perpetual, non-transferable and non-sublicensable right to use the aforementioned data only to review and analyze the performance of its advertising campaigns and for optimizing the metrics, targeting and creatives of its advertising campaigns if not expressly otherwise agreed between the Parties in the Insertion Order.
- 7.5 The Customer shall, at all times during the term of the Insertion Order
- (a) maintain a privacy statement conspicuously on its mobile app and/or its mobile site (as specified in the Insertion Order) that complies with applicable data privacy law and, in particular, includes information on (i) the types and scope of personally identifiable data and/or any non-personally identifiable user data or use-related data collected from users by such mobile app and/or mobile site, (ii) its mobile app's and/or mobile site's

processing and use of any such data and (iii) the types of anonymous identifiers, cookies, pixels and/or similar technologies used by its mobile app and/or mobile site to collect such data; and

- (b) explain within its privacy statement that it works with third party advertising service providers (like Trademob) and allows such providers to use anonymous identifiers, cookies, pixels and/or other similar technologies to collect non-personally identifiable data on its mobile app and/or mobile site for advertising purposes, including interest-based advertising, (as described in Trademob's Privacy Policy), and,
- (c) if required by applicable law with regard to an advertising campaign, provide for a mechanism to ensure that the users provide their consent to the Customer for the intended processing and use of certain data by the Customer and/or Trademob, or provide for any other mechanism to ensure that such processing and use is made legitimate (e.g., with regard to any advertising campaigns that are determined or likely to target minors under 13 years old in the US, the Customer must comply with the requirements of the Children's Online Privacy Protection Act).

7.6 Prior to the execution of an advertising campaign, the Customer shall notify Trademob of any restrictions applying to the collection, processing and use of any user data in connection with such advertising campaign, e.g. as a result from opt-outs by users, the lack of consent by users required under applicable law or any third party restrictions (except by Publishers).

7.7 Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold the respective other Party (the "**Indemnified Party**") harmless from and against any and all third party claims and any and all costs, damages and losses (including but not limited to reasonable attorney's fees and legal costs) relating to such claims that directly or indirectly result from a culpable breach of the Indemnifying Party's obligations set out in this section 7.

7.8 For the sole purpose of enhancing, improving and providing the Trademob Services to our customers, in particular for optimizing media buying and (re)targeting for the advertising campaigns we execute for our customers, and subject to applicable data privacy law, the Customer hereby acknowledges and agrees that we shall have the perpetual right to analyze, to combine with other non-personally identifiable user data and to use the non-personally identifiable user or use-related data that was collected, delivered or generated in connection with the advertising campaigns we executed for the Customer and/or by the Customer's use of the SDK and the Trademob Services (the "**Trademob Data**"), and to use any results (including any further data) derived from any such analysis, combination and use of the Trademob Data in connection with the supply of the Trademob Services to our customers.

## 8. RESERVATION OF RIGHTS

Except to the extent expressly set forth in this Agreement, neither Party grants the other Party any license, express nor implied, to its IP Rights. Ownership of any rights in and to work created using a Party's IP Rights, will inure to the sole benefit of the original owner of such IP Rights from which such work resulted. Nothing in these GTC, the Insertion Order or the performance thereof will operate to grant either Party any right, title or interest, implied or otherwise, in or to the IP Rights of the other Party hereto, other than as expressly set forth in the GTC or the Insertion Order. Each Party expressly reserves all IP Rights not expressly granted under this these GTC or the Insertion Order.

## 9. COMPENSATION

- 9.1 As remuneration for the performance of the Trademob Services by Trademob, including any media buying, the Customer shall pay Trademob the fees agreed in the Insertion Order. Unless expressly stated otherwise, all fees are quoted exclusive of the statutory value-added tax (VAT).
- 9.2 If the Trademob Services are subject to VAT under the applicable tax jurisdiction, VAT in the statutory amount applicable at the time of payment shall be added and paid on the agreed fees by the Customer to Trademob, provided that Trademob as provider of the Trademob Services is the debtor of such VAT amount (*Steuerschuldner*).
- 9.3 If the Customer is required by any law or regulation to make any withholding or deduction from fees payable to Trademob on account of any taxes, duties or levies in connection with the provision of the Trademob Services to the Customer, the Customer shall, together with the relevant payment, pay such additional amount as will ensure that Trademob receives an amount equal to the sum it would have received if no such withholding or deduction had been required. Upon the Customer's request, Trademob shall provide the Customer with such available information and documents as reasonably necessary for obtaining an exemption from the withholding or deduction of amounts or for a refund of the amounts withheld or to be withheld by the Customer on the account of taxes, duties or levies under the applicable tax jurisdiction.

## **10. ACCOUNTING; PAYMENT**

- 10.1 The compensation will be calculated and invoiced monthly on the basis of the delivered volumes of agreed user activities (e.g. ad views, ad clicks, installations of the mobile app, etc.) as tracked by Trademob's tracking platform subject only to the subsequent section 10.2.
- 10.2 Should the Customer use its own tracking and, should the Customer's tracking result deviate from Trademob's tracking result by 10% or more with respect to a given invoice for a certain advertising campaign, the Parties agree to jointly investigate the cause for such deviation and to make reasonable efforts to find an amicable solution. Each Party shall be free to otherwise pursue any claims and rights it may have if the Parties have not found an amicable solution with regard to such a deviation within three (3) months from the Customer's receipt of the respective invoice.
- 10.3 The compensation shall be due and payable to Trademob within ten (10) days from the Customer's receipt of an invoice from Trademob that shall be issued (i) after the end of the month in which the respective advertising campaign was delivered or, (ii) if an advertising campaign runs for a time period longer than a month, after the end of each month during the term of such advertising campaign for the volumes of agreed user activities delivered in the respective month. If Trademob becomes aware of a risk that the Customer may no longer be able to make due payments, Trademob shall have the right to supply the Trademob Services only against prepayment by the Customer or the provision of adequate security.
- 10.4 Any bank charges and costs connected with the payment, including any loss from the exchange rate differences, if the payment was made in any currency other than the invoice currency, shall be fully borne by the Customer.
- 10.5 The Customer shall submit to Trademob any objections relating to an invoice in writing or by email to [accounting@trademob.com](mailto:accounting@trademob.com) specifying the reason for such objection within four (4) weeks upon receipt of the invoice. If no such objection has been made within four weeks upon receipt of invoice, the invoice shall be deemed accepted by the Customer with regard to all defects (in quantity and quality) of the supplied and invoiced Trademob Services and all errors

of the invoice that the Customer could have discovered by a due and reasonable examination of the supplied Trademob Services and/or the invoice by the expiration of this deadline. Trademob will inform the Customer in the invoice about the consequences of failing to submit a timely objection.

## 11. LIABILITY

The Parties claims to damage compensation and reimbursement of futile expenditures (collectively the “**Damages**”) are exclusively set forth in this section 11, regardless of the legal nature of the respective claim (e.g. contractual claims, claims arising from tortious acts, defects, delay, or impossibility of fulfilment).

- 11.1 Except for the cases set out in section 11.3, the liability of the Parties for all Damages is excluded to the extent that the Damages **(a)** were not caused by gross negligence (*grobe Fahrlaessigkeit*) or willful misconduct (*Vorsatz*) of the other Party, its legal representatives, executive officers or other vicarious agents or **(b)** were not caused by a culpable (*schuldhaft*), i.e. at least negligent (*fahrlaessig*), breach of a material obligation by the other Party, its legal representatives, executive officers or other vicarious agents, which jeopardizes the attainment of the contractual purpose; in particular by a culpable breach of ‘cardinal obligations’ (*Kardinalpflichten*). A cardinal obligation according to the meaning of the foregoing sentence is a material contractual obligation of a Party, the fulfilment of which is prerequisite for enabling the proper fulfilment of the agreement in the first place, and on which the other Party regularly relies and may rely.
- 11.2 The liability of the Parties **(a)** in the case of a culpable breach of material obligations, to the extent that it is not caused by gross negligence or willful misconduct, as well as **(b)** in the case of a grossly negligent breach of other (i.e. not material) obligations by employees or vicarious agents of the Parties who are not legal representatives or executive officers (*leitende Angestellte*) of the Parties, is limited to those Damages foreseeable at the time of conclusion of the Insertion Order, which typically arise in transactions of this nature.
- 11.3 The limitations and exclusions of the Parties’ liability for Damages set forth in this section 11 shall not apply to Damages **(i)** for which a Party is liable as a result of a breach of a written and express guaranty (*Garantie*) by that Party as to the quality of works and services (if any), **(ii)** caused by defects of the Services fraudulently concealed by Trademob **(iii)** Damages arising from personal injury and death, **(iv)** arising from a breach of the representations and warranties set forth in section 4 and 5 of these GTC, and **(v)** for which a Party is otherwise liable pursuant to applicable mandatory law and regulations where such liability cannot be excluded by agreement between the Parties in advance, e.g. any product liability under the German Product Liability Act (*Produkthaftungsgesetz*).
- 11.4 The limitation period for any claims of the Parties arising from or in connection with the Insertion Order (including any claims for defects of the Trademob Services) shall be one year from the full supply of the Trademob Service concerned or, respectively, acceptance of the Trademob Service concerned (if acceptance is required under applicable law or agreed in the Insertion Order); this does not apply to a defect which consists of a third party’s rights in rem, based on which the return of the item can be demanded, nor does it apply to claims for Damages which are both subject to the statutory limitation provisions.

## 12. TERM; TERMINATION

- 12.1 The term of the Insertion Order and/or advertising campaign is set out in the Insertion Order. The termination of the Insertion Order for convenience is excluded unless explicitly agreed otherwise in the Insertion Order.
- 12.2 The Parties' right to immediately terminate the Insertion Order for cause shall remain unaffected. In particular, Trademob has the right to immediately terminate the Insertion Order upon notice
- a) if the Customer violates any of the provisions set out in sections 4.2, 5.5, 6.4, 7.4; or
  - b) if the Customer violates any of its other material obligations set out in this GTC or the Insertion Order (including its obligations set out in section 10.3) and fails to cure such breach within fourteen (14) days of receipt of a written notice from Trademob specifying the breach. No such notice is necessary if the violation cannot be cured, or if the violation is so material that Trademob cannot be reasonably expected to adhere to the Insertion Order. A violation is also being deemed material if the Customer has received such notices of warnings several times with regard to similar violations, or
  - c) if the Customer is illiquid, a petition for the opening of insolvency proceedings over the Customer's assets is filed by a creditor of the Customer or by the Customer itself with the competent court or authority and such petition is not withdrawn or dismissed by the court or authority as unreasoned within four weeks from filing; or
  - d) if insolvency proceedings are opened by the competent court or authority over all or a part of the Customer's assets or the competent court or authority rejects the opening of such proceedings for insufficiency of assets; or
  - e) any order to winding-up is issued by any competent court or any resolution is passed by the Customer for its winding-up or dissolution.
- 12.3 Upon termination of the Insertion Order, the Customer is obliged to delete all copies of the SDK.

### 13. CONFIDENTIALITY

- 13.1 The Parties shall keep strictly confidential any information about the affairs of the respective other Party, its subcontractors, suppliers and customers, including but not limited to technical, commercial and financial information (e.g. information on software, interfaces, drawings, documentation, processes, technical and business know-how, prices, cost calculations, pricing conditions, marketing strategies) (i) which one Party (the "**Disclosing Party**") may make accessible to the respective other Party (the "**Receiving Party**") or of which the Receiving Party becomes aware in performing this Agreement (collectively the "**Disclosure**") and (ii) which is either marked as confidential (or if disclosed orally confirmed in writing or by email as being confidential within seven days upon its Disclosure) or the confidential nature of which is obvious to a prudent business person (jointly the "**Confidential Information**"). Notwithstanding the foregoing sentence, personally identifiable employee data of the Parties, the SDK and the terms and conditions of the Insertion Order shall always be deemed Confidential Information for the purposes of this section 13.
- 13.2 The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to third parties without the prior written consent of the Disclosing Party. The Parties shall take adequate and customary measures to protect the Confidential Information against unauthorized disclosure, reproduction and use. The Receiving Party shall disclose the Confidential Information only to such of its officers, directors, employees, subcontractors, suppliers and

external advisors (jointly the "**Associates**") if and to the extent that their knowledge of the Confidential Information is required for the performance of the Insertion Order, and provided that the Associates are bound by the confidentiality obligations with regard to the Confidential Information of the Disclosing Party at least as restrictive as set out in this section 13. In addition, the Receiving Party shall be entitled to submit Confidential Information of the Disclosing Party to companies affiliated with the Receiving Party within the meaning of section 15 et seq. German Stock Corporation Act (*Aktiengesetz- AktG*) (the "**Affiliate(s)**") if so required under applicable law or for administrative purposes of the respective group of companies, provided that such Affiliates are bound by the same confidentiality obligations also with regard to the Confidential Information of the Disclosing Party as set out in this section 13.

- 13.3 Upon the Disclosing Party's request or the termination of the Insertion Order for whatever reason (whichever occurs earlier), the Receiving Party shall immediately return to the Disclosing Party all documents or media containing Confidential Information as well as all copies or excerpts of same; should it not be physically possible to return the Confidential Information (e.g. digital copies on the Receiving Party's servers), then the Receiving Party shall delete the Confidential Information from all of its systems and networks and to confirm the deletion in writing to the Disclosing Party. However, the Receiving Party shall have the right to keep and archive a copy of Confidential Information if and to the extent required by applicable mandatory law for the required record retention period. In this event the Receiving Party shall destroy or delete (as the case may be) such copy upon the expiration of the required record retention period.
- 13.4 The Receiving Party and its Associates shall not use, directly or indirectly, in whole or in part any Confidential Information of the Disclosing Party for any purpose other than the performance of the Insertion Orders without the prior written consent of the Disclosing Party (which consent shall be at the Disclosing Party's discretion).
- 13.5 All Confidential Information (including all material and documents containing Confidential Information) shall remain the property of the Disclosing Party. Except as otherwise expressly set forth in these GTC or the Insertion Order, the Receiving Party shall not acquire any rights in the Confidential Information of the Disclosing Party.
- 13.6 The confidentiality obligations of the Parties set out in this section 13 shall not apply to any information of which the Receiving Party can prove that it:
- (i) was already in the possession of the Receiving Party (as evidenced by its written records) prior to its Disclosure under the Insertion Order without any obligation of confidentiality or restriction on use by the Receiving Party; or
  - (ii) is or comes into the public domain or otherwise ceases to be of a confidential nature other than as a result of an act or omission hereunder by the Receiving Party; or
  - (iii) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, and that such other source is not in breach of a confidentiality agreement with the Disclosing Party; or
  - (iv) is independently generated by the Receiving Party's Associates who have not had access to the Confidential Information; or
  - (v) is required to be disclosed by any applicable law, order of a court of competent jurisdiction or order of competent public authority or agency provided that prior to such

disclosure the Party required to disclose shall consult with the other as to the proposed form, nature and purpose of the disclosure (if legally possible).

13.7 The obligations imposed on each Party under this section 13 shall apply during the term of the Insertion Order, and shall survive its expiration or termination (as the case may be).

#### **14. GOVERNING LAW; JURISDICTION**

14.1 The Insertion Order and these GTC, any annexes and amendments to the Insertion Order and these GTC, including any obligations, rights and claims of the Parties arising out of or in connection with the Insertion Order – irrespective of their legal grounds (e.g. contractual claims, tort) – shall be exclusively governed by the laws of the Federal Republic of Germany (excluding the 1980 UN Convention on the International Sales of Products).

14.2 The place of jurisdiction for all legal disputes, actions or proceedings arising under or in connection with the Insertion Order and these GTC – irrespective of their legal grounds (e.g. contract claims, tort) – including any question regarding the validity or termination of the Insertion Order, shall be, at Trademob's option, Trademob's registered office or the Customer's registered office; for any claims of, or actions or proceedings initiated by the Customer, the exclusive place of jurisdiction shall be Trademob's registered office.

#### **15. MISCELLANEOUS**

15.1 **Headings.** All headings in these GTC have been inserted for ease of reference only and do not affect the meaning or interpretation of these GTC.

15.2 **Severability.** If any provision of these GTC or the Insertion Order is or becomes wholly or partly void or unenforceable or if these GTC or the Insertion Order contains any omissions, the validity of the remaining provisions of these GTC and the Insertion Order shall remain unaffected. The Parties shall replace any invalid or unenforceable provision and remove any omission by a valid and enforceable provision that the Parties would have agreed on in good faith and taking into consideration the purpose of the agreement if they had been aware of the invalid or unenforceable provision or the omission when entering into the Insertion Order.

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