**THIS AGREEMENT** (this “**Agreement**”) is entered into as of \_\_\_\_\_\_\_\_\_, 2020 (the “**Effective Date**”) by and between:

InMobi Pte. Ltd., a Singapore private limited company, with one of its principal place of business at 15420 Laguna Canyon Road, Suite 200, Irvine, California 92618 acting on behalf of itself and its affiliates (“**InMobi**”),

And

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_ based company/corporation with its registered address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Demand Partner**”) (each a “**Party**” and collectively, the “**Parties**”).

**RECITALS**

Whereas, InMobi has developed a proprietary platform for marketers (hereafter referred to as “**Marketing Platform”)** where InMobi (on behalf of its demand partners) places advertising materials or content (collectively “**Ads**” or “**Creative**”) on any inventory or digital property (each an “**Inventory**”) made available by InMobi and/or its Affiliates or a third party with which it has entered into a agreement for provision of Inventory, as applicable (“**Services**”).

Partner wishes to participate in the Marketing Platform and it is Parties’ intent to record their understanding and accordingly have agreed to execute this Agreement;

# Definitions

[\_\_\_]

1. **SCOPE**

Demand Partner hereby authorizes InMobi and its Affiliates to place Demand Partner’s Ads on any Inventory through the Marketing Platform. The Marketing Platform enables Demand Partner to deliver Ads by responding to ad requests with a CPM-based bid price for an applicable impression (the “**Bid**”). InMobi may choose to accept Bids submitted by Demand Partner based on performance standards such as ad response time, which generally apply to all media buyers on the Marketing Platform.

1. **OBLIGATIONS**
2. Demand Partner is solely responsible for all: (i) Creative, (ii) Ad trafficking decisions and targeting decisions (“**Targets**”), (ii) decisions on how much to bid for Targets and all charges in connection with such bids, (iv) destination pages to which Creative directs viewers (e.g., landing pages) and the redirect (e.g., URLs) (“**Destinations**”) and (v) services and products advertised on Destinations.
3. InMobi and its affiliates may make available to Demand Partner certain features (e.g., geographic targeting) to assist with the selection of Targets. Demand Partner is not required to use these features and, as applicable, may opt-in to or opt-out of usage of these features, but if Demand Partner uses these features, then Demand Partner will be solely responsible for those Targets. InMobi or Partners may reject or remove a specific Ad or Target at any time for any or no reason.
4. Demand Partner is solely responsible for its use of the Marketing Platform (e.g., access to and use of accounts and safeguarding usernames and passwords) (“**Use**”). Demand Partner shall comply with the guidelines available at https://www.inmobi.com/content-guidelines-advertisers/ and such other guidelines mutually agreed upon by the Parties (collectively, “**Policies**”).
5. Demand Partner and InMobi will undertake commercially reasonable efforts to ensure that neither party shall, nor will it authorize any third party to, (a) generate automated, fraudulent or otherwise invalid impressions, inquiries, clicks or conversions or (b) conceal conversions. For each Demand Partner campaign placed on the Marketing Platform, the entity on whose Property the Ad was placed (InMobi or a Partner) may be provided with impression, click and price paid information which lists the associated advertiser and Demand Partner as the campaign buyer. InMobi may modify Ads (i) to make non-material changes or (ii) as described in the Policies. Any other modification to Ads may be requested by InMobi but requires Demand Partner authorization, including without limitation by not exercising opt-out rights (e.g., for user interface or Ad quality experiments).
6. Demand Partner will (i) not provide Ads containing malware, spyware or any other malicious code or knowingly breach or circumvent any security measure. (ii) Ads will comply with all applicable laws and regulations, including but not limited to Children’s Online Privacy Protection Act, will not be misleading, libelous, obscene, invasive of others’ privacy, or hateful (racially or otherwise), and will not infringe any third party’s intellectual property or other rights. (iii) Ads will comply with the Policies (iv) Demand Partner may utilize an Ad server solely for serving or tracking Ads. Demand Partner is responsible for inputting Ad server tags so that they are materially functional. (v) InMobi will have no liability for a discrepancy between InMobi's impression count (“**IC**”) under the Marketing Platform and the IC produced by Demand Partner’s Ad server. InMobi reserves the right to refuse or take down any advertisements, websites and other digital platforms.
7. In the event Demand Partner has users based in EEA, Demand Partner acknowledges and agree that its collection, use, sharing and/or treatment of any Personal Data (as such term is defined under the General Data Protection Regulation ("**GDPR**")) must be in compliance with the requirements of GDPR. If Demand Partner whether by itself or through its third parties provide or share with InMobi any Personal Data for users based in EEA, Demand Partner will remain responsible for obtaining appropriate user consent and agrees to InMobi's Data Protection Addendum as set out in <https://www.inmobi.com/advertiser-data-protection-rider/>.
8. In the event Demand Partner proposes to share or obtain any Personal Information of a US based user/consumer as envisaged under California Consumer Privacy Act ("**CCPA**”) (as such terms are defined under CCPA), the Demand Partner agrees to comply with the requirements of CCPA and terms of [Privacy Addendum for Demand Partners](https://www.inmobi.com/localhost/privacy-addendum-for-demand-partners) available at <https://www.inmobi.com/privacy-addendum-for-demand-partners/>
9. Where Demand Partner requires any third party including its trackers on its behalf to either receive from InMobi or share with InMobi, any Personal Data, Demand Partner shall remain liable for the acts and omissions of its third parties to the same extent Demand Partner would be liable if it were either receiving/sharing such Personal Data from/with InMobi. Accordingly, Demand Partner agrees to execute appropriate data processing agreements with such third parties.
10. Each Party shall promptly and no later than within five (5) days of receiving notice from an End User (pursuant to verification), notify the other Party (email accepted) in the event an End User has exercised his/her right to opt-out of behavioural targeting or to the extent available to such End User under applicable privacy laws, the right to opt-out of selling of his/her personal information or other data subject or consumer rights such as right to know, right to information, right to access, right to request correction or right to request deletion of their data etc. (collectively “**Opt-Out**”). Each Party agrees to honour such Opt-Out requests in accordance with the requirements of privacy laws applicable to such Party’s processing of such data

1. **TERM AND TERMINATION**.

This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years from the Effective Date (“**Initial Term**”) and post the Initial Term, this Agreement will renew for additional 12-month periods unless a party gives a non-renewal notice at least 90 days before the end of the then-current term (“**Term**”). Either Party may terminate this Agreement (a) upon thirty (30) days prior written notice to the other Party (b) in the event that the other Party breaches this Agreement and such breach is not cured within thirty (30) days of written notice thereof. Either Party may immediately terminate the Agreement upon written notice if the other Party: (x) becomes or is declared insolvent or bankrupt; (y) is the subject of any proceeding related to voluntarily or involuntarily liquidation or insolvency which is not dismissed within ninety (90) Days; or (z) makes an assignment for the benefit of creditors.

1. **FEES AND Payment Terms**. Demand Partner shall pay all fees set forth in Exhibit A. InMobi shall render invoices to Demand Partner on a monthly basis and shall bill for the Services in arrears. Payment shall be due no later than thirty (30) days from the end of the applicable month where Services have been rendered by Demand Partner. Demand Partner agrees to pay for the Services for the duration of the Term. In the event Demand Partner in good faith disputes any fees on an invoice, Demand Partner must notify InMobi in writing of the reasons for, and the amount of, such dispute, within thirty (30) days of the date of invoice. In such event, Demand Partner may only withhold payment of the amount in dispute and shall pay all undisputed amounts when due. Unless subject to a good faith dispute, amounts not paid when due shall be assessed interest at a monthly rate equal to one and one half percent (1.5%) of the amount owed or the maximum rate allowed by law, whichever is less, calculated from the date the payment was due. All invoices shall be paid in U.S. Dollars. If InMobi commences legal proceedings to collect any payment and prevails, Demand Partner shall pay InMobi’s reasonable attorney’s fees, court costs and other collection expenses.
2. **TAXES**. All fees for Services are calculated exclusive of any federal, state, local sales, excise, value-added or similar taxes. Any taxes or similar liabilities, however denominated, that may now or hereafter be levied on the Services which are chargeable to Demand Partner by any government authority, shall be paid by Demand Partner. Should InMobi be required to pay or pays these liabilities, Demand Partner shall reimburse InMobi for such payments upon receipt of an invoice and showing of indebtedness from InMobi.

1. **DATA**
2. **Definitions.** “**Bid Request Data**” means any information passed to or accessible by Demand Partner via the Marketing Platform prior to the purchase of a particular impression or unit of Ad inventory (i.e. prior to the loading of Demand Partner’s Ad tag), including both audience related information (e.g. gender), non-audience-related information (e.g. contextual, channel), and user specific information including any device identifier or enabled geo-location data. “**Demand Partner Data**” means: (a) all data Demand Partner submits to InMobi in a Bid for a particular unit of Ad inventory, and (b) all data Demand Partner collects following a particular Won Bid using its own technology independently of InMobi and the Marketing Platform and independent of any Syncing Method with InMobi or InMobi’s Partners, but excluding Bid Request Data. “**Property Data**” means data obtained by Demand Partner in connection with this Agreement that identifies or allows identification of a Partner, its URL, services, products, brand, content, context, or users. “**Syncing Data**” means any information obtained by Demand Partner as a result of cookie synchronization with InMobi or its Partners in connection with this Agreement or via any other method of user, segment, or audience synchronization (each, a “**Syncing Method**”).
3. As between the Parties, Demand Partner owns all right, title and interest in and to the Demand Partner Data. As between the Parties, InMobi owns all data generated, collected or provided by the Marketing Platform, including the Bid Request Data, the Syncing Data and the Property Data (collectively, the “**InMobi Data**”).
4. **Use of InMobi Data by Demand Partner.** Demand Partner may not use, sell, or otherwise disclose the InMobi Data, except that Demand Partner shall have the right to:
5. Use Syncing Data for the sole purpose of matching user or audience identifiers used by InMobi with user or audience identifiers used by Demand Partner. For clarity, Demand Partner agrees that it will not store or retain log files or other records that relate to Syncing Data.
6. Subject in each case to the restrictions set forth in Section 6 (d) below, Demand Partner may use and disclose Bid Request Data and Property Data: (i) to perform its obligations under this Agreement, including using Bid Request Data provided or obtained in connection with a particular impression or unit of Ad inventory made available for sale through the Marketing Platform to determine whether to place a Bid on a particular impression or unit of Ad inventory and the amount to be bid (or paid) for such unit of Ad inventory, (ii) for inventory measurement, forecasting, scoring and ranking purposes, (iii) to disclose aggregate campaign statistics and performance reporting about purchases made through the Marketing Platform to the applicable advertiser, (iv) for creating campaign performance analytics and models regarding users interactions with Demand Partner’s Ads, and (v) for detection of click fraud or other fraudulent activities.
7. **Restrictions on User Profiling.** Notwithstanding Section 6 (c): (i) Demand Partner will not use InMobi Data obtained in connection with un-purchased inventory impressions to create or supplement user profiles (e.g., adding targetable interests or proclivities, creating user movement profiles with location data), and (ii) notwithstanding the fact that Demand Partner Data may include elements of Property Data, Demand Partner will not use Property Data obtained from Won Bids (or data derived from such Property Data) to create or supplement user profiles (e.g., site-specific retargeting, collecting product-interest information from URLs, SKUs, etc.).
8. **Permitted Disclosure of Data to Advertisers.** For clarity, Demand Partner may disclose Bid Request Data and Property Data to the applicable advertiser, provided that such advertiser is contractually limited in its rights to use and disclose such data in a manner that is at least as restrictive as this Section 6.
9. **Use of Demand Partner Data by InMobi**. InMobi shall have the right to use and disclose Demand Partner Data provided to InMobi hereunder at its discretion: (a) to operate the Marketing Platform, (b) to perform its obligations under this Agreement, (c) for reporting and analytical purposes, (d) if and as required by court order, law or governmental or regulatory agency, and (e) for improving and optimizing InMobi's services (f) as otherwise permitted with Demand Partner’s prior written consent.
10. **INTELLECTUAL PROPERTY**. Each Party retains all right, title and interest in and to its intellectual property. No licenses will be deemed to have been granted by either Party to any of its intellectual property. Demand Partner acknowledges that it has no proprietary interest in any Services or the InMobi Platform or derivatives thereof, including, but not limited to, the servers, software, or data used by InMobi in the provision of the Services. All right, title and ownership to any software (both in object code and source code format), hardware or know-how which InMobi licenses or develops to provide the Marketing Platform or Services is owned exclusively by InMobi or its licensors. Demand Partner agrees not to, and not to allow others to, modify, copy, or reverse engineer the Services.
11. **CONFIDENTIALITY**. Each Party shall take reasonable precautions to prevent unauthorized disclosure of the Confidential Information of the other Party. “**Confidential Information**” shall mean information marked or otherwise identified as “Confidential,” “Proprietary” or other similar identifier at or before the time of disclosure. Information shall not be deemed Confidential Information if: at the time of disclosure, it was in the public domain or in the possession of the receiving Party (the “**Receiving Party**”); it becomes publicly known through no fault of the Receiving Party; it was received after disclosure from a third party who had a lawful right to disclose such information to the Receiving Party without any obligation to restrict its further disclosure; or is independently developed by the Receiving Party without use of the Confidential Information and without the participation of individuals who have had access to the Confidential Information. The Receiving Party may make disclosures required by court order provided that the Receiving Party uses diligent efforts to limit disclosure and, upon request by the disclosing Party (the “**Disclosing Party**”), assists the Disclosing Party in obtaining confidential treatment or a protective order. A Party receiving a court order to disclose Confidential Information shall, to the extent that it may legally do so, immediately advise the Disclosing Party prior to making such disclosure so that the Disclosing Party may take such other action it deems appropriate to protect the Confidential Information. In the event of any disclosure or loss of Confidential Information of the Disclosing Party, the Receiving Party shall promptly and at its own expense notify the Disclosing Party in writing and act and reasonably cooperate with the Disclosing Party to minimize any damage resulting therefrom. The obligations set forth herein shall survive the expiration or termination of this Agreement for a period of three (3) years or such longer period as required by law, regulation, or court order; provided, however, that the data comprising the Service shall remain subject to confidentiality obligations indefinitely. The Receiving Party shall return or destroy the Confidential Information upon request of the Disclosing Party, provided that it shall not be obligated to destroy copies held in electronic archives or backup systems until such time as such copies would be destroyed in the normal course of business and provided that all such copies shall continue to be treated under the terms of this Agreement.
12. **USE OF NAME & TRADEMARKS, SERVICE-RELATED DATA**. Neither Party shall use the trademarks or service marks of the other Party in any advertising, promotional nor marketing materials without such other Party’s prior written consent. Notwithstanding the foregoing, InMobi may use Demand Partner’s name and trademark or service marks on InMobi’s web site and on other tangible and electronic marketing materials, provided that InMobi shall comply with such reasonable trademark or service mark usage guidelines as provided by Demand Partner from time to time. InMobi may collect usage data, query data and other aggregated or de-identified data in connection with Demand Partner’s use of the Services. InMobi may use such data for purposes of improving its products and services (e.g., corroborating the data in InMobi’s databases). Provided that Demand Partner and its users are not individually identifiable and no Confidential Information ofDemand Partner is disclosed, InMobi may also collect, retain, disclose, distribute and otherwise utilize the foregoing data.
13. **PRIVACY POLICY.** Each Party agrees to post on its websites and applications (and each party will contractually require its respective media buyers, advertiser, or publishers, as applicable, to post on their respective websites and applications) a privacy policy that: (a) complies with all applicable laws, rules, and regulations, (b) accurately discloses the data collection, use and disclosure practices applicable to such site or application, including the fact that data collected on such site or application will be used to target ads at other websites or applications and (c) if applicable, discloses the use of one or more third parties for ad serving activities. Demand Partner further agrees that its privacy polic(ies) will provide end-users with a conspicuous link to a functional opt-out page. In addition, Demand Partner will ensure (and will contractually require its media buyers, advertiser, or publishers, as applicable, to ensure) that on each website or application where information is being collected by pixel, beacon or similar technology for retargeting purposes, such website or application displays a privacy policy disclosing such practice and an opt-out link that complies with the provisions set forth above in this Section 10. Each Party agrees to comply with the terms of its own posted privacy polic(ies). .
14. **REPRESENTATIONS, WARRANTIES & Disclaimers**. Each Party represents and warrants that it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereunder and thereunder. Demand Partner represents and warrants that it will comply in all respects with any export and import laws and restrictions applicable to any hardware, software and technology delivered to the Demand Partner and will otherwise comply with the applicable United States laws and regulations in effect during the term. Demand Partner otherwise represents and warrants that it and its controlling affiliates are not in or from countries subject to U.S. embargo and that it is not a party identified on any governmental export exclusion lists and it will take appropriate measures to ensure that its end users, agents and subcontractors likewise are not in or from countries subject to U.S. embargo or identified on governmental export exclusion lists.

INMOBI DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR SECURE AND DOES NOT WARRANT THE SERVICES AGAINST MALFUNCTION OR CESSATION DUE TO CESSATION OR MALFUNCTION OF ANY INTERNET SERVICE PROVIDER OR ANY OF THE THIRD PARTY NETWORKS THAT FORM THE INTERNET. INMOBI IS NOT RESPONSIBLE FOR THE ACCURACY OR INTEGRITY OF ANY DATA SUBMITTED BY DEMAND PARTNER OR ITS USERS, OR FOR ANY DOWNTIME, LOSS OR CORRUPTION OF DATA THAT OCCURS AS A RESULT OF TRANSMITTING OR RECEIVING DATA OR VIRUSES DUE TO CONNECTION TO OR ACCESS OVER THE INTERNET. EXCEPT AS SET FORTH HEREin, all services are provided “as is” and “as available” and INMOBI MAKES NO WARRANTIES TO DEMAND PARTNER OR TO ANY third party including, without limitation, END USERs, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BY WAY OF EXAMPLE, WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT or RESULTS TO BE OBTAINED FROM USE OF THE SERVICES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

1. **LIMITATION OF Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER ARISING, WHICH ARE RELATED TO THIS AGREEMENT AND THE PROVISION OF SERVICES HEREUNDER (REGARDLESS OF WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR BREACH OF ANY TERM FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH SHALL BE THE EXCLUSIVE REMEDY OF DEMAND PARTNER AND INMOBI’S SOLE LIABILITY. IN NO EVENT SHALL INMOBI, BE LIABLE FOR ANY LOST PROFITS, LOST DATA, OR LOST EQUIPMENT, ANY WEBSITE OR NETWORK DOWNTIME, OR COST OF PROCURING SUBSTITUTE SERVICES.

EACH PARTY’S (AND ITS AFFILIATES’) TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES HEREUNDER FOR ANY DIRECT DAMAGES SHALL NOT EXCEED THE AGGREGATE AMOUNTS ACTUALLY PAID BY DEMAND PARTNER TO INMOBI IN CONNECTION WITH THE SERVICE(S) GIVING RISE TO THE DAMAGES OVER THE PRECEEDING TWELVE (12) MONTHS FROM THE TIME OF THE EVENT RESULTING IN LIABILITY OCCURS. THE ABOVE LIMITATION OF LIABILITY SHALL NOT APPLY TO: (a) AMOUNTS OWED BY DEMAND PARTNER HEREUNDER, (b) CLAIMS ARISING FROM A PARTY FAILING TO COMPLY WITH LAWS; (c) MISUSE OF THE SERVICES IN VIOLATION OF THE TERMS OF THIS AGREEMENT; OR (d) CLAIMS FOR WHICH A PARTY HAS AN INDEMNIFICATION OBLIGATION AND ALL DAMAGES ORDER BY A COURT FOR WHICH AN INDEMNIFICATION OBLIGATION IS OWED SHALL BE DEEMED DIRECT DAMAGES FOR PURPOSES OF THIS SECTION.

1. **Indemnification.** Each Party will indemnify and defend any action by a third party brought against the other Party, its affiliates**,** directors, officers, or employees (arising in connection with infringement, misappropriation or violation, related to materials or data provided by Demand Partner to InMobi, in the case of Demand Partner; or as a direct result of InMobi’s provision of the Services, in the case of InMobi, of any United States intellectual property rights, except to the extent that such claim is based on use of a Service in a manner that is not authorized under this Agreement or Demand Partner specifying the manner in which InMobi was to perform.

In addition to the foregoing indemnification obligations, if all or any part of Service is, or in the reasonable opinion of InMobi may become, the subject of a claim of infringement, misappropriation or violation of a third party’s intellectual property rights, InMobi may, at its sole discretion and expense, either (i) procure for Demand Partner the right to continue receiving and using the Services; or (ii) replace or modify the allegedly infringing aspect of the Services to make it non-infringing, without altering its functionality; or (iii) terminate the Agreement and reimburse Demand Partner for any fees paid in advance for Services that will not be delivered due to such termination

Upon receiving notice of any claim covered by the indemnity obligations set forth in the Agreement, the indemnified Party (“**Indemnified Party**”) shall promptly notify the indemnifying Party (the “**Indemnifying Party**”) in writing of the claim. The Indemnifying Party may assume sole control of the defense of any such claim. The Indemnified Party may, at its own cost and expense, participate through its attorneys or otherwise, in such investigation and defense. The Indemnified Party shall provide the Indemnifying Party reasonable assistance regarding such claim at the Indemnifying Party’s expense. Unless a settlement is solely for monetary damages for which the Indemnified Party is fully indemnified hereunder, the Indemnifying Party shall not settle any claim without the Indemnified Party’s prior, written consent, which shall not be unreasonably withheld or delayed.

1. **General**.

**Non Circumvention.** Demand Partner hereby covenants as follows: (a) it shall not, directly or indirectly, interfere with, circumvent or attempt to circumvent, avoid, or by-pass InMobi’s interest in and/or relationship with its partners; (b) it shall not seek to avoid either directly or indirectly the payment of commissions or fees under this Agreement; and (c) it and/or its affiliates of what-so-ever nature shall not, in any manner solicit and/or accept any business from any partner that have been made available to Demand Partner by and through each Party’s performance under this Agreement, nor in any manner access, contact solicit and/or conduct any transaction with such partner, without the expressed and specific permission of InMobi. In the event of circumvention by Demand Partner, whether direct and/or indirect, InMobi shall be entitled to a monetary compensation equal to the maximum amount it would have realized from such a transaction, plus any and all expenses, including any and all legal fees incurred in the recovery of such compensation.

**Sales Restriction.** Demand Partner shall not, directly or indirectly, resale, redirect, push or otherwise transfer InMobi’s advertising inventory to other networks or exchanges that are existing participants in InMobi’s ad exchange, including, but not limited to AOL, Yahoo, Rubicon, Pubmatic, and OpenX.

**Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in their entirety to a successor in interest in connection with a merger, reorganization or sale of all or substantially all assets or equity not involving a direct competitor of the other Party. Any attempted assignment in breach of this Section 14.1 shall be void. This AGREEMENT shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**Notices.** Any notice shall, if to Demand Partner, be sent to Demand Partner’s authorized representative set forth above, and, if to InMobi, be sent to InMobi at the address set forth above marked “Attention: Legal Department”. Notices shall be deemed given: (a) one (1) business day after being transmitted with delivery costs paid via an express, overnight courier with delivery tracking; or (b) upon delivery when an authorized employee of the receiving Party accepts receipt in writing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. A Party may change its address or designee for notice purposes by giving prior written notice of such and the date upon which it will become effective.

**Counterparts.** This AGREEMENT may be executed: (a) in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument; and (b) by facsimile (or PDF) and such facsimile (or PDF) execution will have the same force and effect as an original document with original signatures.

**Relationship of Parties.** The Parties are independent contractors and nothing herein creates a relationship of partnership, employer and employee, or principal and agent. Neither Party has the authority to bind, act on behalf of, or represent the other. Each Party acknowledges that the arrangements and agreements contemplated hereby are non-exclusive and nothing herein shall be deemed to restrict or limit a Party’s ability to engage in similar relationships, agreements or arrangements with any other party.

**Severability and Modification.** If any provision of this Agreement is adjudged by a competent authority to be invalid, void or unenforceable under applicable law, such provision will be modified or eliminated to the minimum extent necessary to effect the intent of the Parties and the remainder of the provision and the Agreement will not be affected thereby and will continue in full force and effect.

**Waiver of Default.** No waiver or discharge hereof shall be valid unless in writing and signed by the Party against which such amendment, waiver, or discharge is sought to be enforced. A delay or omission by either Party to exercise any right or power under the Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant.

**Amendments.** No alteration, amendment, waiver or other change in any term or condition of this Agreement shall be binding unless mutually agreed to in writing by an authorized representative of each Party.

**Survival.** Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration (in whole or in part) shall survive any such termination or expiration and continue in full force and effect, such to include specifically Sections 4, 5, 7, 8, 11, 12, 13 and 14.

**Third Party Beneficiaries.** Unless expressly provided for otherwise, this Agreement shall not be deemed to create any rights in third parties, including end users, of a Party, or to create any obligations of a Party to third parties.

**Export Control.** InMobi is subject to regulation by agencies of the United States Government, including regulations which prohibit export of certain equipment, technology, hardware and software to certain countries. Any obligations of InMobi to Demand Partner hereunder shall be subject to, and if applicable, limited by, such laws and regulations. Demand Partner agrees to abide by all applicable import/export laws as they apply to any Services.

**Governing Law and Venue.** The Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be in Orange County, California, and the Parties hereby expressly agree to such jurisdiction and venue. The United Nations Convention on Contracts for International Sale of Goods does not apply to this Agreement.

**Force Majeure.** Neither Party will be liable for any delay or failure to perform hereunder due to circumstances beyond such Party’s reasonable control including acts of God, acts of government, flood, fire, earthquakes, civil unrest, epidemics, pandemics, acts of terror, strikes or other labor problems (not involving such Party’s employees) or disruptions involving power or infrastructure systems not within such party’s possession or reasonable control (each, a “**Force Majeure Event**”); provided that the Party relying on a Force Majeure Event notifies the other Party of the Force Majeure Event and uses commercially reasonable efforts to mitigate the effects of the Force Majeure Event and resume performance as soon as reasonably practicable.

**Construction.** Each Party acknowledges that it has reviewed this Agreement attached hereto. It is the Parties’ intent that this Agreement will not be construed against either Party and in the event of an ambiguity or question of intent or interpretation arises, shall be construed as if drafted jointly by the Parties with no presumption favoring or disfavoring any Party by virtue of authorship of any term.

**Further Assurances.** Each Party agrees that it shall execute and deliver such other documents and take such other actions as may be requested to effect the transactions contemplated hereunder.

**Entire Agreement.** The Agreement appended hereto constitutes the entire agreement between the Parties with respect to the subject matter in this Agreement, and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained therein.

**Cumulative Remedies.** Except as otherwise expressly provided, all remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity or otherwise.

 [SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

**INMOBI \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**BY:** **BY:**

Name: Name:

Title: Title:

Date: Date:

**EXHIBIT A**

1. **Bids.** Demand Partner shall submit Bids in U.S. dollars. Once Demand Partner’s Bid has been accepted, Demand Partner will receive a win notification that includes the final price associated with the inventory purchased (“**Closing Price**”). The Closing Price includes all costs for the media and any other customary fees associated with the Marketing Platforms. Once Demand Partner receives a win notification, Demand Partner has purchased such inventory, which is non-refundable (“**Won Bid**”).
2. **Minimum Platform Fee.** InMobi may invoice Demand Partner for a monthly minimum platform technology fee (“**Minimum Platform Fee**”), determined as a function of the aggregate amount of all the Closing Prices associated with Demand Partner’s Won Bids in such month under this Exhibit (“**Monthly Media Spend**”), in accordance with the below Minimum Platform Fee Table below. The Minimum Platform Fee will be waived for the first three (3) calendar months that follow the Effective Date. Demand Partner’s payment of the Minimum Platform Fee will not reduce the amount Demand Partner owes to InMobi for the Monthly Media Spend, which Demand Partner will pay in full in addition to the Minimum Platform Fee.

**Minimum Platform Fee Table**

|  |  |
| --- | --- |
| *Monthly Media Spend* | *Minimum Platform Fee* |
| $0 to $29,999 | $5,000 |
| $30,000 and greater | $0 (waived) |

1. **Reporting**. Charges are solely based on InMobi’s measurements for the Marketing Platform and the applicable billing metrics (e.g., clicks or impressions). InMobi may offset any charges invoiced in subsequent invoices, to account for adjustments in revenue and impression figures. InMobi may, in its sole discretion, extend, revise or revoke credit at any time. InMobi is not obligated to deliver any Ads in excess of any credit limit. If InMobi does not deliver Ads to the selected Targets, then Demand Partner’s sole and exclusive remedy is to make a claim for advertising credits within 30 days after the invoice date (“**Claim Period**”), which InMobi may issue following claim validation.
2. TO THE FULLEST EXTENT PERMITTED BY LAW, (A) DEMAND PARTNER WAIVES ALL CLAIMS RELATING TO ANY MARKETING PLATFORM CHARGES UNLESS A CLAIM IS MADE WITHIN THE CLAIM PERIOD AND (B) THE ISSUANCE OF ADVERTISING CREDITS (IF ANY) IS AT INMOBI’S REASONABLE DISCRETION. EXCEPT AS SET FORTH ABOVE, DEMAND PARTNER WILL HAVE NO RECOURSE FOR ANY TRANSACTION THAT DOES NOT OCCUR AND INMOBI MAKE NO GUARANTEE REGARDING THE LEVEL OF IMPRESSIONS OF ADS, THE TIMING AND DELIVERY OF SUCH IMPRESSIONS OR THE AMOUNT OF ANY PAYMENT TO BE MADE OR DUE HEREUNDER.