



FYBER ADVERTISER TERMS & CONDITIONS

§1 INTRODUCTION

§1.1 The following terms and conditions (“**T&Cs**”) apply between the Fyber group company (“**Fyber**”) as agreed between the parties in the respective Insertion Order as described in Sect. 2.2 below and any advertiser or demand partner that satisfies the criteria in Sect. 2 below (“**Advertiser**”). Fyber offers its services to commercial Advertisers only. Consumers are not eligible to become an Advertiser.

§1.2 The T&Cs and any applicable orders placed by the Advertiser and accepted by Fyber shall be collectively known as the “**Agreement**”. Terms and conditions of the Advertiser do not become part of the Agreement, unless Fyber has accepted them in writing. The parties acknowledge and agree that in case of a conflict between these T&Cs and the Insertion Order, as defined in Section 2.2 below, the Insertion Order shall prevail. The forgoing sentence applies also to conflicts between the Insertion Order and Terms and Conditions provided by the Advertiser, to the extent that Fyber has accepted such Terms and Conditions of Advertiser in writing and in accordance with this provision.

§1.3 Fyber shall operate a dedicated online platform (the “**Fyber Exchange**”) through which promotional material provided by the Advertiser (the “**Ads**”) can be displayed on the website(s), in the mobile application(s), or on/in other advertising space(s) owned, maintained, or controlled by third parties (hereafter referred to as “**Publisher Advertising Space(s)**” and the “**Publisher(s)**” respectively). The Advertiser shall pay Fyber a consideration according to Sect. 3 based on the success of the Ads with the users visiting the Publisher Advertising Spaces (“**Publishers’ Users**”).

§1.4 By operating the Fyber Exchange, and rendering the services according to the Agreement, Fyber acts only as an intermediary between the Advertiser and the Publisher. The Advertiser itself is solely responsible for submitting Ads through the Fyber Exchange to the Publisher. The Publishers are free to decide whether or not, and to which extent, they display the Ads. Fyber has no influence in this regard and thus provides no guarantee that Ads will be displayed in a quantity satisfactory for the Advertiser.

§1.5 Fyber may, but is not obligated to, encourage the Publishers’ Users to participate by obliging the Publishers to set up a system to reward the Publishers’ Users for activities performed in relation to the Ads (the “**Optional Incentive System**”), for example by offering virtual currency or other benefits. The Advertiser acknowledges that it is in Fyber’s discretion whether it obligates the Publishers to set up an Optional Incentive System, and that it is in the Publishers’ discretion how a respective Optional Incentive System is operated. Fyber provides anti-fraud rules for the Publishers to respect, but is under no obligation to monitor whether these rules are being followed. Fyber provides no guarantee as to the satisfactory response of the Publishers’ Users.

§2 REGISTRATION

§2.1 An undertaking offering commercial goods or services can become an Advertiser by entering into a contract with Fyber. Fyber may also offer the possibility to register online as an Advertiser. In case such a possibility is implemented by Fyber, and used by an undertaking interested to become an Advertiser, para 2.2 subseq. apply.

§2.2 After or during registering an account, as displayed during the registration process, with Fyber on the Fyber Exchange, the Advertiser will have to fill in and submit an insertion order specifying further details (the “**Insertion Order**”).

§2.3 By submitting the Insertion Order, the potential Advertiser submits a binding offer to enter into a contract with Fyber according to the T&Cs (the “**Advertiser Offer**”). All fields of the Insertion Order, which are marked as being ‘required’, have to be filled in. Any statements submitted through the Insertion Order or otherwise through the Fyber Exchange must be complete and correct.

§2.4 The Agreement between the Advertiser and Fyber is concluded when Fyber accepts the Advertiser Offer, either by declaring acceptance explicitly, or by otherwise commencing action to fulfil the Agreement.

§2.5 Fyber will promptly confirm receipt of the Advertiser Offer by sending an e-mail to the e-mail address submitted in the Insertion Order. This confirmation is not a binding acceptance of the Advertiser Offer. The confirmation of receipt can however be sent together with such acceptance.

§2.6 A potential advertiser becomes an Advertiser as defined in the T&Cs once Fyber has accepted the Advertiser Offer. Fyber can decide in its sole discretion whether or not to accept the Advertiser Offer.



§2.7 By submitting the Advertiser Offer, the potential advertiser warrants to be properly registered, and that the goods and services that it offers are legal in the countries they are offered. The Advertiser also represents to offer its goods and/or render its services in full compliance with all applicable laws, including any laws regarding the transmission of technical data and personal data, consumer protection, advertising, trademark, unfair competition, youth protection, and gambling. The Advertiser will not interfere or attempt to interfere with the proper working of the Fyber Exchange or prevent others from using the Fyber Exchange.

§2.8 Fyber reserves the right, but shall have no obligation, to review the Ads displayed through the Fyber Exchange, as well as the goods and services promoted by the Ads, in order to determine whether a violation of the Agreement has occurred or to comply with any applicable law, regulation, administrative or governmental request. Fyber shall also have the right to inspect the Advertiser's use of personal data.

§3 CONSIDERATION

§3.1 The Advertiser shall pay Fyber a consideration based on the activities performed with regard to the Ads delivered by the Publishers through the Fyber Exchange. The Advertiser can operate pay-per-view campaigns (web/mobile), pay-per-install campaigns (mobile), pay-per-lead campaigns (web/mobile), or other campaigns, subject to availability.

§3.2 The consideration payable to Fyber is based on the number of valid activities performed with regard to the Ads delivered by the Publishers through the Fyber Exchange.

§3.3 A valid activity is a view, install, lead or other activity, as the case may be, generated through any of the Advertiser's Ads delivered through the Fyber Exchange, unless the Advertiser provides sufficient evidence that such activity is a fraudulent action. Fraudulent actions are actions performed by a bot, script, automated program or similar device in relation to any of the Advertiser's Ads delivered through the Fyber Exchange. The Advertiser shall inform Fyber of any such fraudulent action and provide sufficient evidence no later than 25 working days after the valid activity has been recorded within the Fyber Exchange. For clarification purposes only, the parties agree that for the determination of the validity of an activity it shall not be decisive whether any further and subsequent activities or outcomes are achieved (for example, to be valid, an 'install' does not require that the individual actually uses the installed application afterwards).

§3.4 Whether a view, install, lead or other activity, as the case may be, is valid is tracked by Fyber and reported online to the Advertiser through the Fyber Exchange ("**Fyber Tracking**"). Fyber may, at its own discretion, also use tracking information obtained by Advertiser; Advertiser shall submit such tracking information upon request by Fyber. In case the Advertiser considers the Fyber Tracking to be incorrect, the Advertiser can dispute the Fyber Tracking in writing. Subject to the Advertiser providing sufficient evidence of the inaccuracy within 25 working days of such objection, Fyber shall issue a revised invoice. Such entitlement to a revised invoice shall be excluded where the difference between the evidence provided by the Advertiser and the Fyber Tracking is less than 5 per cent, unless Fyber has intentionally or through gross negligence caused the Fyber Tracking to be incorrect.

§3.5 The consideration is due and payable within 30 working days after the invoicing date, unless the Advertiser already has credit on its account, in which case the consideration will be deducted after the valid activity has occurred (see Sect. 3.3 subseq.). In the event that the Advertiser's account is in credit, no interest shall be due.

§3.6 To the extent that Advertiser makes a pre-payment for any Ads, Fyber will credit the Advertiser's account accordingly. Such funds can be used by the Advertiser within 24 months from deposit. The Advertiser can request the balance of the account to be reimbursed within 90 days of deposit of the respective funds. To process reimbursements, Fyber will deduct a service fee of 4 per cent of the reimbursed amount. Upon expiry of the 90 days period, the pre-paid balance will no longer be reimbursable.

§3.7 The Advertiser's account balances will be reduced by Fyber to offset the consideration payable to Fyber under this Sect. 3 as they are incurred. VAT is deducted accordingly (if applicable). To the extent that the consideration is deducted from the Advertiser's account, Fyber will generally make a deduction within 24 hours after the valid activity has been recorded within the Fyber Exchange.

§3.8 For the sake of the calculation of the 90 days and 24 months periods set out above (Sect. 3.6), the consideration (and VAT, if applicable) will always be offset against the oldest payments on the Advertiser's account.

§3.9 The Advertiser can only offset counterclaims against claims of Fyber if the Advertiser's counterclaims are undisputed or established by a court judgment. The Advertiser can only exercise a right of retention if its counterclaim is based on the same contractual relationship.



§4 CONTENT OF ADS

§4.1 The Advertiser represents and warrants not to submit any Advertisement to Fyber or the Fyber Exchange that is unlawful, defamatory, libelous, harassing, abusive, fraudulent or obscene, or contains links to content of such nature (“**Advertisement of an Illegal Nature**”). Ads which are unlawful include, without limitation, those which breach any laws regarding the transmission of technical data and personal data, consumer protection, advertising, trademark, unfair competition, youth protection, and gambling.

§4.2 In case the Ads are unlawful, or defamatory, libelous, harassing, abusive, fraudulent or obscene in certain countries or regions of the world only (“**Restricted Countries**”), the Advertiser shall block Restricted Countries for such Ads. As far as the Fyber Exchange offers an option to block the Restricted Countries and/or not to select the Restricted Countries, the Advertiser shall use this feature, or otherwise instruct Fyber in writing not to display the Ads in Restricted Countries.

§4.3 The Advertiser shall not submit any Ads which contain or link to spam, bulk mail or offers with hidden costs.

§4.4 Ads of an Illegal Nature, Ads not blocked or selected for Restricted Countries and Ads contrary to Sect. 4.3 are collectively referred to as “**Undesired Ads**”.

§4.5 Fyber has the right, but is under no obligation to manually verify Ads submitted by the Advertiser before they are activated (i.e. made available through the Fyber Exchange).

§4.6 Fyber may, at its sole discretion, deactivate or remove any Advertisement which, in Fyber's reasonable opinion, is an Undesired Advertisement. Fyber undertakes to inform the Advertiser without undue delay in case an Advertisement has been removed. The Advertiser can replace the Undesired Advertisement with another Advertisement which complies with the Advertiser's obligations under this Sect. 4.

§4.7 If the Advertiser considers that Fyber has deemed an Advertisement to be an Undesired Advertisement under Sect. 4.6 and removed it for no good reason, the Advertiser shall request Fyber, in writing, to review its decision. If, upon further review, Fyber agrees with the Advertiser, it shall promptly re-activate the Advertisement. If however Fyber still disagrees with the Advertiser, Fyber may, at its reasonable discretion:

- (a) elect to discontinue to deliver the Advertisement through the Fyber Exchange;
- (b) elect to continue to deliver the Advertisement through the Fyber Exchange, but inform its Publishers in an appropriate way that it holds the Advertisement to be an Undesired Advertisement, and suggest the Publishers put it on a blacklist.

§4.8 The Advertiser does not have any other claims against Fyber.

§5 LEGAL RELATIONSHIP WITH PUBLISHERS

§5.1 The Agreement is between Fyber and the Advertiser only.

§5.2 In the Publisher Terms and Conditions, Fyber obliges the Publishers to accept certain terms aimed at protecting the Advertisers. Fyber encourages the Advertiser to read the Publisher Terms and Conditions, especially with regard to Optional Incentive Systems, and Fraud Protection. Fyber can neither warrant nor represent that the Publishers will adhere to their obligations. In the event that a Publisher does not fulfil its obligations under the Publisher Terms and Conditions, or obligations individually agreed upon between the Publisher and Fyber, the Advertiser shall not have any claim against Fyber, unless Fyber is responsible for such breach or non-performance, but shall assert any claims against such Publisher.

§5.3 To the extent that any obligation of the Advertiser under the Agreement protects the interests of the Publishers, the Agreement is for the benefit of the Publishers (echter Vertrag zugunsten Dritten, Sect. 328 German Civil Code).

§6 IMPLEMENTATION

§6.1 The Advertiser shall implement all code provided by Fyber for the proper tracking of the Ads, including Optional Incentive Systems. The Advertiser shall bear all costs and expenses related to such implementation.

§6.2 The Advertiser must not alter or modify the code provided by Fyber under Sect. 6.1 without Fyber's prior written consent.



§7 ADVERTISER'S SITE

§7.1 The Advertiser shall inform Fyber, giving reasonable notice, in the event it intends to materially alter the content or appearance of the site the Ads directly or indirectly link to ("**Advertiser's Site**").

§7.2 The Advertiser's Site must not contain any illegal or offending content, especially not content as defined by Undesired Ads (cf. Sect. 4.4).

§7.3 The Advertiser warrants and represents that it does not include any illegal or offending content on the Advertiser's Site.

§7.4 The Advertiser shall remove or suppress illegal or offending content (including actions) on the Advertiser's Site provided by third parties (including users) without undue delay. The Advertiser shall take all reasonable measures to prevent the reoccurrence of such infringements.

§7.5 The Advertiser shall hold Fyber harmless of any third party claims alleging the Advertiser's Site contains illegal content.

§7.6 Fyber neither endorses nor approves of actions performed or content made available by the Advertiser.

§8 TECHNICAL AND COMMERCIAL LIMITATIONS; CHANGES; AVAILABILITY

§8.1 Unless otherwise provided for in the T&Cs, Fyber provides the Fyber Exchange through which it renders its services on an 'AS IS' and 'AS AVAILABLE' basis.

§8.2 Fyber offers the Advertiser use of the Fyber Exchange over the Internet subject to technical and commercial limitations as defined below.

§8.3 Fyber may modify the Fyber Exchange without prior notice. Therefore, the Advertiser is granted a right of use only for the then current version. The Advertiser may reduce or cease its use of the Fyber Exchange in the event that it is modified.

§8.4 In the event that the modification severely affects the Advertiser's interests, the Advertiser shall inform Fyber in writing that it objects to the modification. In case Fyber does not comply with the Advertiser's request to restore the functionality of the Fyber Exchange in a way that is materially equivalent to the former functionality, the Advertiser shall have the right to terminate the Agreement for cause according to Sect. 9. The Advertiser shall not have any other claims.

§8.5 Generally, only the suppression of materially important features without the introduction of materially equivalent features, not the introduction of new features or functionalities shall be considered to materially affect the interests of the Advertiser in the sense of Sect. 8.4.

§8.6 Fyber reserves its right to cease operation of the Fyber Exchange at any time, without giving reasons or prior notice. Any balance owed to the Advertiser will be paid out. Any other claims are excluded, unless otherwise provided for in the Agreement.

§8.7 Fyber undertakes to assure an availability of the Fyber Exchange of 90% (ninety percent) as a yearly average. Periods during which the Fyber Exchange is not available because of technical or other problems outside Fyber's control (such as force majeure or third party fault) and periods during which routine maintenance works are carried out, are excluded from this. Fyber may restrict access to the Fyber Exchange if required for network security, maintenance of network integrity and the prevention of severe malfunction of the network, the software or stored data. The Advertiser's rights in case of intent or gross negligence remain unaffected.

§9 TERMINATION

§9.1 The Agreement is entered into for an unlimited period of time, unless otherwise provided for in the Agreement. In case the Advertiser has credited its account, or the parties have agreed that the Advertiser spends a given amount of money for Ads on the Fyber Exchange ("**Guarantee Sum**"), the Agreement shall remain in force until the Guarantee Sum has been spent or there are no more credits on the account.

§9.2 Each party has the right to terminate the contract at any time with immediate effect, if no limitation of the usage period has been agreed upon. The parties remain free to terminate the contract for cause at any time.



§9.3 In case Fyber is responsible for a termination of the contract for cause, the Advertiser will be refunded for any payments it may have already made and which are still credited on the account. The Advertiser does not have any other claims, unless otherwise provided in the T&Cs.

§9.4 Fyber may terminate the contract especially for, but not limited to, the following reasons:

§9.4.1 An Advertisement of the Advertiser violates criminal law

§9.4.2 The Advertiser has provided incorrect information upon registration

§9.5 In case Fyber rightfully terminates for cause, Fyber is entitled to keep 75 % (seventy-five percent) of all funds still credited to the Advertiser's account. The Advertiser remains free to prove that no or only substantially lower damages were suffered.

§9.6 If there is no option to terminate the contract within the Fyber Exchange, the termination has to be declared in written form. A termination for cause can only be declared in writing. E-mail is sufficient for this purpose.

§10 CLAIMS BASED ON DEFECTS

§10.1 Fyber grants the Advertiser access to the Fyber Exchange in the then current version only (see § 8). The Advertiser cannot claim that a given state or functional range is maintained or achieved. The Advertiser acknowledges that the Fyber Exchange, as any other software, can never be completely free of bugs. Therefore, the Fyber Exchange can only be considered to be defective if its usability is affected severely and for a significant period of time.

§10.2 The Advertiser shall document any faults in the Fyber Exchange, and report them in writing (along with a log of the error messages displayed, if applicable). Before reporting a potential bug, the Advertiser will consult the instruction and other troubleshooting tools provided by Fyber (especially frequently asked question lists, forums and boards for troubleshooting). The Advertiser will use its best efforts to support Fyber in any attempts to debug.

§10.3 The Advertiser will notify Fyber of any faults, without undue delay upon discovery, in writing (fax, letter or e-mail). To comply with this, it is sufficient that the report is sent in time, otherwise all claims based on such defects shall forfeit.

§10.4 Fyber is not liable for defects caused by external influences, faulty handling, force majeure or changes or manipulations which are not carried out by Fyber.

§10.5 The Advertiser is liable for any costs incurred by Fyber based on incorrect reports by the Advertiser, especially in the event that there is no defect, or the defect has been caused by the Advertiser itself.

§10.6 Fyber does not assume any warranties, unless they are given in writing, or explicitly provided for in the Agreement.

§11 INDEMNIFICATION

§11.1 Each party agrees to indemnify and hold the other party harmless from and against any losses, costs, liabilities and expenses, including reasonable attorneys' fees, arising out of any third party claims resulting from the breach of the warranties made by such party in the Agreement.

§11.2 The indemnifying party has the right, at the indemnifying party's expense, to assume the exclusive defense and control of any matter for which the indemnifying party is required to indemnify the indemnified party. The indemnified party agrees to cooperate with the indemnifying party's defense of such claims.

§12 LIMITATION OF LIABILITY

§12.1 Fyber is not responsible for damages, unless they are caused intentionally or by gross negligence.

§12.2 Liability for breach of a cardinal obligation or an essential obligation is limited to the damage which could have been foreseen.

§12.3 The damage which can be foreseen is limited to EUR 2,500.00 per Advertiser (or the Guarantee Sum, whichever is higher).

§12.4 The aforementioned limitation of liability also applies to the personal liability of staff, employees, assistants, vicarious agents, contributors, representatives, organs, shareholders of Fyber and their members.



§12.5 The aforementioned limitations of liability determined in Sect. 12.1 to 12.4 do not apply to the liability for personal injury of life, body, and health. The limitation of liability pursuant to Sect. 12.1 and 12.4 does not apply in case the damage is the result of a breach of a cardinal obligation, an essential obligation or a guarantee. Fyber remains responsible for product liability, and according to Sect. 44 a TKG (German Telecommunication Law).

§13 DATA PROTECTION

§13.1 The Advertiser represents and warrants to store all data transmitted by Fyber through the Fyber Exchange (including user data and usage data) in conformity with all legal requirements.

§13.2 The Advertiser represents and warrants to collect and process all data related to Publishers' Users (including user data and usage data) in conformity with all legal requirements.

§13.3 The Advertiser represents and warrants not to transmit any personal data (i.e. data allowing identification of an individual) related to the Publishers' Users to any third party or any country outside the European Union, unless data protection laws allow for such transmission.

§13.4 The Advertiser acknowledges that Fyber may store user data and usage data, which they collect automatically or through forms filled in by the Publishers' Users.

§13.5 The Advertiser acknowledges that Fyber may use such data to optimize its offers and services, and for statistical purposes, market research, and the promotion of its services.

§13.6 The Advertiser acknowledges that Fyber may use e-mail addresses and other contact data submitted by the Publishers' Users for marketing and promotion, as far as allowed by applicable law.

§14 PROTECTION OF LOGIN DATA

§14.1 The Advertiser shall keep all access data (login, passwords etc.) for the Fyber Exchange ("**Access Data**") strictly confidential. The Advertiser shall promptly inform Fyber in the event that it learns or suspects that an unauthorized third person is in possession of the Access Data.

§14.2 In case Fyber has reason to believe that an unauthorized third party is in possession of Access Data, Fyber may, without assuming any responsibility to do so, and always acting in its sole discretion, change the Access Data without prior notice or block the respective account. Fyber will promptly inform the Advertiser and will, upon request, communicate the new Access Data to the Advertiser without undue delay. The Advertiser cannot claim to have its initial Access Data restored.

§14.3 In case a third party uses, through the Advertiser's fault, the Advertiser's Access Data, the Advertiser is liable for all such actions, and for damages. In such event, all access through the Advertiser's Access Data shall be considered as an access by the Advertiser.

§15 ACCESS TO THE T&CS, CHANGES AND FURTHER NOTICES, COMMUNICATION

§15.1 Each login to the Fyber Exchange is subject to the T&Cs. The T&Cs can be printed or saved on storage media.

§15.2 Fyber may make changes to the T&Cs (including amendments) at any given time in the future, if this should prove necessary (in particular to reflect changes in the Fyber Exchange, new developments with regard to fraud, or changes in the legal framework applicable to it, such as new legislation or case-law) and provided the Advertiser is not unreasonably disadvantaged contrary to good faith.

§15.3 The Advertiser will be notified of changes to the T&Cs in writing ("**Notification**"). Specifically, Fyber will notify the Advertiser on the Fyber Exchange and/or via e-mail.

§15.4 The Advertiser may dispute changes to the T&Cs within a time period of two weeks following receipt the Notification of the changes and the possibility of taking notice thereof. Advertiser shall submit its opposition in writing (for example via e-mail).

§15.5 The changes to the T&Cs become binding as of the date of Notification sent to the Advertiser via e-mail. In the event that the Advertiser does not dispute the changes within the above-mentioned time period or continues to use the Fyber Exchange after having received the Notification of the changes to the T&Cs without having disputed the changes.



§15.6 Fyber will inform the Advertiser about the possibility of disputing the changes and the legal consequences, especially the legal consequences of a lack of opposition, when notifying the Advertiser about the changes to the T&Cs.

§15.7 If the Advertiser disputes the changes in time, each party may terminate the Agreement with one month's prior notice unless termination is possible at any time according to Sect. 9. Until termination, the T&Cs in their former version will govern the Advertiser's relationship with Fyber. The Advertiser does not have any other claims against Fyber.

§15.8 Unless otherwise provided in the Agreement, Fyber will communicate with the Advertiser via e-mail. The Advertiser shall make sure that it receives all e-mails sent by Fyber to the address submitted in the Insertion Order or otherwise through the Fyber Exchange (see Sect. 2.3), during registering an account or at a later date. The Advertiser will in particular configure the spam filter accordingly and regularly check all incoming e-mail under this address. Notwithstanding the foregoing, Fyber may choose any other means of communication it considers appropriate under the circumstances.

§16 OWNERSHIP OF RIGHTS

§16.1 The Advertiser acknowledges that by registering, it grants Fyber the right to name the Advertiser as a reference for Fyber's services. This includes the right to use the Advertiser's logo on Fyber's websites. The Advertiser may revoke this right at any time, in writing, for any future use.

§16.2 The Advertiser agrees that it will use any data (including any usage data and compilations thereof), information or software, provided by Fyber to the Advertiser, only for the purpose of providing and optimizing Ads for Fyber on the Fyber Exchange according to the Agreement.

§16.3 Fyber will retain all rights, title, and interests in and to the Fyber Exchange (except for any licensed content and third-party Ads included therein), including all data (such as any usage data and compilations thereof), information and software related thereto. The Advertiser acknowledges that the software, information, content and data relating to the Fyber Exchange (such as any usage data or compilations thereof) are protected for Fyber under copyright and similar rights and may contain trade secrets or other intellectual or industrial property owned or licensed by Fyber.

§16.4 The Advertiser agrees not to modify, alter, create or copy derivative works of the provided data, information, content or software of the Fyber Exchange. Fyber does not grant to the Advertiser any license, express or implied, to the intellectual or industrial property of Fyber or its licensors, except for a limited right of use according to the terms and for the duration of the Agreement.

§17 NON-DISCLOSURE

§17.1 The parties shall keep confidential all information defined in Sect. 17.2 which is received from the other party or otherwise received under the Agreement.

§17.2 Information to be kept confidential shall include the Ads prior to publication, any data (including any usage data and compilations thereof), information or software relating to the Fyber Exchange; and/or any other information designated in writing, or identified orally at the time of disclosure, by the disclosing party, as 'confidential' ("**Confidential Information**").

§17.3 Both during and after the term of the Agreement, neither party will use for any purpose or disclose to any third party, any Confidential Information. Any exception to this must be obtained in advance.

§17.4 The foregoing restriction does not apply to information that has been developed independently by the receiving party without access to the other party's Confidential Information or has been rightfully received from a third party authorized to make such disclosure or has been approved for release in writing by the disclosing party or has become publicly known through no breach of this Sect. 17 by the receiving party or is required to be disclosed by a competent legal or governmental authority, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to disclosure and assists in obtaining an order to protect the information from public disclosure.



§18 MISCELLANEOUS

§18.1 Fyber's failure to act with respect to a breach by the Advertiser does not waive Fyber's right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by Fyber under the Agreement shall be deemed effective unless delivered in writing and signed by a duly appointed representative of Fyber.

§18.2 All or any of Fyber's rights and obligations under the Agreement may be assigned to a subsequent owner or operator of the Fyber Exchange in a merger, acquisition or sale of all or substantially all of Fyber's assets.

§18.3 The Advertiser must not assign or transfer the Agreement or any or all of its rights thereunder without the prior written consent of Fyber.

§18.4 Section headings used in the Agreement are for convenience only and shall not affect the interpretation of the Agreement.

§18.5 If any provision of the Agreement should be held by a court of competent jurisdiction to be unlawful, void, or for any reason unenforceable, then in such jurisdiction that provision shall be deemed severable from the Agreement and shall not affect the validity and enforceability of the remaining provisions.

§18.6 Any changes, amendments or the abrogation of the Agreement (partly or entirely) require written form (letter, fax or e-mail); the requirement of written form can only be waived in written form.

§18.7 The courts of Berlin, Germany, shall have exclusive jurisdiction.

§18.8 The laws of the Federal Republic of Germany apply for all contracts concluded by Fyber on the basis of the T&Cs and any claims arising therefrom, and for all claims related to the use of the Fyber Exchange. The application of the United Nations Convention on Contracts for the International Sale of Goods and German International Private Law are excluded.

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