



CRITEO PUBLISHER TERMS AND CONDITIONS

These Terms and Conditions (“Terms”) shall be incorporated by reference into each insertion order (“Insertion Order” or “IO”) by and between Criteo and the Publisher listed in the IO. Criteo and Publisher are the “Party” or “Parties.” These Terms and any specific Terms in an IO shall be collectively considered the “Agreement.”

1 DEFINITIONS

- 1.1 “Ad” means any advertisement that Criteo has the right to display.
- 1.2 “Affiliate” means in relation to a Party, any person that, directly or indirectly, controls or is controlled by or is under common control of such Party. The term “control” means the power to, directly or indirectly, direct or cause the direction of the management of an entity, whether through the ownership of registered capital or voting securities, by contract or otherwise, and includes, without limitation (i) ownership directly or indirectly of 50% or more of the shares in issue, registered capital or other equity interests of such person, (ii) ownership, directly or indirectly of 50% or more of the voting power of such person or (iii) the power directly or indirectly to appoint a majority of the members of the board of directors or similar governing body, and the terms “controlled” and “controlling” shall have correlative meanings.
- 1.3 “Agreement” shall include these Terms and all IOs entered into between the Parties.
- 1.4 “Criteo Technology” means Criteo’s proprietary technology that allows Criteo to serve relevant Ads to users (based on their online browsing behavior) and display Ads to them, including but not limited to Criteo’s Ad tracking, Ad serving, and Ad planning and reporting technologies.
- 1.5 “Deliverables” means the inventory of advertising space sold by Publisher on a cost per thousand impression basis or other metric as listed in the IO to be displayed on the Sites.
- 1.6 “Intellectual Property of Criteo” means all present and future intellectual and industrial property rights, including but not limited to patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in designs, rights in computer software, database rights, know-how, trade secrets, the Criteo Technology and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
- 1.7 “Site” or “Sites” means any website(s), or other interactive properties listed on the applicable IO, including Sites that the Publisher does not own or operate but has the contractual right to serve Ads.

2 AD PLACEMENT

- 2.1 Compliance with IOs. Publisher agrees that during the term of each IO, the Publisher shall provide the Deliverables on the Site(s) to Criteo exclusively for the population built for Criteo and recognized through the Criteo Technology. The Publisher shall follow Criteo’s instructions to implement the Criteo Technology. These instructions concern the display, ad serving, tracking and reporting of Ads. The Publisher undertakes not to modify any invocation code or other programming of the Criteo Technology without Criteo’s prior written consent.
- 2.2 Intellectual Property. Publisher acknowledges Criteo’s ownership and/or license and/or title in and to all Intellectual Property rights in the Criteo Technology and any copies thereof (including, without limitation, all modifications and improvements thereto). Publisher agrees that it shall not acquire any right, title, or interest to Criteo’s Intellectual Property in Criteo Technology as a result of the use of the Criteo Technology. For the term of each IO, Criteo grants Publisher a limited, non-exclusive, revocable, royalty-free and non-sublicensable license to use the Criteo Technology solely as necessary to perform its obligations under an IO strictly in accordance with the provisions of the Agreement.
- 2.3 Policies. Publisher agrees that it shall adhere to any placement restrictions or editorial policies set forth in an IO. The Publisher shall comply at all times with Criteo policies that include privacy policy and advertising guidelines as posted here (<http://www.criteo.com/publisher-terms-and-conditions/>). The Publisher acknowledges that these policies may be updated from time to time to reflect Criteo’s practices and match Criteo’s new products. Publisher is required to review these policies regularly to keep itself informed of and comply with the most current version of these policies at all times.

3 PRICING - PAYMENTS

- 3.1 Publisher shall issue Criteo a monthly invoice detailing the fees for the previous month. Criteo measures, through its servers, the number of impressions and/or clicks and/or other indicators necessary for calculating the charges for any Deliverables. For the purpose of invoicing, Publisher shall use the delivered impression numbers for Deliverables generated within an online console provided by Criteo. Any discrepancy between the Publisher and Criteo by more than 5% will require further analysis, and the Parties shall exercise good faith efforts to resolve such discrepancy.
- 3.2 Unless stated otherwise in the IO and subject to resolution of any discrepancies in the foregoing sentence between the Parties (if any), Criteo shall pay the agreed price within sixty (60) days after the date of invoice in the currency indicated in the IO, including applicable consumption tax (“VAT”) but exclusive of any additional expenses (e.g. the reimbursement of fees incurred for transportation, telecommunications, government charges, postage, etc. by the Publisher) or any local taxes / levies / fees, current or that may be proposed and made applicable subsequently, all of which shall be borne by the Publisher. Publisher shall indemnify and hold Criteo harmless against any liabilities for the same including penalties, interest, expenses or proceedings arising therefrom.



4 TERM AND TERMINATION

- 4.1 **Term.** The term of each IO shall commence and end on the dates listed in the IO. If no date is specified in the IO or is classified as “open,” the term shall be one year from the last date that set forth in the signature blocks (“Initial Term”), and shall be automatically renewed for an additional one year term each time (“Renewal Term(s)”) unless terminated in accordance with these Terms.
- 4.2 **Termination.** This Agreement may be terminated by either Party (a) upon thirty (30) days prior written notice, unless a different timeframe is set forth in the IO; or (b) if the other Party materially breaches a provision of this Agreement and fails to cure such breach within ten (10) days after receiving written notice of such breach from the non-breaching Party; or (c) immediately upon notice if the other Party, for any reason ceases trading or makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other Party's property, or the other Party seeks protection under any bankruptcy, receivership, or comparable proceeding is instituted against the other Party.

5 CONFIDENTIALITY

- 5.1 **Scope.** “Confidential Information” means all nonpublic information disclosed by or for a Party in relation to this Agreement, including the Criteo Technology, this Agreement and documents provided under this Agreement, all other documentation and information provided to the receiving Party in connection with this Agreement, and all documentation derived therefrom, containing information which was not previously known to the receiving Party (whether conveyed in written, oral or in any other form and whether such information is furnished before, on or after the date of this Agreement), but not including any information the receiving Party can demonstrate (through competent evidence) is (a) already known by it without restriction, (b) rightfully furnished to it without restriction by a third party not in breach of any confidentiality obligation, (c) generally available to the public without breach of this Agreement or (d) independently developed by it without reliance on such Confidential Information.
- 5.2 **Confidentiality.** Except for the specific rights granted by this Agreement, during the Term of this Agreement and after termination or expiration of this Agreement for any reason whatsoever, the receiving Party shall keep the Confidential Information confidential, not use the Confidential Information for any purpose other than the exercise of its rights or performance of its obligations under this Agreement, not access, use or disclose any of the disclosing Party's Confidential Information to any third party other than with the prior written consent of the disclosing Party or in accordance with Sections 5.3 and 5.4 below, and shall protect the disclosing Party's Confidential Information using at least the standard of care used to protect its own Confidential Information, but not less than reasonable care. The receiving Party shall ensure that its employees, officers, affiliates and contractors with access to such Confidential Information (a) have a need to know for the purposes of this Agreement and (b) have agreed to restrictions at least as protective of the disclosing Party's Confidential Information as this Agreement. Each Party shall be responsible for any breach of confidentiality by its employees and contractors. Neither Party may disclose the terms of this Agreement without the prior written consent of the other Party.
- 5.3 **Compelled Disclosure.** A receiving Party may disclose Confidential Information received pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); provided that prior to any such disclosure, the receiving Party shall use reasonable efforts to: (a) promptly notify the disclosing Party in writing of such requirement to disclose; (b) cooperate with the disclosing Party in protecting against or minimizing any such disclosure or obtaining a protective order; and (c) otherwise limit the disclosure to the greatest extent possible under the circumstances.
- 5.4 **Publicity and Marketing.** Neither Party shall make any press release relating to the Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Criteo may disclose the fact that Publisher is a source of inventory to advertisers.

6 PRIVACY & DATA

- 6.1 **Privacy Policy.** Publisher will ensure that each of its Sites posts a privacy policy that (i) includes a link to Criteo privacy policy (currently located at <http://www.criteo.com/privacy/>), (ii) when compulsory by law or regulation, provides to the users appropriate notice and choice mechanisms that comply with relevant laws and regulations and (iii) provides option to deactivate the Criteo service by using Criteo opt-out solution or opt out platforms solutions available such as [IAB opt-out platform](#), [Network Advertising Initiative opt-out platform](#) or [Digital Advertising Alliance platform](#).
- 6.2 **Data.** Publisher agrees that Criteo may use data accessible due to performance of this Agreement as part of its business operations, and to operate, manage, test, maintain and enhance the Criteo Technology and other Criteo products, programs and/or services. Criteo will not collect or use data provided by, from or related to Publisher for purposes of segmenting, re-targeting, creating or supplementing user profiles or inventory profiles, or creating interest categories, unless (a) such data collection and usage are authorized by the Publisher, or (b) the data is derived by Criteo from a user's recorded view, click, or interaction with an Ad.

7 WARRANTIES AND REPRESENTATIONS

- 7.1 **Warranties.** Each Party represents and warrants that: (a) it has all necessary permits, licenses, governmental authorizations and clearances to conduct its business and to perform its obligations under this Agreement; (b) this Agreement is legally binding upon it and enforceable in accordance with its terms; (c) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound; and (d) it will perform its obligations in compliance with all applicable laws, rules, and regulations, including applicable data protection or privacy laws and regulations. Publisher further represents and warrants that it shall comply with its obligations set forth in Sections 2.3 and 6.1 of these Terms.



7.2 **Disclaimers.** EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

8 INDEMNIFICATION

8.1 **By Criteo.** Criteo agrees to defend Publisher, its Affiliates and their respective directors, officers, employees and agents against any claim by a third party that is related to Criteo's breach of any express representation or warranty in Section 7 to the extent the Ad is used by Publisher in accordance with these Terms and an IO. Criteo agrees to indemnify Publisher for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claims.

8.2 **By Publisher.** Publisher agrees to defend Criteo, its Affiliates and their respective directors, officers, employees and agents against any claim by a third party, judgment or proceeding that is related to: (a) Publisher's breach of any express representation or warranty made in Section 7; (b) Publisher's breach of Sections 2.3 (including Prohibited Contents), 5 and 6; or (c) Publisher's placement of any Ads in breach of these Terms or any relevant IO. Publisher agrees to indemnify Criteo for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claims.

8.3 **Procedure.** Any claim for indemnification subject to Section 8.1 or 8.2 requires that (a) the indemnified Party provides prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying Party shall have sole control and authority to defend, settle or compromise such claim, but shall not make any settlement without the indemnified Party's written consent (not to be unreasonably delayed, conditioned or withheld).

9 LIMITATION OF LIABILITY

9.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, CIVIL LIABILITY OR OTHERWISE), FOR ANY (A) INTERRUPTION OF USE, LOSS OR INACCURACY OF DATA, LOSS OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (C) DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID OR TO BE PAID HEREUNDER DURING THE PREVIOUS SIX (6) MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS SECTION 9 SHALL LIMIT EITHER PARTY'S LIABILITY FOR FRAUD OR FRAUDULENT MISREPRESENTATION, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY, INDEMNIFICATION (AS PROVIDED IN ARTICLE 8) OR OTHER MATTER TO THE EXTENT PERMITTED BY APPLICABLE LAW.

10 MISCELLANEOUS

10.1 **Entire Agreement; No Oral Modifications.** The IO and these Terms constitute the entire agreement of the Parties with respect to the subject matter thereof and supersedes all prior negotiations, understandings or agreements (oral or written), between the Parties. No change, consent or waiver under this Agreement will be effective unless in writing. These Terms and an IO may be executed in one or more counterparts, each of which shall be an original, but taken together constituting one and the same instrument. Execution of a facsimile (e.g., pdf or electronic signature) copy shall have the same force and effect as execution of an original signature.

10.2 **Conflicts; Governing Law; Amendment.** In the event of any inconsistency between the terms of an IO and these Terms, the terms on an IO will prevail. All IOs will be governed by the laws of New South Wales, Australia. The Parties agree that any dispute arising in connection with the IO (including these Terms) will be first resolved via amicable consultation between the Parties. If the Parties fail to resolve the dispute via consultation within 30 business days, either Party may file the dispute with the courts of New South Wales. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative.

10.3 **Notices.** Any notice required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically, by fax, by email or hand delivery.

10.4 **Force Majeure.** In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (except payment obligations) due to any cause beyond its reasonable control such as earthquakes, typhoons, floods, fires and other natural disasters, wars, insurrections and similar military actions, civil unrest and strikes, slowdowns, embargoes, expropriation, injunctions or other restraints and actions of government, contamination, radioactivity or any other causes preventing such performance ("Force Majeure Event"), the affected Party shall, at the time of the occurrence of the Force Majeure Event, promptly inform the other Party, providing written information on such event. If a Force Majeure Event shall occur, the Parties shall decide whether this Agreement should be amended in light of the impact of the event upon the implementation hereof or either Party may terminate this Agreement due to a Force Majeure Event lasting for more than thirty (30) days.

10.5 **No Assignment.** This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either Party without the other Party's written consent, not to be unreasonably withheld. However, without consent, Criteo may assign this Agreement to any successor



to all or substantially all of its business which concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their successors, representatives and permitted assigns.

- 10.6 Independent Contractors. The Parties shall be independent contractors under this Agreement, and nothing herein will constitute either Party as the employer, employee, agent or representative of the other Party, or both Parties as joint venturers or partners for any purpose.
- 10.7 Waiver. No failure or forbearance by a party to enforce any of its rights under this Agreement or insist upon performance of the other Party's obligations under this Agreement will be deemed a waiver of such rights or obligations to any extent, and no waiver by either Party of any default or breach of the Agreement will constitute a waiver of any other or subsequent default or breach.

Last update: 1 September 2016