



## SVG TERMS OF BUSINESS

### 1. Definitions

In the Agreement, the following definitions are used:

**Ad or Ads** means any advertisement or advertisements promoting the products and/or services of Advertiser.

**Ad Tag** means a piece of HTML on a webpage that will contact an Ad server and request an Ad.

**Advertiser** means Advertiser whose services/products are the subject of the Ads and who appoints SVG in accordance with clause 3.

**Agency** means the media agency appointed by Advertiser to procure the Services on its behalf in accordance with an Insertion Order.

**Agreement** means these terms of business, together with any terms appearing in an Insertion Order except, to the extent any such terms expressly conflict, these terms of business shall prevail.

**SVG** means SVG Media Private Limited, a company incorporated in India with CIN. NO. U45400DL2007PTC163788 having its registered office S-27, 2nd floor, Star City Mall Market, Mayur Vihar, Delhi-110091.

**Confidential Information** means information that concerns the financial and commercial terms of this Agreement or that relates to any party's business plans, intentions, operations, processes, media plans, marketing surveys, research and data, product information, know-how, trade secrets, market opportunities, business affairs and any other similar information, but excluding any information that: (i) is, or later rightfully becomes, available to the public; (ii) was in the recipient's rightful possession prior to receipt of the information from the discloser; (iii) is later disclosed to the recipient by a third party who has no obligation of confidentiality; (iv) is independently developed by the recipient without the use or benefit of the Confidential Information; or (v) is required to be disclosed by applicable law or regulation or pursuant to a court order or other legal process of competent jurisdiction.

**Content** means images, graphics, text, data, links or other objects supplied by Advertiser, or Agency on its behalf, to SVG for inclusion in the Ads.

**Cookie** means a parcel of text sent by a server to the cookie file in a user's browser and then sent back unchanged by the user each time it accesses that server. HTTP cookies are used for authentication, session tracking, and storing non-personally identifying information about specific users, such as site preferences or buying habits.

**Data** means all data (aggregated or non-aggregated), statistics, code or similar information provided by Advertiser or generated or collected by SVG or the Services Network in performing the Services that directly relate to the Advertiser.

**Insertion Order** means an insertion order or similar approval document such as a media authorisation form, media plan or other written document acceptable to SVG which is submitted online, by email or otherwise (i) to SVG by Advertiser or Agency or (ii) to Agency by Advertiser, as the case may be, requesting the Services.

**Inventory** means the advertising web-space of publishers and other media owners and related data.

**Parties** means the parties to this Agreement from time to time and **Party** shall mean any one of them.

**Products** means certain products which may be offered in conjunction with the Services, including, but not limited to: audience data management; audience targeting across IP-enabled devices (display, mobile and video) and audience reporting and performance analysis; real-time bidding; display; video; mobile; real-time optimisation; Facebook Exchange; lead generation; CPC/CPA campaigns; audience analysis; search re-targeting; audience discovery; and campaign reporting/performance analysis.

**Pixel** means a snippet of code that calls for a 1x1 transparent pixel to be delivered to a webpage by a third party server to allow the third party server to record information such as the IP address of the user's computer, URL of the page, and time the page was viewed.

**Services** means digital media services, including delivery of certain Products and the purchase of Inventory within Ad exchanges, Services Network and other media sources via SVG's or third party platform, as more particularly set out in an Insertion Order.

**Services Network** means any third parties that SVG engages or makes purchases from in relation to the display of Ads and the provision of the Services, including: publishers, media owners, audience centres, demand-side platform providers, Ad servers, data partners, brand safety providers, creative providers and/or Ad exchanges.

**Services Technology Stack** means the technologies utilised by SVG and the Services Network to provide the Services which primarily enable Ads to be targeted at members of a target audience identified on the basis of the websites they visit, activity on such websites, such as their purchasing activity, together with features such as the gender and location of the audience members.

**Technologies** include Cookies, Ad Tags, Pixels and similar other forms of computer code.

**Website** means a website owned or operated by Advertiser, including any links to such website that may be incorporated in the Ads.

**Year** means the twelve (12) month period following the date of the first Insertion Order and each anniversary thereof.

References to "in writing" include in written form, by email or by online acceptance.



## 2. Services

SVG leverages the Services Technology Stack in order to offer programmatic buying and real time bidding of display, video and mobile media and, when they become internet enabled, other media channels. This Agreement applies to the provision of the Services.

## 3. Appointment

SVG may be appointed to provide the Services either by: (i) an Advertiser directly; or (ii) an Agency, acting on behalf of Advertiser (whether such Agency is acting as principal or agent at law). Irrespective of the method of appointment, this Agreement shall bind Advertiser upon the execution of an Insertion Order and by executing an Insertion Order Advertiser confirms that it has accepted this Agreement. If the Insertion Order is executed by an Agency, Agency warrants and represents that it has Advertiser's authority to enter into this Agreement and will ensure that where applicable it and Advertiser complies with and is subject to all of the provisions of this Agreement. This Agreement applies to the exclusion of all other terms and conditions governing the provision of the Services, including any agreements between Agency and Advertiser.

By appointing SVG to provide the Services, for and on behalf of Advertiser, Agency shall be afforded the full benefit of all rights, limitations and protections as are granted to SVG under this Agreement and Agency shall procure that SVG shall provide the Services to Advertiser pursuant to the terms of this Agreement.

## 4. Provision of the Services

SVG is a separate and distinct legal entity from the Agency and trades as legal principal as a matter of law. Following submission of an Insertion Order, Advertiser or Agency shall supply SVG with the Content necessary to provide the Services detailed in such Insertion Order for inclusion in the Ads. In case of delay by Advertiser in providing such Content, neither SVG nor Agency shall have any liability to the extent SVG is unable to provide the Services and deliver the Services by the agreed dates.

The Ads are displayed on websites as determined by the Services Technology Stack operated by third parties. Consequently, the display of Ads is not ultimately within the control of SVG and, as such, SVG cannot guarantee that any brand safety measures to prevent the display of Ads on websites that are of a pornographic, defamatory, obscene or illegal nature are successful in every instance.

SVG will promptly take steps to remove any Ads that are displayed on websites in a manner that does not comply with the brand safety measures described above, upon becoming aware of such display.

The Products are procured from third parties and so SVG can only warrant that the Products will be provided using reasonable skill and care.

SVG will not be held responsible for any delays or errors with the proper implementation of Technologies associated with a particular Advertiser campaign.

SVG makes no warranties of any kind with respect to the Services, the Services Technology Stack or the Services Network or any data supplied thereby, whether express or implied, including any implied warranties as to merchantability, non-infringement, non-interruption, accuracy or fitness for a particular purpose.

## 5. Invoicing and Payment

Advertiser, or as the case may be, Agency shall pay SVG the amounts appearing in an Insertion Order.

All amounts are due to SVG by the 25th day following the month of the Ads appearing.

SVG shall also be entitled to separately invoice for: (i) all related out-of-pocket costs, administrative fees, or expenses incurred by SVG in performing the Services; (ii) interest on any outstanding balance owed to SVG at the rate of 4% above the standard base lending rate of State of Bank of India from the date the invoice became due for payment until the date it is paid in full; (iii) any costs incurred by SVG or Agency in recovering debts owed by Advertiser; and (iv) any administrative compliance fee because of an act or omission of the Advertiser to supply Ads or Content in accordance with SVG's reasonable instructions.

## 6. Intellectual Property and Data

No Party shall acquire any intellectual property rights of the other in connection with the provision of the Services and each Party remains the sole owner of any and all intellectual property rights it owned or used prior to the execution of this Agreement.

Advertiser shall retain ownership of all Data. SVG shall have a worldwide, royalty free, non-exclusive, transferable licence to use and otherwise process Data in order to provide, operate, maintain and enhance the Services, the Services Technology Stack and any Products or programs connected to the provision of the Services including, without limitation, the right to disclose Data with entities of the Services Network and, where necessary, to sub-licence the same rights to media owners and sub-contractors strictly in connection with the performance of the Services. The licence granted under this provision to SVG is granted on the following conditions: (i) Data collected in respect of a particular Advertiser will not be used for the benefit of another Advertiser; and/or (ii) following termination or expiry of the Agreement, SVG shall have the right, for a period of 6 months from such termination or expiry, to use the Data for the purposes of internal reporting (including the compilation of statistics), evaluating the Services, and improving the Services Technology Stack, and to disclose the Data if required by applicable law or regulation or pursuant to a court order or other legal process. The Data will not be shared or pooled with the data of other advertisers

Advertiser grants SVG a worldwide, royalty-free, non-exclusive transferable licence to use and reproduce any intellectual property rights in and to the Content (including, for the avoidance of doubt, any Advertiser trade and service marks) and to distribute or, in the case of trade or service marks, reproduce the same within the Services Network for the purposes of providing the Services.



In performing the Services, SVG may be required to contract with external providers and/or media owners that service the Services Network and who may utilise all or some of the Technologies for media targeting purposes and may insert the same on a Website. Any Data received by such providers and/or media owners will be used only for performing the Services. The Parties agree and acknowledge that Advertiser shall be solely responsible in relation to maintaining a privacy policy that covers the Services and, in particular, but without limitation, discloses that third parties may place Technologies on the browsers of visitors to its Website(s) and may send their own Cookies to the visitors' Cookie file. These Technologies allow the Services Technology Stack to serve Ads. SVG shall use reasonable endeavours to ensure that each Ad will incorporate an icon that will include information for visitors on how to opt-out of being retargeted.

To the extent that any Data contains personal data, the Parties acknowledge that the Advertiser will be acting as data controller. Accordingly, SVG will only use Data in accordance with the instructions of: (i) the Advertiser (where SVG is appointed directly), as a data processor; or (ii) the Agency (acting on behalf of the Advertiser, whether as principal or agent), as a sub-data processor. The Agency warrants and represents that any instructions communicated to SVG, under this Agreement, accurately reflect the Advertiser's instructions; and SVG will not be responsible or liable for any inaccuracies. SVG will use such personal data in connection with the Services in accordance with the Information Technology Act, 2000 and the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.

#### **7. Warranties**

Each Party warrants and represents to the other that it has the right, power and authority to enter into this Agreement, grant the rights, give the undertakings and perform the obligations required under this Agreement.

Advertiser agrees and acknowledges that it will be solely responsible for the Content and Advertiser warrants and represents that it possesses all consents, licences and other rights necessary to promote the Content and that the Content, including all Websites which promote the Content: (i) is not misleading, inaccurate, indecent, libellous or unlawful; (ii) does not violate the rights of any third party; (iii) shall not harm or adversely affect the operation of the Services Technology Stack or any webspaces of any third party, publisher or media owner in which it is displayed; (iv) complies at all times with all applicable laws, statutes or regulations, advertising and marketing codes of practice and standards in any jurisdiction in which its Ads are displayed; and (v) does not give access via hyperlinks to any website containing material that is obscene, defamatory or contrary to any applicable law or regulation.

Advertiser represents that has paid all license fees and/or other fees required to be paid to third parties in connection with the use, reproduction, performance and display of any and all Content or advertisements as contemplated under this Agreement, including, without limitation, all public performance, guild fees, or other fees ("License Fees"); Advertiser covenants to timely pay any and all License Fees demanded of SVG any time during or after the Term.

Advertiser shall defend, indemnify, and hold SVG, harmless from and against any proceedings, damages, costs, liabilities and expenses (including court costs and legal fees), suffered or incurred as a result of any breach of the warranty given by Advertiser in the preceding paragraphs.

#### **8. Confidentiality**

Each Party agrees to take commercially reasonable precautions to protect from disclosure the Confidential Information that it receives from the other.

#### **9. Termination and Suspension**

This Agreement shall remain in effect while any Services are being rendered to Advertiser. Notwithstanding, the Agreement may be terminated by any Party on not less than 30 days' written notice to the other for any or no reason, or immediately where one Party is in material breach of this Agreement, which includes, without limitation, non-payment of any amounts due, or is, or is about to become insolvent, enter into an arrangement with its creditors or process having similar effect, in these circumstances the non-breaching Party may terminate this Agreement with immediate effect.

Any termination of this Agreement will not affect the Parties' rights and obligations hereunder arising prior to the date of termination and, notwithstanding any such termination, Advertiser or Agency as the case may be will remain fully responsible and liable for all charges, expenses and fees incurred or earned prior to the date of termination. Notwithstanding any other provision in this Agreement or any other applicable agreement, in the event any Party gives notice of termination, SVG will not be required to place or purchase any media time and/or space for Advertiser or Agency, as the case may be, subsequent to the date of the notice of termination, unless Advertiser or Agency on its behalf, advances the funds or pre-pays the payment for such media time and/or space. In the event that Advertiser or Agency on its behalf requests the cancellation of bookings after the cancellation deadlines, SVG will use all reasonable endeavours to obtain acceptance of such cancellation. However, SVG cannot guarantee acceptance of such. Should Advertiser or Agency on its behalf require any cancellation or amendment to the booking of campaigns which result in additional costs, e.g. retrospective rate adjustments, cancellation charges or lower discounts from the media, Advertiser or Agency on its behalf, will be required to reimburse SVG for the additional costs incurred during and after the termination of this Agreement and compensate SVG by paying a cancellation fee equivalent to the sum of any additional costs incurred by SVG as a result of cancellation of that Insertion Order.

If Advertiser fails to pay any fees or costs invoiced by SVG or Agency within thirty (30) days following the payment due date, SVG shall have the right to suspend performance of the Services without notice to Advertiser, such Services not to be reinstated until Advertiser pays all such overdue amounts.

#### **10. Limitation of Liability**

SVG's aggregate liability to Advertiser and/or Agency under or in connection with this Agreement (including all Insertion Orders), howsoever arising and whether caused by tort (including negligence), breach of contract, under any indemnity or



otherwise, whether or not such loss or damage is foreseeable, foreseen or known will be limited to the aggregate of all fees paid to SVG (excluding media and tech fees) under the relevant Insertion Order where the liability arises.

In no event shall SVG be liable for any:

(i) loss of actual or anticipated income, savings or profits, loss of contracts or business, loss of goodwill or reputation (whether direct or indirect); or

(ii) for any special, indirect, or consequential loss or damage of any kind,

howsoever arising and whether caused by tort (including negligence), breach of contract, under any indemnity or otherwise, whether or not such loss or damage is foreseeable, foreseen or known. No Party shall be entitled to recover more than once for the same loss or losses.

The exclusions and limitation of liability set out in this section or elsewhere in this Agreement do not apply to liability arising from fraud, fraudulent misrepresentation, death or personal injury caused by negligence or anything else which cannot be excluded or limited by law.

## 11. General

Excluding payment obligations, each Party will be excused from performing obligations contained in this Agreement while such performance is prevented by an act of God, fire, flood, earthquake, transportation disruption, war, insurrection, labour dispute, or any other occurrence beyond the reasonable control of that Party.

Other than as expressly stated herein, this Agreement contains the entire agreement between the Parties relating to the Services and supersedes any previous agreements or understanding whether written or oral, in particular any agreement between Advertiser and Agency in respect of the Services. Any variation to this Agreement shall have no effect unless expressly agreed and accepted in writing by an authorised representative of SVG.

Each party shall be and act as an independent contractor and not as partner or joint venturer of the other.

During the term of this Agreement and for six (6) months following expiry or termination, Advertiser shall not solicit or entice away from SVG or employ or attempt to employ any person who is, or has been, engaged by SVG as a director, officer, employee or contractor.

Where employment results from breach of this paragraph, the Advertiser shall pay SVG a sum equivalent to thirty percent (30%) of the annual remuneration of the relevant SVG director, officer, employee or contractor, with such sum recognised to be the equivalent of replacement recruitment costs.

Nothing in this provision shall prohibit employment which Advertiser can demonstrate to result from a general, public recruitment campaign that is not directly aimed at SVG directors, officers, employees or contractors.

Nothing in this Agreement shall create or confer any rights or other benefits in favour of any person other than the Parties to this Agreement from time to time. The Parties to this Agreement do not require the consent of any third party to rescind or vary this Agreement at any time.

This Agreement, its substance, formation, interpretation and any disputes, actions or other claims or liabilities arising out of or in connection with it (whether contractual or non-contractual) shall be governed by and construed in accordance with the laws of India, without reference to conflicts of laws principles and the parties submit to the exclusive jurisdiction of the Courts of Mumbai. Notwithstanding the preceding, SVG may seek injunctive or other equitable relief from any court or authority of competent jurisdiction.