

## European Broadcaster Exchange (EBX) Limited VOD Terms and Conditions Oct 2018

This agreement between European Broadcaster Exchange (EBX) Limited (“**EBX**” or the “**Company**”) and {Name of buyer} (“**Buyer**”) relating to VOD advertising (“**Advertising**”) through EBX’s technology.

The buyer agrees to EBX terms and conditions (“**EBX Terms and Conditions**”) in conjunction with the 4’s/IAB Standard Terms and Conditions Version 3.0 (“**IAB Terms and Conditions**”) and together with any corresponding Insertion Order (“**Insertion Order**”).

### EBX Terms and Conditions

#### 1. DEFINITIONS AND INTERPRETATION

**ABD** or **Advance Booking Deadline** means the date falling 5 (five) clear Working Days prior to the Launch Date unless otherwise agreed between the Parties in the Insertion Order;

**Agency** means an advertising agent, agency or Agency Buying Group buying Advertising with EBX on behalf of one or more Clients;

**Agency Commission** has the meaning given in clause 6;

**Booking** means the Buyer’s request by any means, including by an Insertion Order, to EBX to book Advertising;

**Brand** means an Advertiser’s product, service or brand;

**Buyer** means the person identified in the Insertion Order, being either an Agency or a Direct Advertiser. Where the person is not a distinct legal entity (for example, where the person named is a trading division) it shall be deemed to be the legal entity or entities which operates such person;

**Campaign** means all or part of the Advertising within a Booking which relates to a single burst of activity for a single Brand or service for a single promotional purpose;

**Campaign Approval Vehicle** means the web-based campaign approval communications vehicle which is used by the advertising industry, or any such other vehicle, including but not limited to CARIA, iDesk, Adazzle and Mediagenie;

**Copy Clearance** means the industry recognised body which is responsible for clearance of Copy;

**Copy** means Advertisement material provided to EBX for display on a Platform whether finished or in preparation;

**Copy Requirements** means EBX’s technical specification requirements for Copy from time to time in force and available upon request;

**Copy Rotation Instruction** means the instructions provided to EBX regarding the Site Area, timing and geography of Advertisements as set out in the Insertion Order;

**Gross Expenditure** means gross expenditure, whether in cash or otherwise, before any Agency Commission and excluding VAT;

**Impression** means an Advertising spot file or combination of files containing an Advertisement being received by a device, with measurement of delivery of a Campaign being designated by the relevant Platform from time to time;

**Launch Date** means the intended date set out in the Insertion Order of first display of the Advertisement under this Agreement on a Platform specified in the Insertion Order;

**Market Rates** means EBX's discretionary pricing and qualitative terms for Advertising in relation to Campaigns booked after the ABD;

**Media Partner** means any third-party publisher, other than EBX, on whose behalf EBX sells Advertising;

**Platforms** means all relevant platforms on which the Advertisement may be displayed;

**VOD** means video on demand and/or on-demand streamed broadcast content available on the Platforms;

**Working Day** means a day, except a Saturday or Sunday, which is not a public holiday, religious holiday, or bank holiday in the UK.

## 2. COPY REQUIREMENTS

EBX Terms & Conditions override the terms as outlined within the IAB Terms and Conditions in relation to clause IX b in relation to late Copy and IX d in relation to damaged copy.

**Compliance:** Copy will only be transmitted by EBX if it satisfies all of Broadcaster's Copy Requirements, complies with all Applicable Laws, any relevant rules and guidelines of any Competent Authority, reflects the spirit and complies with the letter of the relevant codes, and is approved, where relevant, by the relevant industry bodies to the Broadcaster's satisfaction unless, in the Broadcaster's sole discretion, such approval is not required; and where relevant is delivered to EBX accompanied with Copy Rotation Instructions. Furthermore, the Buyer shall ensure that the Copy provided to EBX for transmission or display is the same Copy (and where relevant, the associated clock number) as the Copy approved by Copy Clearance at the expense of the Advertiser or the Agency on the Advertisers behalf. For the avoidance of doubt, any approval by the Broadcaster of any Copy will not be deemed to constitute an acceptance by EBX that such Copy is provided in accordance with this Agreement, nor will it constitute a waiver of EBX's rights hereunder.

**Timescale for Delivery of Copy:** Copy must be delivered to EBX not less than 7 (seven) clear Working Days before the relevant Launch Date. If Copy is delivered less than 7 (seven) clear Working Days before the relevant Launch Date:

EBX may decline to transmit or display such Copy and the Buyer shall, at the discretion of EBX, be liable to pay in full for all the Impressions (or other costs) referred to in the Insertion Order, whether or not the relevant Advertisement is displayed for the full Campaign period or at all, and the Buyer acknowledges and agrees that such payment is a genuine pre-estimate of EBX's Loss; and

notwithstanding this:

(a) the Launch Date will be delayed by one day for each Working Day that the Advertisement is delivered late (and for the avoidance of doubt the End Date will remain unchanged); and/or

(b) the number of Impressions which EBX has agreed to provide and which is specified in the Insertion Order will be reduced on a pro rata basis to reflect the number of days by which the period of the Campaign is reduced by (a) above.

**Changes:** Application of Copy changes or changes in transmission instructions initiated by the Buyer and accepted less than 5 (five) clear Working Days before the relevant Launch Date shall be at the sole discretion of EBX.

**Unsuitable Content & Out of Specification Copy:** If EBX decides that an Advertisement is unsuitable or not to specification, EBX shall notify the Buyer or the creative agency accordingly, who must supply alternative Copy as soon as practicable and, in any case, not later than 7 (seven) clear Working Days prior to the relevant Launch Date. Alternative Copy shall be accepted at shorter notice at the sole discretion of

EBX. Should alternative Copy not be supplied, or not be accepted by EBX acting reasonably, EBX may decline to display such Copy shall be entitled to be paid by the Buyer in full for the Booking made, notwithstanding that no Advertisements may have been displayed and the Buyer acknowledges and agrees that such payment is a genuine pre-estimate of EBX's Loss.

**Regulation and Applicable Law:** EBX shall not be liable for any addition to, changes in or deletions from any Copy required by any other Competent Authority or because of any Applicable Law.

**Reservation of EBX right to reject Copy:** EBX reserves the right in its absolute discretion and without incurring any liability, to decline to display any Advertisement without giving any reason in writing for so declining but the Buyer shall not be liable to pay for any such Advertisement which EBX so declines to display in accordance with this clause.

**Repeats:** EBX reserves the right to restrict or prevent any repeat display of any Campaign.

**Multiple Brands/Advertisers:** EBX reserves the right at its discretion to refuse Copy advertising more than one Brand or Advertiser. If Copy advertises more than one Brand or Advertiser, EBX will be entitled to charge the Buyer on the basis that it comprises separate Advertisements and therefore counts for more than one campaign.

**Copy Rotation Instructions:** EBX will use reasonable endeavours to follow any Copy Rotation Instructions but shall not be liable for any failure to do so.

**Limit of liability:** For the avoidance of doubt, neither EBX nor any of its Media Partners shall have any liability in respect of any Loss arising out of or in connection with the application of any of the provisions of this clause including the Broadcaster's refusal to approve Copy for any reason.

### 3. IMPRESSIONS

The number of Impressions stated in each Booking is an estimate of the number of Impressions to be delivered over the relevant Campaign Dates. The number of Impressions delivered will vary across the relevant Campaign Dates and could be higher or lower than the value of the Impressions booked. EBX provides no guarantee that the number of Impressions booked will be delivered.

If the Impressions delivered for a Campaign are less than those estimated by 10% then both EBX and the Buyer will agree shortfalls. Any shortfall will be delivered against one or more other Campaigns.

EBX will invoice the Buyer for the delivered number of Impressions at the end of each calendar month.

### 4. PRICE

EBX's prices will be as agreed from time to time between EBX and the Buyer. The Buyer agrees that its confirmation (whether in writing, orally or by any other reason) to EBX of the Insertion Order irrespective as to whether the Insertion Order is signed and/or returned by the Buyer to EBX constitutes acceptance of all relevant terms including the price. Where EBX pricing is agreed in the Insertion Order, unless otherwise agreed in writing, these will be subject to Campaigns being booked by the Buyer in advance of the Advance Booking Deadline and where Campaigns are booked after the Advance Booking Deadline, EBX reserves the right to charge these Campaigns at Market Rates.

### 5. CANCELLATION AND POSTPONEMENT

EBX cancellation Terms & Conditions override the terms as outlined within the IAB Terms and Conditions in relation to clause V.

**Campaign Booking Cancellation before the ABD:** A Campaign Booking may be cancelled by the Buyer 5 days prior to the applicable Advance Booking Deadline by giving written notice to EBX and no charges will be due to EBX in relation to such cancelled Booking. If a Campaign Booking is cancelled by the Buyer other than in accordance with this clause, the Buyer will remain liable to pay EBX's charges in full whether the Advertisements in relation to such Campaign Booking are displayed. A Booking for any Advertisement or a Campaign Booking may be

cancelled by EBX at any time prior to the applicable Advance Booking Deadline without any liability whatsoever on the part of EBX. Nothing in this clause shall affect EBX's right to reject any Bookings made after the relevant ABD.

**Campaign Booking Cancellation after the ABD:** The Buyer shall be liable to pay the full amount of EBX's charges in relation to a Booking where such Booking is cancelled after the Advance Booking Deadline.

**Deferment of Campaigns after ABD:** EBX may, in its absolute discretion, agree to allow a Buyer to defer a Campaign Booking after ABD subject to:

(a) confirmation of a deferment date for the Campaign commencement which must be not more than three months (or as otherwise agreed between the Parties) after the first intended Launch Date and;

(b) The campaign value being switched out for another advertiser/campaign;

(c) if the deferred Campaign is not launched within the three-month period and/or the Campaign has not been switched for another similar value Campaign, the Buyer will face a penalty at 40% of the deferred Campaign value.

**Deferment at EBX's Discretion:** For the avoidance of doubt, the arrangement set out in clause will be agreed by EBX in its absolute discretion and EBX shall not be obliged to give reasons for accepting or declining to accept an application for deferment made by the Buyer. The Buyer acknowledges and agrees that the fees referred to in "Campaign booking cancellation after the ABD" & "Deferment of Campaigns after ABD" are a genuine pre-estimate of EBX's Loss.

## 6. AGENCY COMMISSION

**Agency Commission:** EBX may in its sole and absolute discretion apply Agency Commission in respect of the purchase of Advertising by that Agency and for the avoidance of doubt this will not exceed [%] of the Gross Expenditure payable to EBX. EBX requires Buyers to comply with the definition of an Agency before it can be considered eligible for Agency Commission.

**Application:** Agency Commission is only applied to the actual cost of the Advertising and is not applied to any other charges such as late payment surcharges, cancellation fees, late changes charges, alternative Copy surcharges or any deferment charges.

**Transparency:** The Agency is responsible for disclosing to the Advertiser appropriate details of any Campaign including the amount it earns on the Campaign and it undertakes to EBX that it will do so. In relation to this and notwithstanding the confidentiality provisions in this Agreement, EBX also grants the Agency permission to disclose the amount of any Agency Commission to any relevant Advertiser.

**Invoice:** EBX will invoice every Campaign by Advertiser separately and will report the amount and % of the Agency commission on the face of the invoice, enabling the Agency to share the invoice with the Advertiser therefore providing full transparency on cost and commission.

## 7. GOVERNING LAW & JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).