

BIDSWITCH Standard Terms for Demand Partners

Last Updated Date: July 14th 2020

1. Definitions

"Additional Services" means one or more additional services that may be made available to and selected by the Demand Partner from within the BIDSWITCH User Interface, further details of which can be accessed through the BIDSWITCH User Interface.

"Advertising" means digital material made available to the BIDSWITCH Platform by a Demand Partner including but not limited to all content, trade marks, branding features and 'look and feel'.

"Advertising Materials" means creative materials, active URL's and their related tags.

"Bid" means a response (containing Bid Data) to a Bid Request provided by a Demand Partner via the BIDSWITCH Platform to a Supply Partner that includes an offer to buy Media.

"Bid Data" means the data provided to a Supply Partner in response to a Bid Request that only includes Personal Data that is being used in accordance with all applicable laws.

"Bid Request" means a request (containing Supply Partner Data) made by a Supply Partner for Bids on Media that it wishes to sell that includes certain criteria that must be met, such as the price for such Media and other information that only includes Personal Data that is being used in accordance with all applicable laws.

"Bid Distribution Fees" means the fees set out in the Bid Distribution Fees Table in the BIDSWITCH Demand Partner Agreement that are payable for the BIDSWITCH Services selected by the Demand Partner using the BIDSWITCH User Interface.

"BIDSWITCH Platform" means BIDSWITCH's proprietary online trading platform through which Supply Partners can submit Bid Requests for Media that they wish to sell and Demand Partners can submit Bids for Media that they wish to buy through the operation of a dynamic, real-time exchange whereby Media is sold to Demand Partners whose Bids are selected by Supply Partners.

"BIDSWITCH Service" means the service or services selected by the Demand Partner using the BIDSWITCH User Interface.

"BIDSWITCH Trading Agreement" or **"Agreement"** means this fully executed BIDSWITCH agreement that incorporates these terms that together form a fully executed agreement between you and BIDSWITCH.

"BIDSWITCH User Interface" or **"BIDSWITCH UI"** means the online tool that allows the Demand Partner to access the BIDSWITCH Service.

"Connect Mode" means the BIDSWITCH Service whereby BIDSWITCH provides a connection from the Demand Partner's systems to the BIDSWITCH Platform that enables the Demand Partner to buy Media from Supply Partners and the Demand Partner pays Supply Partners the Media Cost directly for Media acquired.

"Data Processing Addendum" means the agreement located at <https://www.bidswitch.com/bidswitch-inc-data-processing-addendum> that governs the processing of Personal Data by BIDSWITCH on your behalf.

"Demand Partner" or **"Customer"** means a party that is connected to the BIDSWITCH Platform that wishes to buy Media.

"Fees" means the amounts charged by BIDSWITCH to the Demand Partner for the BIDSWITCH Services set out on the BIDSWITCH Demand Partner Agreement.

"Impression" means provision of the relevant Advertising Materials to the relevant Site after a Winning Bid has been successfully completed in accordance with section 3.

"Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, know-how, confidential information, trade secrets, patents, inventions and discoveries and all other rights (including moral rights) resulting from intellectual activity in the industrial, scientific, literary or artistic fields in each case whether registered or unregistered and including any pending applications for or rights to apply for any of the foregoing anywhere in the world.

"Media" means digital advertising units on websites and other locations made available by Supply Partners where Advertising can be displayed that is made available on the BIDSWITCH Platform.

"Media Cost" means the amount payable for Media acquired through the operation of the BIDSWITCH Platform as set out in section 3.

"Media Mode" means the BIDSWITCH Service whereby Media can be acquired using the BIDSWITCH Platform where BIDSWITCH (but not the Demand Partner) has direct contractual relationships with Supply Partners and the Demand Partner pays BIDSWITCH the Media Cost for Media acquired.

"Personal Data" means information that allows the holder to identify someone as an individual and/or is considered to be 'Personal Data' by any applicable laws.

"Site" means one or more websites made available to the BIDSWITCH Platform and/or online locations that are operated by or on behalf of a Supply Partner or upon which a Supply Partner has the right to display Advertising.

"Supply Partner" means a party that is connected to the BIDSWITCH Platform that has Media that it wishes to sell.

"Supply Partner Data" means data provided by a Supply Partner to the BIDSWITCH Platform that does not identify BIDSWITCH or a Supply Partner or a Site (or information that the holder would already have had before it was provided by BIDSWITCH) that the BIDSWITCH Platform uses for the day-to-day operation of the BIDSWITCH Platform that only includes Personal Data that is being used in accordance with all applicable laws.

"Supply Partner Transaction Fees" means fees that a Supply Partner has agreed to pay to BIDSWITCH for Media that it sells, instead of and in substitution for Transaction Fees being payable by the Demand Partner.

"Targeting Group" is a feature that is accessible by the Demand Partner within the BIDSWITCH UI that enables the Demand Partner to granularly select categories of Media for which it wishes to provide Bids.

"Transaction Fees" means Transaction Fees – Connect Mode and/or Transaction Fees – Media Mode.

"Transaction Fees – Connect Mode" means the Fees set out in the Transaction Fees Table in the BIDSWITCH Demand Partner Agreement are payable by the Demand Partner for Media acquired using Connect Mode.

"Transaction Fees – Media Mode" means the Fees set out in the Transaction Fees Table in the BIDSWITCH Demand Partner Agreement that are payable by the Demand Partner for Media acquired in addition to the Media Cost when Media Mode is selected by the Demand Partner from within the BIDSWITCH User Interface.

"Winning Bid" means the amount payable for each Bid that wins as calculated in accordance with section 3.

2. Applicability

This Agreement relates to the sale and purchase of Media using the BIDSWITCH Platform and constitutes the entire agreement between you and BIDSWITCH. Any contrary terms and conditions that you may have shall not apply to this Agreement.

3. Operation of the BIDSWITCH Platform

3.1 The BIDSWITCH Platform shall receive Bid Requests for Media from Supply Partners in response to which the BIDSWITCH Platform shall provide Bids to Supply Partners. Upon receipt of such Bids, Supply Partners shall select which Bid best fits the criteria set out in their Bid Request (the **"Winning Bid"**). Upon selection of the Winning Bid, the BIDSWITCH Platform shall procure delivery of the winning Demand Partner's Advertising to the relevant Site (each an **"Impression"**).

3.2 Your use of the BIDSWITCH Platform is subject to the BIDSWITCH 'fair use policy' set out in this section 3.2. If in the reasonable opinion of BIDSWITCH it is believed that you are sending substantially less Bids than Bid Requests you are 'listening' to, BIDSWITCH may ask you to moderate your access, or in extreme cases BIDSWITCH may restrict and/or suspend your access to the BIDSWITCH Platform.

3.3 In relation to clause 3.1 you hereby authorise BIDSWITCH to use 'BIDSWITCH True Price' (when made available to you) to optimise and adjust Bids that you provide to the BIDSWITCH Platform to reduce the overall cost of Media that you buy (when compared to the overall cost of Media if BIDSWITCH True Price was not used). No fee shall be charged by BIDSWITCH to you for BIDSWITCH True Price. BIDSWITCH reserves the right to charge you a fee for BIDSWITCH True Price by giving you at least 30 days prior notice of this in writing (email sufficing). BIDSWITCH reserves the right to suspend your access to BIDSWITCH True Price at any time. All other Fees payable by you in accordance with this Agreement shall continue to be payable.

4. Third party advertisers

4.1 You agree to ensure that all provisions of this Agreement are complied with by both you and any third party advertisers that you represent. You will be directly liable to BIDSWITCH for any act or omission by you or your advertiser that is not in accordance with this Agreement.

4.2 You confirm that you are the authorised representative of any advertiser that you advise BIDSWITCH that you act on the behalf of and that that you are authorised to enter into and perform this Agreement on behalf of any such advertiser. You agree to be jointly and severally liable with any advertisers that you represent for all payment obligations set out in this Agreement and that BIDSWITCH may contact any advertiser that you represent if any amounts payable under this Agreement are not received by the due date.

5. Demand Partner obligations

5.1 You warrant, represent and confirm that:

5.1.1 all Advertising and the websites, goods and services that they promote and Bids shall not:

- violate or encourage violation of any applicable laws, regulations or advertising codes;
- infringe any intellectual property rights of any third party or contain any material which may be harmful, abusive, obscene, threatening, or defamatory;
- be pornographic, obscene or contain sexually explicit images or activity;
- promote or contain links to gambling, online casinos, tobacco, alcohol or weapons; or
- promote or contain links to malware including but not limited to 'viruses', 'Trojans' and 'worms';

5.1.2 you will only provide data (including Personal Data) to the BIDSWITCH Platform in accordance with all applicable laws.

5.1.3 you will not use any Bid Request (or part thereof) that you receive for anything other than (i) deciding whether to submit a Bid and/or (ii) submitting a Bid for the Media that each such Bid Request relates to.

5.2 You agree to observe BIDSWITCH's online technical specifications and buy-side policies relating to the use of the BIDSWITCH Platform (available at <https://www.bidswitch.com/bidswitch-policy>) as updated by BIDSWITCH and advised to you from time to time.

5.3 You agree that if BIDSWITCH, acting reasonably, believes that you do not comply with any obligations of this section 5, BIDSWITCH may immediately suspend the provision of the BIDSWITCH Service (either with or without providing notice of this) to you, until BIDSWITCH is reasonably satisfied with your compliance with this section 5.

5.4 You agree to comply with the Data Processing Addendum.

5.5 You represent and warrant that you have obtained all necessary consents from end users for the purposes of personalizing Advertising, in accordance with the EU General Data Protection Regulation ("GDPR") and the Californian Consumer Privacy Act ("CCPA") and will send BIDSWITCH all information reasonably requested by BIDSWITCH relating to the same (and as BIDSWITCH may update from time to time).

6. BIDSWITCH Obligations

6.1 BIDSWITCH shall use all reasonable endeavours to procure the display of Advertising in accordance with this Agreement.

6.2 BIDSWITCH will measure the delivery of Advertising using BIDSWITCH's reporting systems. If there is a discrepancy between the BIDSWITCH reporting systems and yours, the BIDSWITCH Platform reporting systems will prevail, but BIDSWITCH will discuss any such discrepancy over 10% with you upon request and use all reasonable endeavours to resolve the matter to your reasonable satisfaction. As part of any discrepancy procedure, BIDSWITCH will make available to you up to 30 days' of log data in response to such inquiries from you and you agree to make your log data for the same period available to BIDSWITCH. Log data that is shared shall include the timestamp, user IP (when available), auction ID and Media Cost) for any period that you dispute on the express agreement that each party shall delete all such data provided to it by the other party as soon as any dispute relating to such discrepancies has been resolved in accordance with this Section 6.

6.3 BIDSWITCH shall use all reasonable endeavours to ensure that all Supply Partners ensure that their Sites, everything displayed on their Sites and their Bid Requests shall not:

- violate or encourage violation of any applicable laws, regulations or advertising codes;
- infringe any intellectual property rights of any third party or contain any material which may be harmful, abusive, obscene, threatening, or defamatory;
- be pornographic, obscene or contain sexually explicit images or activity;
- promote or contain links to gambling, online casinos, tobacco, alcohol or weapons; or
- promote or contain links to malware including but not limited to 'viruses', 'Trojans' and 'worms'.

6.4 BIDSWITCH agrees to comply with the Data Processing Addendum.

7. Rejection of Advertising

BIDSWITCH may reject any Advertising that does not comply with clause 5.1. However, you acknowledge and agree that BIDSWITCH has no obligation to review and/or approve any Advertising that you submit to the BIDSWITCH Platform and that BIDSWITCH accepts no liability for any Advertising that is displayed on a Site on your behalf in accordance with this Agreement.

8. Payment for Media and Additional Services

8.1 You are responsible for paying BIDSWITCH for all Media that you buy using Media Mode, the Fees and any Additional Services that you may select via the BIDSWITCH UI from time to time and BIDSWITCH shall send you an invoice for these to the e-mail address set out on page 1 of this Agreement. Such invoice shall be reduced by any amount that you have already pre-paid for that calendar month. You agree to pay all BIDSWITCH invoices in the same currency as the invoice within 30 days of the date of invoice.

8.2 Where you have agreed to pre-pay for Media you buy and related Fees, you agree to pre-pay BIDSWITCH at least 7 days before the end of each calendar month an agreed amount each month for Media that you plan to buy in the next calendar month.

8.3 If you do not pay us on time, all amounts due on your account will be payable by you to us on demand and we reserve the right to suspend provision of the BIDSWITCH Service to you and/or terminate this Agreement and/or any part of it if any amounts payable by you are overdue by more than 10 days.

8.4 If you do not pay us on time, we will charge you interest at the rate of three per cent (3%) above the base rate of the HSBC bank in Switzerland from time to time. If we need to take legal action against you for failing to pay us in accordance with this Agreement, you also agree to pay the legal costs and expenses that we incur in making you pay us.

8.5 You are not entitled to set-off any amounts that you owe BIDSWITCH against any amounts that BIDSWITCH owes you unless we have accepted your claim or your claim has been found to be valid by a final court ruling.

8.6 If you dispute any amount on an invoice you should provide notice of this to BIDSWITCH by writing to your BIDSWITCH representative using the email address above within 15 business days of the end of the month that the invoice you dispute relates to. Your email must include the amount you dispute and provide adequate information to support your claim. Within 30 business days of receipt of your email, BIDSWITCH will investigate and provide you with a written response. You may not withhold payment for any amounts that you do not dispute.

9. Intellectual Property

9.1 Other than as set out expressly in this Agreement, neither party will acquire any right, title or interest in any Intellectual Property Rights belonging to the other party or to the other party's licensors.

9.2 If BIDSWITCH provides you with software and/or access to the BIDSWITCH User Interface, BIDSWITCH grants you a non-exclusive, non-sublicensable licence for use of that software and/or the BIDSWITCH User Interface. This licence is for the sole purpose of allowing you to use and enjoy the benefit of the BIDSWITCH Services. You may not copy, modify, distribute, sell or lease any part of the BIDSWITCH Services, included software or BIDSWITCH User Interface or Bid Requests that you receive (or any part thereof), nor may you reverse engineer or attempt to extract the source code of that software or BIDSWITCH User Interface, unless laws prohibit such restrictions or you have BIDSWITCH's prior written permission to do this. You will not remove, obscure or alter any BIDSWITCH copyright notice (if any), branding or other proprietary rights notices affixed to or contained within the BIDSWITCH Service, BIDSWITCH User Interface, software or related documentation.

9.3 BIDSWITCH may include your name and branding in BIDSWITCH's presentations, marketing materials, customer lists and financial reports.

10. Payment deposits

10.1 BIDSWITCH may require you to pay a deposit in advance for amounts payable by you to BIDSWITCH under this Agreement (a "Payment Deposit").

10.2 If you pay a Payment Deposit it will be offset against future invoices payable by you to meet your payment obligations under this Agreement, the balance will be refunded to you (without any interest) at the end of this Agreement. If you do not pay BIDSWITCH in full in accordance with this Agreement, your Payment Deposit will be set off against your payment obligations to BIDSWITCH.

11. Use of information

11.1 You hereby grant BIDSWITCH a royalty free, non-exclusive worldwide licence in the Advertising solely to enable BIDSWITCH to provide the BIDSWITCH Services. You grant to BIDSWITCH all rights necessary to allow BIDSWITCH to provide the BIDSWITCH Services and to advise BIDSWITCH customers and prospective customers that you use the BIDSWITCH Services.

11.2 You agree that BIDSWITCH is entitled to sublicense the licenses granted to BIDSWITCH under this Agreement to third parties where necessary to fulfil our obligations under this Agreement.

12. Liabilities and indemnities

12.1 You agree to indemnify and hold harmless BIDSWITCH, its affiliates, agents and Supply Partners from and against any and all third-party claims and liabilities arising out of or related to your breach of any part of this Agreement. Supply Partners that use the BIDSWITCH Platform and any direct or indirect, wholly or partly owned subsidiaries and/or holding companies of BIDSWITCH are third-party beneficiaries of this indemnity.

12.2 Subject to section 14 BIDSWITCH agrees to indemnify you and hold you harmless against any and all third-party claims and liabilities arising out of or related to BIDSWITCH's breach of any part of this Agreement.

13. Representations, warranties and disclaimers

13.1 You represent and warrant that you have the full power and authority to agree to this Agreement.

13.2 You represent and warrant that (i) you are the owner of, or are legally authorised to act on behalf of the provider of the Advertising; and (ii) you have control over the way in which Advertising is displayed using the BIDSWITCH Platform on Sites.

13.3 Unless expressly stated in this Agreement, BIDSWITCH does not make any promises about the BIDSWITCH Services.

13.4 BIDSWITCH will not be liable to Demand Partner for the content of any Site that the BIDSWITCH Platform may make available to Demand Partner.

14. Limitation of liability

14.1 Nothing in this Agreement excludes or limits either party's liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by negligence; or (c) anything which cannot be excluded or limited by law.

14.2 Neither party shall have any liability (whether in contract, tort or otherwise) under or in connection with this Agreement for any special, indirect or consequential loss (whether such loss was foreseeable, known or otherwise).

14.3 Each parties' aggregate liability (whether in contract, tort or otherwise) under or in connection with this Agreement shall not exceed the net amount payable by Demand Partner to BIDSWITCH in any rolling 6 calendar month period ending the date on which such liability arises.

15. Assignment

You may not assign any rights or obligations that you may have under this Agreement to a third party unless this has first been agreed by BIDSWITCH in writing. BIDSWITCH may assign all or any of its rights and obligations under this Agreement to a wholly owned direct or indirect subsidiary of BIDSWITCH. BIDSWITCH may also assign your payment obligations to BIDSWITCH under this Agreement to a third party by giving notice of this in writing to you.

16. Term, cancellation and termination

Either party may cancel this Agreement by giving at least one month's written notice of this to the other in writing.

17. Other matters

This Agreement shall be governed by the laws of England without regard to its conflict of law provisions and the parties hereby submit to the non-exclusive jurisdiction of the English courts for the resolution of any dispute which may arise in connection with this Agreement.

18. Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy conferred upon or reserved for either party under this Agreement is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

19. Notices

All notices under this Agreement must be in the English language, in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with this section. Any such notice may be delivered personally or by first class pre-paid recorded delivery letter or facsimile transmission and shall be deemed to have been served (a) if by hand, when delivered, (b) if by courier service or registered mail, 72 hours after despatch, and (c) if by facsimile transmission when despatched, in each case, with proof of sending/delivery (as the case may be) retained by the sending party.

20. No Partnership

Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute or be deemed to constitute a partnership, association, joint venture or other co-operative entity or undertaking between the parties and neither party shall have any authority to bind the other in any way.

21. Entire Agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties, and constitutes the entire agreement between the parties, relating to the subject matter of this Agreement. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

22. Severability

If the whole or any part of any provision of this Agreement is deemed to be illegal or unenforceable, remaining provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

23. Representatives

Each party shall appoint a prime contact for the purposes of performing this Agreement as set out in the BIDSWITCH Agreement and may appoint a substitute or alternative individual by reasonable written notice to the other party.

24. Publicity

Except as provided in section 11, each party shall keep the terms of this Agreement confidential and will not use the other party's name in any publicity, advertisement or other disclosure without the other party's prior written consent.

25. No Third Party rights

A person that is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 or any other substantially similar applicable laws to enforce any of the terms of this Agreement.

26. Confidentiality

26.1 For the purposes of this Agreement, "Customer's Confidential Information" shall mean any data or information of any kind and in any format relating to the business, business processes, business logic, business strategy, products, games, customers or customer behaviour, revenues, know how, trade secrets or other information relating to the Demand Partner which is not generally publicly available.

26.2 BIDSWITCH shall not, except as expressly permitted in this Agreement, without the prior written consent of the Demand Partner: (a) communicate, or otherwise make available, the Customer's Confidential Information to any third party; or (b) use Customer's Confidential Information for any commercial, industrial or other purpose whatsoever other than the provision of the BIDSWITCH Services; or (c) copy, adapt, or otherwise reproduce the Customer's Confidential Information save as strictly necessary for the provision of the BIDSWITCH Services under this Agreement.

27. Use of name:

You agree that BIDSWITCH can use your company and/or trading name and related branding to advise other users and potential users of the BIDSWITCH Service for marketing and promotional purposes relating to the BIDSWITCH Service with your prior written consent.

28. Change of terms

If BIDSWITCH advises you of a change to the BIDSWITCH Trading Agreement Standard Terms, you will have 7 days to consider the change before it shall be deemed to take effect unless within such 7 days you advise BIDSWITCH that you do not agree to the change. If you advise BIDSWITCH that you do not agree to the change you will be entitled to continue to use the BIDSWITCH Platform to sell Media for a period of 21 days from the date that you advise BIDSWITCH of this, after which you must stop using the BIDSWITCH Platform.