

BIDSWITCH Standard Terms for Supply Partners

Last updated on August 26 2020

1. Definitions

“**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 and related information including the price that will be provided to the Supply Partner in response to a Bid Request that does not include any Personal Data that is not being used in accordance with all applicable laws.

“**BIDSWITCH Deals API for Suppliers**” means the application programming interface for a Supply Partner to propagate deals information to specified Demand Partners and the technical specifications of such Deals API are located at <https://protocol.bidswitch.com/api/deals-api.html>

“**BIDSWITCH DSP Transaction Fees**” means fees payable by a Demand Partner to BIDSWITCH for buying media in Media Mode or Connect Mode.

“**BIDSWITCH Fees**” means the amounts charged by BIDSWITCH to the Supply Partner for the BIDSWITCH Service set out in the BIDSWITCH Supply Partner Agreement.

“**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.

“**Bid Request**” means a request (containing Supply Partner Data) by a Supply Partner for Bids on Media that it wishes to sell that includes certain criteria that must be met including the price for the Media and other information that does not include any Personal Data that is not being used in accordance with all applicable laws.

“**BIDSWITCH Supply Partner Connection Agreement**” or “**Agreement**” means the fully executed BIDSWITCH agreement that incorporates these terms that together form a fully executed agreement between you and BIDSWITCH.

“**BIDSWITCH Trading**” means the BIDSWITCH Service that enables the Supply Partner to agree with one or more Demand Partners that the Supply Partner (rather than each such Demand Partner) shall pay BIDSWITCH Trading Fees in relation to Media that the Supply Partner sells to such Demand Partners in either Connect Mode or Media Mode.

“**BIDSWITCH Trading Fees**” means BIDSWITCH Trading Connect Fees and/or the BIDSWITCH Trading Media Fees.

“**BIDSWITCH Trading Connect Fee**” means the fee described in the BIDSWITCH Supply Partner Agreement.

“**BIDSWITCH Trading Media Fee**” means the fee described in the BIDSWITCH Supply Partner Agreement.

“**BIDSWITCH Service**” means the service or services selected by the Supply Partner using the BIDSWITCH User Interface.

“**BIDSWITCH User Interface**” or “**BIDSWITCH UI**” means the online tool that allows the Supply Partner to access the BIDSWITCH Service.

“**Connect Mode**” means the BIDSWITCH Service whereby BIDSWITCH provides the Supply Partner with a connection to the BIDSWITCH Platform that enables the Supply Partner to sell its Media to one or more Demand Partners with whom the Supply Partner has a separate agreement relating to the sale of and payment for such Media.

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

“**Demand Partner**” means a party that is connected to the BIDSWITCH Platform that wishes to buy Media.

“**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.

“**Media Mode**” means the BIDSWITCH Service whereby the Supply Partner has a dedicated connection to the BIDSWITCH Platform to sell its Media to one or more Demand Partners with whom the Supply Partner does not have a separate agreement relating to the sale of and payment for such Media.

“**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.

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 receives Bid Requests for Media from Supply Partner’s in response to which the BIDSWITCH Platform provides Bids to Supply Partner’s. Upon receipt of such Bids, Supply Partners 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 procures delivery of the winning Demand Partner’s Advertising to the relevant Site (each an “**Impression**”).

3.2. Subject to the terms of this Agreement, you shall have the right to access and use the BIDSWITCH Platform solely for the purposes of (a) making your Media available for sale to Demand Partners; and (b) making Bid Requests and receiving Bids, Impressions and other data related to the display of Advertising on your Media.

3.3 Throughout the Term, BIDSWITCH grants you all necessary rights in the Advertising to enable the display of Impressions on your Media.

3.4 The BIDSWITCH Service shall not take place between a Supply Partner and a Demand Partner unless and until the Supply Partner has offered and a Demand Partner has agreed to trade Media via the BIDSWITCH UI. A Demand Partner may request participation in the BIDSWITCH Service with a Supply Partner via the BIDSWITCH UI. The BIDSWITCH Service will only be activated by BIDSWITCH upon acceptance by you of each such Demand Partner request that you receive via the BIDSWITCH UI.

4. Supply Partner obligations

4.1 You warrant, represent and confirm that:

4.1.1 all Sites and their content shall comply with the BIDSWITCH sell-side policies relating to the use of the BIDSWITCH Platform (available at www.bidswitch.com) as updated by BIDSWITCH and advised to you from time to time..

4.1.2 you will not provide any data (including data containing Personal Data) to the BIDSWITCH Platform unless you have the right to do so in accordance with all applicable laws.

4.2 You agree to observe BIDSWITCH’s online technical specifications as updated by BIDSWITCH and advised to you from time to time..

4.3 You agree that if BIDSWITCH, acting reasonably, believes that you do not comply with any obligations of this section 4, BIDSWITCH may immediately suspend your connection to the BIDSWITCH Platform (either with or without providing notice of this) to you, until BIDSWITCH is reasonably satisfied with your compliance with this section 4.

4.4 You agree to comply with the Data Processing Addendum.

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

4.6 You represent and warrant that each third party advertising technology partner that you work with in relation to the Media that you makes available for sale through the BIDSWITCH Platform through (each a “**Consented Third Party Vendor**”) (a) have obtained all necessary consents from end users for purposes of personalizing advertising, in accordance with the GDPR; (b) are listed as an ‘ad technology provider’ by ‘Google DV360’ at <https://support.google.com/admanager/answer/9012903> (and as ‘Google DV360 may update from time to time) in relation to Media that you make available through ‘Google DV360’; and (c) comply with the IAB’s consent management platform (“**CMP**”) and/or any other GDPR compliant CMP in relation to all other Media that you make available for sale through the BIDSWITCH Platform. For each Consented Third Party Vendor, you will send BIDSWITCH all information reasonably requested by BIDSWITCH (and as BIDSWITCH may update from time to time).

5. BIDSWITCH Obligations

5.1 BIDSWITCH shall use all reasonable endeavours to provide Advertising to you in accordance with this Agreement.

5.2 BIDSWITCH shall use all reasonable endeavours to ensure that Demand Partners ensure that their Advertising and the websites, goods and services that they promote and Bids comply with the BIDSWITCH buy-side policies relating to the use of the BIDSWITCH Platform (available at www.bidswitch.com) as updated by BIDSWITCH and advised to you from time to time.

5.3 BIDSWITCH will measure the delivery of the Advertising using BIDSWITCH’s reporting systems and pay you accordingly. BIDSWITCH reserves the right to use ‘Media Rating Council’ (“**MRC**”) accredited (or similar) technology to measure the delivery of Advertising provided to you. If there is a discrepancy between the BIDSWITCH reporting systems and yours, the BIDSWITCH Platform reporting systems will prevail, and 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. Each party shall provide the other with daily automated reporting by email and/or via an ‘API’ service and/or any other method that is mutually agreed between the parties from time to time. BIDSWITCH shall provide the Supply Partner with (i) daily reporting to provide a preliminary guide of gross and net revenue and applicable fees; and (ii) final monthly financial reporting that BIDSWITCH will detail (a) the amounts that BIDSWITCH shall invoice the Supply Partner for; and (b) what the Supply Partner should invoice BIDSWITCH for (subject to any ‘**Refund Eligible Deliverables**’ as defined below) (the “**Monthly Report**”). 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 5.

5.4 BIDSWITCH agrees to comply with the Data Processing Addendum.

6. Rejection of Sites

BIDSWITCH may reject any Sites that you make available through the BIDSWITCH Platform that does not comply with section 4.1. However, you acknowledge and agree that BIDSWITCH has no obligation to review and/or approve any Sites that you make available to the BIDSWITCH Platform and that BIDSWITCH accepts no liability for any Site or content of any Site that is made available through the BIDSWITCH Platform on your behalf in accordance with this Agreement.

7. Payment for Media and BIDSWITCH Services

7.1 Unless otherwise agreed between you and BIDSWITCH via the BIDSWITCH UI, BIDSWITCH is responsible for paying you for Media that you sell using the BIDSWITCH Platform in accordance with the BidSwitch Supply Partner Agreement within 60 days of the receipt of invoice providing BIDSWITCH has itself received payment for such Media. In accordance with this Agreement you shall send BIDSWITCH an invoice for this to the e-mail address set out on the BidSwitch Supply Partner Agreement. The settlement of such invoice may be reduced by any amount that BIDSWITCH may have previously overpaid to you or with respect to fees invoiced to you for the corresponding period. BIDSWITCH reserves the right to withhold payment for Media until it has been paid for such Media.

7.2 **Refund-Eligible Deliverables:** BIDSWITCH may request (and you shall repay to BIDSWITCH) the Media Cost and any fees relating to any Impressions that are subsequently determined by Google and/or any MRC accredited (or similar) technology to be fraudulent, suspect in quality, or unusable, according to Google's advertising standards and/or such MRC accredited (or similar) technology ("**Refund-Eligible Deliverables**"). BIDSWITCH may request a refund for Refund-Eligible Deliverables and you will deduct or provide a credit for such Refund-Eligible Deliverables from the next invoice you provide to BIDSWITCH. If requested, BIDSWITCH will provide you with monthly summary reports of Google's and/or such MRC accredited (or similar) technology that will include the Impressions and monetary values of Media for which a refund is sought.

8. Intellectual Property

8.1 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.

8.2 If BIDSWITCH provides you with software and/or access to the BIDSWITCH User Interface in connection with the BIDSWITCH Services, BIDSWITCH grants you a non-exclusive, non-sublicensable licence for use of that software and/or BIDSWITCH User Interface. Such 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, 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, User Interface, software or related documentation.

8.3 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.

9. Liabilities and indemnities

9.1 You agree to indemnify and hold harmless BIDSWITCH, its affiliates, agents and Demand 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. Demand 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.

9.2 Subject to 9.3, 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.

9.3 Nothing in this Agreement limits either parties' liability for any damages resulting from loss of life, harm to body or health, Each parties liability is limited to typical foreseeable damages.

10. Representations, warranties and disclaimers

10.1 You represent and warrant that you have the full power and authority to agree to this Agreement and will provide BIDSWITCH with no less favourable rights and priorities in relation to Media selling opportunities that you provide any other party that you make your Media available to.

10.2 You represent and warrant that (i) you are the owner of, or are legally authorised to act on behalf of the provider(s) of the Sites; and (ii) you have control over the way in which Media is made available through the BIDSWITCH Platform on Sites.

10.3 Unless expressly stated on this Agreement, BIDSWITCH does not make any promises about the BIDSWITCH Platform or its related services.

10.4 BIDSWITCH will not be liable to you for any Advertising that a Demand Partner may make available to you through the BIDSWITCH Platform.

10.5 In accordance with clause 10.3 of the Agreement, BIDSWITCH does not make any guarantees that any particular Bid Request may be seen by a Demand Partner, nor does BIDSWITCH make any guarantee of a Demand Partner bidding and/or winning on any such Bid Request. For avoidance of doubt, BIDSWITCH shall have no obligation to ensure that a Demand Partner shall establish connection with you on the BIDSWITCH Platform.

11. Limitation of liability

11.1 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.

11.2 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).

11.3 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 BIDSWITCH TO SUPPLY PARTNER IN ANY ROLLING 6 CALENDAR MONTH PERIOD ENDING THE DATE ON WHICH SUCH LIABILITY ARISES.

12. 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.

13. 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.

14. 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.

15. 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 the BIDSWITCH 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. Publicity

Except as provided in section 8.3, 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.

21. No third party rights

A person who is not party to this Agreement shall have no rights under any applicable laws to enforce any of the terms of this Agreement.

22. Confidentiality

22.1 For the purposes of this Agreement, "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 Supply Partner which is not generally publicly available.

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

23. Integration

Notwithstanding any other provisions of this Agreement, BIDSWITCH shall have no obligation to integrate your system(s) with the BIDSWITCH Platform and BIDSWITCH reserves the right to suspend (either temporarily or permanently) any integration process if you do not comply with BIDSWITCH's reasonable requests and requirements relating to its integration.

24. Change of terms

If BIDSWITCH advises you of a change to the BIDSWITCH 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 using the BIDSWITCH Platform for a period of 21 days after the date that you advise BIDSWITCH of this, after which you must stop using the BIDSWITCH Platform.