

# ***IMPROVE DIGITAL BUYER TERMS AND CONDITIONS***

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**BUYER TERMS AND CONDITIONS ("BTC")** of **IMPROVEDIGITAL INTERNATIONAL B.V.**, a private limited liability company with its registered office address in (1119 PX) Schiphol-Rijk at Beechavenue 182, the Netherlands, and any of its affiliates hereinafter referred to as **"Improve Digital"**.

Improve Digital makes available a digital platform to Sellers to sell, via RTB auction or direct deals, advertising space to Buyers. Buyers can be advertisers, or an agency, DSP or other intermediary who (ultimately) works for an advertiser. Sellers can send certain data together with the offer of advertising space (the bid), and the advertiser or other parties on the buying side may also record certain data. Improve Digital does not determine what data, including personal data, to collect or process via the Improve Digital platform and is only technically responsible for allowing Seller supply and Buyer demand to meet.

## DEFINITIONS

1. In these BTC the following expressions shall have the meaning as set out next to them:

**"Ad Inventory"** means advertising inventory from Sellers' Sites.

**"Ad Unit"** means a unit of Advertising Inventory.

**"Agreement"** means any agreement between Improve Digital and Buyer including the BTC and the schedules and/or the annexes to the agreement.

**"Applicable Data Protection Law"** means all applicable data protection and privacy laws, including EU Data Protection Law where applicable to a Party.

**"Beta Feature"** means any Service feature that is expressly identified as "Beta", "Alpha", "Experimental" or "Pre-Release" or that is otherwise expressly identified as unsupported.

**"Bidding Terms"** means with respect to a user of the 360 Platform all of its criteria, specifications and other settings as set in the 360 Platform relating to a particular Ad Unit, a particular Ad Inventory or a particular audience, as applicable.

**"Bid(s)"** means, with respect to a particular auction, the price of the bid entered in an auction by Buyer (always calculated back to a CPM rate).

**"Bid Request"** means a request from a Seller, facilitated by Improve Digital, sent to Buyers to bid on Ad Inventory.

**"Bid Request Data"** means the data that is sent in the Bid Request to Buyer. Bid Request Data can consist of both Seller Data and Improve Digital Data. Where some Bid Request Data may qualify as Personal Data, in order to achieve a high-level of compliance Improve Digital considers all Bid Request Data as Personal Data.

**"Block List"** means a list of advertisers, brands, Buyers and industries of which Ad Unit cannot be served on certain indicated Ad Inventory.

**"Buyer"** means an advertiser, agency, network, technical provider or other party that buys and/or attempts to purchase and/or facilitates the purchase of Ad Inventory.

**"Buyer Data"** means all data that Buyer receives as Bid Request Data. The resulting Buyer Data can include, but is not limited to, Buyer Personal Data.

**"Buyer Personal Data"** means that part of Buyer Data that is considered to be Personal Data, and for which Buyer is considered to be the Controller.

**"Clearing Price"** means the actual price charged to the winning bidder for displaying Ads.

**"Controller"**, **"Data Subject"**, **"Personal Data"**, **"Processor"** and **"Recipient"** all have the meaning in the DP Directive, and as from May 25, 2018, the GDPR.

**"Cookies"** means the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user within the meaning of the EP Directive, and any successor legislation thereto.

**"CPC"** stands for "Cost Per Click". CPC defines how much revenue a Seller receives each time a user clicks an advertisement link on his website.

**"CPM"** means cost per mille (cost per a thousand impressions).

**"Deal-ID"** means deals directly made between Buyer and a Seller based on a Deal-ID number.

**"Erroneous Bid"** means a substantially higher bid by a Buyer than might be expected given the circumstances and from which can (and may) be deduced that this was caused by an inadvertent error of the Buyer.

**"EU Data Protection Law"** means all applicable EU data protection and privacy laws, including: (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("**DP Directive**"), and on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("**GDPR**"), (ii) the Privacy and Electronic Communications Directive 2002/58/EC ("**EP Directive**"), and (iii) any other European Union or EU Member State laws made under or pursuant to (i) and (ii); in each case as such laws may be amended or superseded from time to time.

**"First Price Auction"** means an auction mechanism where the highest Bid wins the auction and where the Clearing Price equals the amount of this highest Bid.

**"Improve Digital Data"** means all data that Improve Digital collects and stores in connection with it providing the Services, as specified in more detail in the Improve Digital Platform Privacy Policy, as updated from time to time and available at <https://www.improvedigital.com/platform-privacy-policy/>.

**"Improve Digital Personal Data"** means that part of Improve Digital Data that is considered to be Personal Data, and for which Improve Digital is considered to be the Controller.

**"Net Bid"** means the final CPM price of a Buyer that competes in the auction.

**"Parties"** means Improve Digital and Buyer and **"Party"** means Improve Digital or Buyer.

**"Real Time Bidding" or "RTB"** means the possibility to buy Ad Inventory from Improve Digital using a demand side platform at the Buyer side or any other buying technology including the 360 Platform and using an auction to define the Winning Bid. This can be standard programmatic buying or buying using a Deal-ID.

**"Second Price Auction"** means an auction mechanism where the highest Bid wins the auction and the Clearing Price equals the second-highest Bid plus 0,01 ct.

**"Seller"** means a customer of Improve Digital or Improve Digital itself, a media owner, network or any other party that sells and/or attempts to sell and/or facilitates the sale of Ad Inventory through the Service(s).

**"Seller Data"** means all data provided by Seller to Improve Digital under a separate master services agreement between Seller and Improve Digital, including but not limited to Seller Personal Data, and which Improve Digital may process on Seller's behalf.

**"Seller Personal Data"** means that part of Seller Data that is considered to be Personal Data, and for which Seller is considered to be the Controller.

**"Seller Sites"** means the digital properties of Seller, or its clients, on which the Ad Inventory appears, such as for example, websites, syndication platforms, video players, and apps.

**"Service(s)"** means the service provided by Improve Digital to Buyer in the form of technology to allow Buyer to receive Bid Requests and place Bids, in order to buy Ad Inventory, and or any other ancillary services performed by Improve Digital under the Agreement.

**"Static Bid or Tag based buying"** means all the buying of Ad Inventory between Buyer and Seller that is not done by making use of the RTB infrastructure or the auction infrastructure.

**"UI Numbers"** means the numbers in the user interface communicated to Buyer for reporting purposes but not for invoicing.

**"Visitor"** means a unique individual consuming media, services, content or any other digital activity and therewith generating Ad Inventory.

**"Winning Bid"** means the price that wins the auction

**"360 Platform"** means Improve Digital's proprietary technology platform and Service(s), whether or not via tools of third party suppliers, through which parties may buy or sell Ad Inventory including any integration interfaces.

#### **APPLICABILITY OF THE BTC**

2. These BTC apply to the Agreement and any agreement entered into between Improve Digital and Buyer in relation to the Service(s) provided by Improve Digital to Buyer.

3. Any terms and conditions set forth in any document(s) issued by Buyer either before or after issuance of any document by Improve Digital setting forth or referring to these BTC are hereby explicitly rejected and disregarded by Improve Digital, and any such terms shall be wholly inapplicable to any Agreement between Improve Digital and Buyer and shall not be binding in any way on Improve Digital.

#### **AUCTION PROCESS**

4. Improve Digital may use a First Price Auction, Second Price Auction or another auction mechanism to perform the Services under the Agreement.

5. The highest Bid may not always win an auction due to current and future functionality within the 360 Platform, including, without limitation, functionality to specify Bidding Terms related to the purchase of its Ad Inventory and determine who can bid on and win auctions of Ad Inventory in the Service(s).

6. Buyer shall have no recourse for any transaction (e.g., any purchase or sale of Ad Inventory) that does occur based on Erroneous Bids and/or Bidding Terms.

7. Improve Digital may reject or deactivate Ad Units that do not comply with its respective policies, or do not comply with any applicable law, rule or regulation, or for any reasonable business reason.

#### **INVOICING AND PAYMENT**

8. Improve Digital will add taxes, duties and similar levies to its price where Improve Digital is required by law to pay or collect them and these will be paid by Buyer together with the price.

9. Improve Digital reserves the right to make corrections to former invoices with regard to tax where Improve Digital is required by law to do so.

10. Prices are increased once a year to a maximum amount of the ECB price index "Harmonised Index of Consumer Prices (HICP)" as published by the European Central Bank. New prices will become applicable per the first of the next full calendar month.

11. All invoices of Improve Digital shall be payable within thirty (30) days after receipt of the invoice. In the event of failure to pay within this term, Buyer shall be in default without any notice of default or reminder being



required and shall be obliged to pay interest of one and a half percent (1.5%) per month on the entire amount that is due as of the date on which payment should have been made. Invoices shall be based on Improve Digital's administration and billing system.

12. Complaints about invoices must ultimately within fourteen (14) days of the invoice date be submitted by Buyer in writing to Improve Digital stating the reasons why the disputed amount is incorrect along with supporting documentation. Subsequent complaints will not be processed. In that case, Buyer is deemed to have agreed with the specifications of the relevant invoice. Complaints about the invoice do not suspend the payment obligation of Buyer.

13. Improve Digital shall provide Buyer with a monthly invoice with the amount to be paid to Improve Digital, including the sum of the auctions won by Buyer multiplied by the Clearing Price for that particular month, which shall be e-mailed to Buyer no later than the 15th of each month after the month of delivery.

14. In the event the buying takes place based on the billing numbers of the Buyer's technology (mostly non-RTB), upon which Parties explicitly have to agree in writing, the numbers are based upon Buyer's end of month reports, which are taken from Buyer's system. Buyer agrees to provide Improve Digital a login to the Buyer's technology so as to provide the relevant data on a regular basis to Improve Digital. Discrepancies with Improve Digital's own administration are subject to investigation by Improve Digital and shall have to be evidenced by Buyer with substantial proof at Improve Digital's sole discretion.

15. Invoices are due regardless of whether Buyer has collected payment from advertisers or Buyer's agents and regardless of the total size of the amount on the invoice in any given month. Buyer shall also be responsible for and shall pay any applicable sales, use or other taxes or duties/tariffs applicable to provision of the Service(s).

16. Buyer understands and agrees that UI Numbers, Invoices, Bids and Net Bids are based on specific Bids and volumes and are adjusted for purposes including, but not limited to, statistical errors, technical matters, technical charges, variable service fees, currency differences and other matters.

17. All expenses either in or out of court made by Improve Digital for the collection of any amount due under the Agreement shall be for account of Buyer, including but not limited to the recovery of Improve Digital's reasonable attorney's fees and expenses, which costs shall amount to no less than fifteen per cent (15%) of the amount owed.

18. In the event Buyer uses the Service(s) to purchase Ad Inventory directly from a Seller not using the RTB infrastructure, Buyer will be solely responsible for payment obligations to the applicable Seller in respect of the purchased Ad Inventory, and, for purposes of clarification, Improve Digital will have no responsibility for such payment obligations. Buyer will defend, indemnify and hold harmless Improve Digital from all third-party claims or liabilities (including, without limitation, reimbursement for reasonable outside attorneys' fees and disbursements) arising out of or related to Buyer's payment obligations for Ad Inventory purchased by Buyer directly from a Seller.

19. Notwithstanding anything to the contrary in these BTC, Buyer will be ultimately responsible for any and all payment obligations for its purchases of Ad Inventory through the Service(s). All invoices sent by a third party to Improve Digital which can be reasonably allocated to the Buyer shall be charged on by Improve Digital to the Buyer by means of an invoice which invoice shall be paid by the Buyer in accordance with this BTC. Buyer will defend, indemnify and hold harmless Improve Digital from all third-party claims or liabilities (including, without limitation, reimbursement for reasonable outside attorneys' fees and disbursements) arising out of or related to such invoices.

20. Buyer shall not have the right to withhold or reduce any payments or to set-off existing and future claims against any payments due under the Agreement or under any other agreement that Buyer may have with Improve Digital and agrees to pay the amounts under an Agreement regardless of any claimed reduction, withholding or offset which may be asserted by Buyer or on its behalf.

## SERVICE

21. With regards to any RTB related trading on the 360 Platform, Improve Digital shall act in its own name and for its own account between Buyer and Seller. As a result, Improve Digital shall sell the Ad Inventory to Buyer and shall subsequently invoice Buyer. Improve Digital reserves the right to adjust invoice instruction taking into account corrections as described in clauses 4-20 of the BTC. With regards to RTB, there will be no direct transactions, agreements or invoices in place between Buyer and Seller.

22. Before making the Service(s) available Improve Digital and Buyer shall test the interaction between the 360 Platform and the Buyer's platform used. Only when initial testing is in the opinion of Improve Digital successfully completed, Improve Digital shall make the Service(s) available to Buyer.

23. Improve Digital shall perform the Service(s) for Buyer and deliver Buyer's Ad Units through the Service(s) in accordance with proprietary criteria built into the Service(s). Improve Digital may update or modify the Service(s) from time to time. Buyer shall not have approval rights over these updates but Improve Digital shall work diligently and in good faith with Buyer to maintain Buyer's access to the Service(s) should an update interfere with that access without any liability of Improve Digital in this respect.

24. The Service(s) and/or the 360 Platform will be offered in its current state ("as is") and Improve Digital gives Buyer no warranty with respect to the Service(s) and/or the 360 Platform.

25. Improve Digital gives Buyer no guarantee that: a) the use of the Service(s) and/or the 360 Platform will meet Buyer's requirements, b) the use of the Service(s) and/or the 360 Platform will be uninterrupted, timely, secure or free from errors and/or defects at all times, c) all information acquired by Buyer as a result of the use of the Service(s) and/or the 360 Platform will be accurate or reliable, and d) that defects in the operation or functionality of any software as part of the use of the Service(s) and/or the 360 Platform will be restored.

26. Buyer covenants that, when using a Service, the Bidding Terms entered into the Service will be true and correct and complete in all material respects.



## AD INVENTORY

27. Buyer agrees and acknowledges that Ad Units may be displayed to Visitors based on Bids and other criteria selected by Buyer and/or Buyer's advertisers, and Buyer is solely responsible for their choices on such Bids and criteria.
28. Buyer agrees that it has no exclusivity to serve Ad Units on any specific Ad Inventory.
29. Buyer agrees that no ad impression guarantees or minimums are provided by Improve Digital. Buyer agrees that no guarantees are given with regard to the position of the Ad Unit.
30. Buyer agrees to abide by and conform to the specific Block List and understands that this can be modified from time to time through email or any other form of written communication including the Buyer user interface.
31. Buyer agrees and guarantees that each advertiser name and URL entered into the Buyer technology are correct and accurate.
32. Buyer expressly confirms and warrants it will not redirect Ad Inventory it receives from the 360 Platform to third parties other than direct advertisers and/or media agencies and/or (agency) trading desks. Nor will Buyer redirect the inventory in any way to other ad networks, ad exchanges or any other buying parties.

## AD UNITS AND CRITERIA

33. In order to enable the performance of the Service(s), Improve Digital is allowed, solely for the purposes of performance of the Agreement and solely during the term of the Agreement, to connect to the Buyer's technology solely in order to enable sending Bid Requests to Buyer and receiving Bids from Buyer.
34. In order to make use of the Service(s), Buyer is allowed, solely for the purposes of performance of the Agreement and solely during the term of the Agreement, to connect to the 360 Platform in order to enable Improve Digital to automatically send Bid Requests to Buyer, and for Buyer to place Bids. Buyer and Improve Digital may agree in writing certain parameters for the delivery of Bid Requests from the 360 Platform, such as exclusions of certain sites or limiting Bid Requests to certain geographies.
35. Buyer will ensure that all Ad Units (including, without limitation, all rich media aspects of Ad Units) are rendered and served in a format consistent with, and which can be supported by, the then-current indicated terms and specifications provided and shall also abide with the BTC.
36. Buyer will permit Improve Digital to test, upon the effective date of the Agreement and from time to time throughout the term of the Agreement, the correct implementation by Buyer of the technical requirements for receiving Bid Requests, for placing Bids and serving Ad Units, more specifically, and for compliance with the specifications and the BTC more generally, and agrees to provide contact information, technical specifications, and other information related to operating systems reasonably requested by Improve Digital. If such testing identifies any non-compliance, Buyer will bring the Buyer's technology into compliance within twenty-four (24) hours of Improve Digital's notice of non-compliance, and Buyer shall not serve any Ad Units to Ad Inventory until Improve Digital re-tests and certifies the Buyer's technology. Notwithstanding the foregoing, in the event that Buyer is unable to bring the Buyer's technology into compliance within seventy-two (72) hours of such notice of non-compliance, Improve Digital shall have the right to terminate the Agreement immediately upon written notice to Buyer.

## AD AND CREATIVE POLICIES

37. Buyer represents and warrants that: (a) it will not provide or submit Ad Units that contain or promote: (i) concepts that are hateful or disparaging towards any race, religion, gender, sexual orientation or nationality; (ii) firearms, bombs and other weapons, explosives or how-to guides for any of the above; (iii) any content that contains or promotes illegal activities, including, but not limited to hacking; (iv) any content that contains or promotes pornography or graphic sexual depictions; (v) any content that contains, promotes or links to indecent, obscene or highly explosive subject matter; (vi) any content that facilitates or promotes illegal file-sharing (MP3s, copyright protected video, or the equivalent), adware, spyware, malware, religious products & services, and are deemed to be objectionable, and that (b) all Ad Units will be in compliance and conformity with the local laws and regulations or with any additional policies or specifications provided and (c) it will not provide or submit Ad Units that when viewed or clicked on by a Visitor's computer causes such Visitor's computer to download any software application. Buyer shall compensate Improve Digital for all damages and costs Improve Digital may suffer resulting from a breach of this provision 37.
38. Improve Digital shall have the right to reject Ad Units deemed to be objectionable or that do not comply with local laws and regulations or with any additional policies or specifications provided.
39. Improve Digital shall have the right to discontinue the collaboration in the event that Buyer fails to comply with any local laws and regulations or with any additional policies or specifications provided.

## DATA PROTECTION OBLIGATIONS RELATED TO THE SERVICES

40. Buyer and Improve Digital will use and will provide the Service(s) in compliance with Applicable Data Protection Law and Buyer shall process Bid Request Data and other Buyer Data in compliance with such laws, rules and regulations.
41. Improve Digital is responsible for the Improve Digital Data. For the processing of Improve Digital Data for the purposes as described in section 46, Improve Digital is the sole Controller and Buyer is a Recipient.
42. Seller is responsible for Seller Data. For the processing of Seller Data for the purposes as described in section 44, Seller is the sole Controller, Improve Digital is a Processor and Buyer is a Recipient.
43. For the avoidance of doubt, Buyer is not a Processor acting on behalf of and on instruction from either Improve Digital or Seller.



44. Buyer is responsible for Buyer Data and has to determine if and when it is a Controller for such Buyer Data containing Personal Data and is responsible for determining and meeting its rights and obligations with regard to handling such Personal Data, including for the onward transfer to a third country or an international organisation which cannot ensure an adequate level of protection, under Applicable Data Protection Law.

45. In some cases Buyer Data, Improve Digital Data and Seller Data may be very similar or identical to one another and similar or identical entries may exist. For example, the timestamp and IP address for an Ad Unit. However, such similarities or overlap have no impact on the Parties' responsibilities for their respective data sets.

46. Buyer may only use Improve Digital Data and Seller Data for remitting a Bid to the auction process. Buyer is required to either pass the advertiser's URL in the Bid or declare all click-through URLs associated with its Ad Units in Improve Digital's user interface.

47. Buyer represents and warrants that it will not use special categories of Personal Data in connection with placing Bids or its provision of Ad Units.

48. Buyer represents and warrants that, in the event that the receipt by Buyer of any Improve Digital Data and/or Seller Data would result in a transfer of Personal Data to a third country or an international organisation which cannot ensure an adequate level of protection under EU Data Protection Law, it will inform Improve Digital thereof.

49. Buyer understands and agrees that it shall not store and gain access to Cookies through the Ad Units on any Ad Inventory.

50. Buyer agrees and will verify that if the information communicated by Buyer or their advertisers through the Service(s) contains Personal Data it is legally entitled to do so, and that Improve Digital and Sellers are legally entitled to process such Personal Data. This includes, but is not limited to, providing appropriate information and getting valid and verifiable consent, also for and on behalf of Improve Digital where appropriate.

51. Buyer represents and warrants that it will comply with the above obligations and Buyer shall fully defend, indemnify and hold harmless (*volledig vrijwaren*) Improve Digital and the Sellers from any and all government enforcement action, third party claims, including those of Data Subjects, and/or liabilities (including reasonable attorneys' fees) resulting from any breach of its obligations, representations or warranties herein.

#### **DATA PROTECTION FOR DATA PROCESSING NOT RELATED TO THE SERVICES**

52. In the event of (a) any processing by Buyer of Personal Data beyond the purposes mentioned in section 46, and/or (b) the use of any Cookies by Buyer, Buyer shall be deemed sole Controller with respect to such Personal Data processing activities and the responsible party with respect to the use of such Cookies.

53. Buyer is solely responsible and liable for the compliance with the Applicable Data Protection Law for of any processing activities related to Buyer Personal Data and/or use of Cookies. Both Improve Digital and Seller shall have no liability with respect to such processing activities and/or such use of Cookies.

54. Whereas Buyer does not have a direct relationship with Seller, Buyer may need the cooperation of Seller to achieve compliance with the Applicable Data Protection Law and to receive permission to access the Seller Sites. Notwithstanding the foregoing, Buyer shall always be ultimately responsible for the fulfilment of its obligations under the Applicable Data Protection Law and liable if the fulfilment of these obligations is not forthcoming.

55. Where Buyer wants to collect or process Buyer Personal Data and/or use Cookies or similar technologies, in the context of or when serving Ad Units on Seller Sites for purposes other than for Buyer receiving Bid Requests or sending Bids, Buyer may be obliged to request valid and verifiable consent under the Applicable Data Protection Law, by sending through Improve Digital to Seller a link as provided by Buyer to Buyers' own information for Data Subjects as shown on Buyers Website together with Buyers' request to implement this link in Sellers' information for Data Subjects in order to address and meet the legal requirements of the Applicable Data Protection Law for these processing activities by Buyer. It is Buyers' sole responsibility to provide Improve Digital with a good working link.

56. Improve Digital expressly assumes no responsibility for the above, including any control over the placement or subsequent use by Buyer of such Buyer Cookies and of any resulting Buyer Data that is Personal Data.

57. Without limiting the foregoing, Improve Digital can make commercially reasonable efforts to coordinate in connection with the above between Buyer and any Sellers indicated by Buyer, at the express request of Buyer. Buyer is responsible to submitting a detailed request providing all necessary information to the Seller in relation to the necessary access by Buyer to Sellers' Site. Sellers can withdraw their permission at any time.

58. Buyer represents and warrants that it will comply with the above obligations and Buyer shall fully defend, indemnify and hold harmless (*volledig vrijwaren*) Improve Digital and the Sellers from any and all government enforcement action, third party claims, including those of Data Subjects, and/or liabilities (including reasonable attorneys' fees) resulting from any breach of its obligations, representations or warranties herein.

#### **LIABILITY**

59. Other than as expressly set out in the Agreement, Improve Digital's total aggregate liability in connection with an attributable failure to fulfil any obligations under the Agreement, a wrongful act and/or any other legal grounds, for any kind of damage including claims of third parties, including Data Subjects, and regulatory authorities, will (cumulatively) be limited to the amount paid out in the relevant matter under the liability insurance taken by Improve Digital. If, for any reason whatsoever, no payment is made under the aforementioned insurance, the total liability of Improve Digital is limited to the amount directly charged by Improve Digital to the Buyer for the Services in the previous three (3) months prior to the date the alleged failure to fulfil any obligations under an Agreement and/or the wrongful act first arose, but in no event to exceed €25,000 (twenty-five thousand Euro).



60. Any Buyer's claim for damages or otherwise must be brought by Buyer within thirty (30) days of the date of the event giving rise to any such claim, Improve Digital shall have no obligation or liability to Buyer if the claim is made with the competent court after a period of one (1) year from the date on which the other Party was aware or could have been aware of the facts on which the claim is based.

61. Buyer agrees to indemnify and hold harmless (*volledig vrijwaren*) Improve Digital from and against any costs and damages—resulting from claims of third parties, including but not limited to regulatory authorities, Data Subjects, Sellers, Improve Digital's suppliers, media owners, clients and/or Visitors, in connection with Buyer's use of the Service(s), the Ad Units, the 360 Platform or tools of third party suppliers instructed by Improve Digital.

62. The limitations of liability in this article are not applicable in case of wilful misconduct or gross negligence (*opzet en bewuste roekeloosheid*).

63. The above provisions set out the entire liability of Improve Digital and its affiliates with regard to any claim, based on contract, tort or otherwise, in connection with the subject matter of the Agreement. The limitation of Improve Digital's liability applies accordingly to its employees, agents and sub-contractors.

## **SUBCONTRACTING AND ASSIGNMENT**

64. Improve Digital shall be entitled to use third-party services for the execution of the Agreement. Improve Digital is not liable for damages arising out of any act, failure to act or omission of such third persons.

65. Improve Digital has the right to wholly or partially assign the rights and obligations under an Agreement to a third party. The approval of Buyer of such assignment is hereby irrevocably granted by Buyer. Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Improve Digital and this stipulation is binding on third parties (*goederenrechtelijke werking*).

## **INTELLECTUAL PROPERTY RIGHTS**

66. Except as may be expressly provided herein, neither Party shall have or obtain any rights in or to any intellectual property rights of the other Party in connection with the Agreement.

67. Without limiting the generality of the foregoing, Improve Digital retains all right, title and interest in the Service(s) and to the software and other technology used by Improve Digital to operate the Service(s), Improve Digital's trademarks, and all enhancements made by Improve Digital to any of the foregoing from time to time, including but not limited to all patent, trademark, copyright, trade secret and all other intellectual property rights in the foregoing. Buyer may not use the Service(s) except pursuant to the limited rights expressly granted in these BTC. All rights not expressly granted herein are reserved by Improve Digital. Except for the licences expressly granted to Improve Digital under the Agreement, Buyer retains all right, title and interest in and to the Ad Units, Buyer Ad Tags and Buyer's trademarks.

68. Buyer shall not, and shall not attempt to, and will not assist or knowingly permit any third party to: (a) alter, adjust, copy, reproduce, modify, delete, damage, disassemble, decompile, reverse engineer or create derivative works of the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital, or any portions thereof; or (b) breach, disable, tamper or interfere with the proper operation of the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital, or with any security measures designed to protect the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital. Buyer shall compensate Improve Digital on demand for any damages and costs Improve Digital may suffer resulting from a breach of this provision 68.

69. Buyer guarantees that no (intellectual and/or industrial property) rights of any third party are infringed by the Ad Units or any other Buyer Data supplied by Buyer to Improve Digital in connection with the Service(s). Buyer indemnifies (*vrijwaren*) Improve Digital against all claims of third parties in this regard and shall compensate Improve Digital on demand for damages suffered by Improve Digital as a consequence and in connection with such an infringement.

## **FORCE MAJEURE**

70. "Force Majeure" is in these BTC in addition to its effect in the law and jurisprudence, all external causes, foreseen or unforeseen, that Improve Digital cannot influence, but which prevent Improve Digital to fulfil its obligations, strikes in the business included, including but not limited to regulations by any government authority, fire, flood, power outage, interruption, failure or defects in internet, telephone or other interconnection service or in electronic or mechanical equipment, staff illness of Improve Digital exceeding ten (10) working days, strikes, late delivery or unsuitability of materials, the failure by third parties engaged by Improve Digital to fulfil their obligations and/or default by one of the suppliers of Improve Digital.

71. If Improve Digital is unable to meet its obligations due to Force Majeure, it will not be liable. Insofar as compliance is not permanently unfeasible, its obligations will be suspended. If the period during which compliance is not feasible due to Force Majeure lasts or looks set to last longer than two (2) months, either Party will be entitled to terminate the Agreement, without any liability to pay damages.

72. If at the time Force Majeure takes effect, Improve Digital has already partly met its obligations or can only partly meet its obligations, it will be entitled to invoice separately the Service(s) that have already been delivered or can be delivered, and Buyer will be obliged to settle this invoice as if it concerned a separate agreement.

## **CONFIDENTIALITY**

73. Each Party shall maintain as confidential any information furnished or disclosed to one Party by the other Party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing Party and its customers, with the exception of any information needed to improve the result of the trading of media inventory.

74. Each Party shall be entitled to announce publicly that it has entered into the Agreement. Buyer grants Improve Digital a non-exclusive, non-transferable, royalty-free licence to use in block and stylized form Buyer's company name, service, and/or logo for use by Improve Digital on its website, promotional materials, and marketing collateral in combination with the Service(s). However, neither Party will make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the other Party or its employees, directors and/or officers.

#### **TERM OF THE AGREEMENT & TERMINATION**

75. An Agreement shall remain into effect for the period as specified in the Agreement. After such period the Agreement shall each time tacitly be renewed by the same term. The Agreement can be terminated by either Party by giving a registered notice thereof no less than three (3) full calendar months prior to the end of the term of the Agreement. If the Agreement has been agreed on for an indefinite period of time, the Agreement can be terminated by either Party by giving a registered notice thereof no less than six (6) months prior to the termination date of the Agreement.

76. Each of the Parties shall be entitled to terminate, in part or in whole and without any liability whatsoever an Agreement prematurely by written notice to the other Party in each of the following cases:

- (a) if the other Party breaches its obligations under such Agreement and has not cured such breach within thirty (30) days following receipt of a written notice of the breach;
- (b) if the other Party applies for a suspension of payments or is granted a suspension of payments, bankruptcy or winding-up proceedings are instituted against the other Party or the other party is declared bankrupt or wound up; the other party's company is liquidated or terminated; or
- (c) a substantial part of the other Party's capital is attached preventing it from fulfilling its obligations under the Agreement.

77. Without limiting the foregoing, in the event of a breach by Buyer of any of its obligations under the Agreement, Improve Digital has the right to immediately suspend its obligations under the Agreement. Parties agree that any unjustified failure of Buyer to pay any amount due to Improve Digital and unauthorized use of the Service(s) by Buyer or on behalf of Buyer shall qualify as a default which justifies termination of the Agreement. Buyer waives its rights to dissolve or nullify the Agreement or to have the Agreement dissolved or nullified in accordance with the Dutch Civil Code.

78. Upon occurrence of any of the events referred to above in provisions 76 and 77, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

79. Upon occurrence of any of the events referred to above in provisions 76 and 77, Buyer shall immediately cease the use of the Service(s). All use of the Service(s) after such termination by employees of Buyer or its affiliates and other persons who use or have used the Service(s) on behalf of Buyer shall be attributed to Buyer and Buyer shall be liable for such unauthorized use. Termination of the Agreement for whatever reason shall not release Buyer from its obligation to pay the Buyer fees or any other fees or charges for the term of the Agreement until the termination date.

80. Termination of the Agreement does not release Parties from their obligations under the following provisions of these BTC: 59-63 (Liability), 66-69 (Intellectual property rights), 73,74 (Confidentiality), 75-80 (Term of the Agreement & termination), 87-89 (Applicable law and jurisdiction), or other provision of the Agreement which, by their nature, are intended to survive the termination of the Agreement.

#### **REPRESENTATION, RESPONSIBILITIES AND OBLIGATIONS OF BUYER**

81. Buyer represents and warrants that it has full authority to enter into and carry out the Agreement. Buyer is solely and fully responsible and liable for (a) its own use or the use of third parties being connected to the 360 Platform or the Service(s) through the Buyer ("**Connected Third Party**") of the 360 Platform and the Service(s) and (b) its and such Connected Third Party's acts and omissions in connection with the 360 Platform and the Service(s).

82. Buyer shall at all times (a) pay for the purchased Ad Inventory (b) be solely responsible for soliciting advertisers and Sellers, (c) enter and otherwise provide accurate and complete information to Improve Digital, the Service(s) and the 360 Platform, (d) comply with Improve Digital's and third party supplier's posted policies for use of the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital, (e) be prohibited from interfering with or disrupting the integrity or performance of the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital, (f) be prohibited from damaging or tampering with any part of a Service or in any other way attempting to gain unauthorized access to the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital or the related systems or networks or breaching any Service security measure or (g) be prohibited from misappropriating any part of a Service or modifying, disassembling, decompiling, reverse engineering, copying, reproducing or creating derivative works from or in respect to Services or any part of a Service.

83. Buyer agrees that it is responsible for the use of the Service(s) and/or the 360 Platform and/or tools of third party suppliers instructed by Improve Digital, by its employees, approved agents, subcontractors and/or other Connected Third Party, and that it will ensure such employees, approved agents, subcontractors and/or other Connected Third Parties comply with the terms of this Agreement. Buyer acknowledges that in the event of a breach of this clause or other clauses in the Agreement, Improve Digital reserves the right, in its sole discretion exercised in good faith, to suspend or permanently deactivate Buyer's account in the 360 Platform and/or Service(s).





84. Buyer shall not disclose Seller Ad Inventory availability, volume, or pricing data obtained through the Service(s).

#### **MISCELLANEOUS**

85. In the event that any provision(s) of these BTC shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof and such provision(s) shall be deemed severed from these BTC. Every other provision shall remain in full force and effect.

86. The failure on the part of either Party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.

#### **APPLICABLE LAW AND JURISDICTION**

87. These BTC and the Agreement and all agreements relating thereto or resulting there from shall be governed by and construed in accordance with the laws of the Netherlands.

88. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any offer, confirmation or Agreement.

89. All disputes, controversies or claims arising out of or in connection with these BTC or the Agreement or relating to these BTC or the Agreement or any further agreements relating thereto or resulting there from, or the breach, termination or invalidity thereof, shall exclusively be submitted in the first instance to the Court of Amsterdam, the Netherlands.

#### **CHANGE OF BTC**

90. Improve Digital reserves the right to change these BTC.

91. These BTC are drawn up in the English language on the express condition that all words, terms and expressions used herein shall be construed and interpreted in accordance with Dutch law.