

IPONWEB Standard Terms for OBA Customers
Last Updated Date: October 27, 2022

1. Definitions

"Additional Services" means services that IPONWEB may make available to the Customer from time to time (including via the UI) that are in addition to the OBA Services.

"Advertising" means digital material together with related code that you make available to the OBA Platform including but not limited to all content, trademarks, branding features and 'look and feel'.

"Advertising Materials" means creative materials, active URLs and their related tags.

"Applicable Data Protection Law(s)" shall mean the EU General Data Protection Regulation (Regulation 2016/679) (the **"GDPR"**), the GDPR as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **"UK GDPR"**) and the California Consumer Privacy Act of 2018 California Civil Code § 1798.100 et seq. (**"California Consumer Privacy Act"** or **"CCPA"**), together with any other laws applicable to the processing of Personal Data.

"Bid" means a response (containing Bid Data) to a Bid Request.

"Bid Data" means the data and related information including the price that will be 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 Data Protection Laws.

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

"BIDSWITCH" means Criteo entity providing Bidswitch services.

"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 or on behalf of Supply Partners.

"Customer" is defined in the Term Sheet.

"Data Processing Addendum" means the document located [here](#) that governs the processing of Personal Data by IPONWEB in connection with the OBA Service.

"Demand Partner" means a third party that wishes to buy Media through the BIDSWITCH Platform.

"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.

"Initial Term" is defined in the Term Sheet.

"Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trademarks, 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.

"IPONWEB" means Criteo entity providing services to you.

"Media" means digital advertising units on Sites where Advertising can be displayed that is made available for sale on the BIDSWITCH Platform.

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

"OBA Agreement" or "Agreement" means the Term Sheet and these Standard Terms that together form a fully executed agreement between you and IPONWEB.

"OBA Platform" means IPONWEB's proprietary online programmatic trading platform that generates and submits Bids to the BIDSWITCH Platform and procures the delivery of Advertising Materials in relation to each OBA Platform Bid that becomes a Winning Bid.

"OBA Service" means the service or services that the Customer may select from time to time via the UI.

"OBA Service Fee" means the amount payable by the Customer to IPONWEB for providing the OBA Services as provided in the Term Sheet

"Personal Data" means information that allows the holder to identify a data subject and/or is considered to be 'Personal Data' by any Applicable Data Protection Laws.

"Renewal Term" is defined in the Term Sheet.

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

"Standard Terms" means these IPONWEB Standard Terms for OBA Customers.

"Supply Partner" means a third 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 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 Data Protection Laws.

"Term Sheet" means a fully executed IPONWEB OBA term sheet between IPONWEB and Customer that incorporates these Standard Terms.

"User Interface" or "UI" means the online tool (where available) that allows the Customer to access the OBA Platform.

"Winning Bid" is defined in section 3 below.

2. Applicability

These Standard Terms relate to the sale and purchase of Media using the OBA Services, including use of any UI and any Additional Services via the UI, and together with the Term Sheet and the Data Processing Addendum constitutes the entire agreement between you and IPONWEB relating to your use of the OBA Service (unless expressly stated otherwise). Any contrary terms and conditions that you may have shall not apply to the Agreement.

3. Operation of the OBA Platform

The OBA Platform shall receive Bid Requests from Supply Partners in response to which the OBA Platform may generate and submit Bids to Supply Partners via the BIDSWITCH Platform. Upon receipt of such Bids, Supply Partners shall select which Bid best fits the criteria set out in their originating Bid Request (the “**Winning Bid**”). If a Bid submitted to the OBA Platform becomes a Winning Bid, the OBA Platform shall procure delivery of the Advertising Materials relating to such Winning Bid to the relevant Site (each an “**Impression**”). The Media Cost for each Impression is payable by the Customer to IPONWEB together with the OBA Fee.

4. Third Party Advertisers

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

4.2 You confirm that you are the authorised representative of any advertiser that you place Advertising on behalf of using the OBA Service or otherwise advise IPONWEB that you act on behalf of and that you are authorised to enter into and perform the 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 the Agreement and that IPONWEB may contact any advertiser that you represent if any amounts payable under the Agreement are not received by IPONWEB by the due date.

5. Customer Obligations

5.1 You warrant, represent and confirm that:

5.1.1 all Advertising and the websites, goods and services that they promote shall comply with the OBA Creative Guidelines (available [here](#)), each as updated by IPONWEB and advised to you from time to time;

5.1.2 you will not provide any data (including data containing Personal Data) to IPONWEB unless you have the right to do so in accordance with all applicable laws (including but not limited to Applicable Data Protection Laws) and any agreements you have with third parties; and

5.1.3 where applicable, you have obtained all necessary consents from data subjects, in accordance with all Applicable Data Protection Laws, for purposes of providing personalised Advertising to such data subjects and will send IPONWEB all information reasonably requested by IPONWEB relating to the same (and as IPONWEB may reasonably update from time to time).

5.2 You agree to comply with the Data Processing Addendum (if Personal Data is shared between the parties)

5.4 You agree that if IPONWEB, acting reasonably, believes that you do not comply with any obligations of this section 5 or the terms of an agreement with IPONWEB and/or its corporate affiliate, IPONWEB may immediately suspend the provision of the OBA Services to you (either with or without providing notice of this), until IPONWEB is reasonably satisfied with your compliance.

6. IPONWEB Obligations

6.1 IPONWEB shall use all reasonable endeavours to arrange for the display of your Advertising in accordance with the Agreement.

6.2 IPONWEB will measure the delivery of the Advertising using IPONWEB's reporting systems.

6.3 IPONWEB 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:

- (a) violate or encourage violation of any applicable laws, regulations or advertising codes;
- (b) infringe any Intellectual Property Rights of any third party;
- (c) contain any material which may be harmful, abusive, threatening, or defamatory;
- (d) contain any material which may be pornographic, obscene or contain sexually explicit images or activity;
- (e) promote or contain links to gambling, online casinos, tobacco, alcohol or weapons; or
- (f) promote or contain links to malware including but not limited to 'viruses', 'Trojans' and 'worms'.

6.4 IPONWEB shall comply with the Data Processing Addendum (if Personal Data is shared between the parties).

7. Rejection of Advertising

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

8. Payment for Media and Additional Services

8.1 You are responsible for paying IPONWEB for all Media that you buy using the OBA Platform together with any Additional Services that you may select via the UI and IPONWEB shall send you an invoice for this to the e-mail address set out in the Term Sheet. Such invoice shall be reduced by any amount that you have already pre-paid for that calendar month. You agree to pay all IPONWEB 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 your Media Costs for BIDSWITCH Media you agree to pre-pay IPONWEB 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 IPONWEB and/or its corporate affiliate on time, all amounts due on your account will become immediately payable by you to us on demand and we reserve the right to suspend provision of the OBA Service to you and/or terminate the 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 IPONWEB and/or its corporate affiliate on time, we reserve the right to charge you interest at the rate of three per cent (3%) above the base rate of the HSBC bank in Switzerland on any overdue amounts. If we need to take legal action against you for failing to pay us in accordance with the 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 IPONWEB against any amounts that IPONWEB 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 IPONWEB by writing to your IPONWEB representative 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, IPONWEB 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 Unless expressly stated in the 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 IPONWEB provides you with software and/or access to any User Interface in connection with the OBA Services, IPONWEB grants you a non-exclusive, non-sublicensable licence for use of that software and/or User Interface. Such licence is for the sole purpose of allowing you to use and enjoy the benefit of the OBA Services. You may not copy, modify, distribute, sell or lease any part of the OBA Services, including the software or 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 User Interface, unless laws prohibit such restrictions or you have IPONWEB's prior written permission to do this. You will not remove, obscure or alter any IPONWEB copyright notice (if any), branding or other proprietary rights notices affixed to or contained within the OBA Services, OBA Platform, any User Interface, software or related documentation.

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

10. Payment Deposits

10.1 IPONWEB may require you to pay a deposit in advance for amounts payable by you to IPONWEB under the 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 the Agreement, the balance will be refunded to you (without any interest) at the end of the Agreement. If you do not pay IPONWEB in full in accordance with the Agreement, your Payment Deposit will be set off against your payment obligations to IPONWEB.

11. Use of Information

11.1 You hereby grant IPONWEB all rights necessary in Advertising and other materials you provide to the OBA Platform to enable IPONWEB to fulfil its obligations under the Agreement including the right to advise IPONWEB and BIDSWITCH customers and prospective customers that you use the OBA Services.

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

12. Liabilities and Indemnities

12.1 You agree to indemnify, defend and hold harmless IPONWEB, BIDSWITCH, Grid, their 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 the Agreement. Supply Partners that use the BIDSWITCH Platform and any direct or indirect, wholly or partly owned subsidiaries and/or holding companies of IPONWEB are third-party beneficiaries of this indemnity.

12.2 Subject to section 12.3, IPONWEB agrees to indemnify you and hold you harmless against any and all third-party claims and liabilities arising out of or related to IPONWEB's breach of any part of the Agreement.

12.3 IPONWEB shall only be liable to you for voluntary or gross negligent acts or omissions. This limitation does not apply to any damages resulting from loss of life, harm to body or health or from violations of essential contractual obligations. For damages resulting from any breach of essential contractual obligations, IPONWEB's liability to you is limited to typical foreseeable damages.

13. Representations, Warranties and Disclaimers

13.1 You represent and warrant that you have the full power and authority to agree to the 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(s) of the Advertising; and (ii) you have control over the way in which Advertising is displayed using the OBA Service on Sites.

13.3 Unless expressly stated in the Agreement, IPONWEB does not make any promises about the OBA Services, including the OBA Platform and UI.

13.4 IPONWEB will not be liable to Customer for the content of any Site that the OBA Services and/or the BIDSWITCH Platform may make available to Customer.

14. Compliance.

14.1 Each party warrants that neither it nor any affiliates, officers, directors, employees, and agents is the subject of any sanctions administered by any applicable sanction authority having jurisdiction over it.

14.2 Each party agrees to perform its obligations hereunder in compliance with all applicable laws and requirements relating to trade sanctions, foreign trade controls, export and re-export controls, non-proliferation, anti-terrorism, and similar laws, as well as with all applicable anti-corruption laws, anti-terrorist financing legislation, and anti-money laundering laws.

14.3 Each party ensures compliance with Criteo S.A.'s Code of Conduct available online.

15. Limitation of Liability

15.1 NOTHING IN THE 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.

15.2 NEITHER PARTY SHALL HAVE ANY LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) UNDER OR IN CONNECTION WITH THE AGREEMENT FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS (WHETHER SUCH LOSS WAS FORESEEABLE, KNOWN OR OTHERWISE).

15.3 EACH PARTIES' AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) UNDER OR IN CONNECTION WITH THE AGREEMENT SHALL NOT EXCEED THE NET AMOUNT PAYABLE BY CUSTOMER TO IPONWEB IN ANY ROLLING 6 CALENDAR MONTH PERIOD ENDING THE DATE ON WHICH SUCH LIABILITY ARISES.

16. Assignment

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

17. Governing Law and Jurisdiction

The Agreement shall be governed by the laws of England, without regard to its conflict of law provisions to the extent such principles or rules would require the application of the laws of any jurisdiction other than those of England, 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 the Agreement.

18. Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of the 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 the 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 the Agreement must be in the English language, in writing and shall be sent to the address of the recipient set out in the 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 the Agreement and no action taken by the parties under the 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 the Agreement.

22. Severability

If the whole or any part of any provision of the Agreement is deemed to be illegal or unenforceable, remaining provisions of the 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 the Agreement as set out in the Term Sheet and may appoint a substitute or alternative individual by providing reasonable written notice of this to the other party.

24. Publicity

Except as provided in section 9.3 and section 11, each party shall keep the terms of the 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 who is not party to the 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 the Agreement unless expressly stated otherwise herein.

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 Customer which is not generally publicly available.

26.2 IPONWEB shall not, except as expressly permitted in the Agreement or as required by law, or by subpoena, judicial or administrative order, without the prior written consent of the Customer: (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 OBA Services or the UI; or (c) copy, adapt, or otherwise reproduce the Customer's Confidential Information save as strictly necessary for the provision of the OBA Services under the Agreement.

27. Change of Terms

If IPONWEB advises you of a change to the 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 IPONWEB that you do not agree to the change. If you advise IPONWEB that you do not agree to the change, you will be entitled to continue to use the OBA Service for a period of 21 days from the date that you advise IPONWEB of this, after which you must stop using the OBA Service.