

EYEOTA PTE LTD

Data Services Agreement Terms and Conditions

These Terms and Conditions were last updated on 16th November 2016.

These Terms and Conditions (this “**Agreement**”) are an agreement between the entity set forth in the Order (“**Company**” or “**you**”) and Eyeota Pte Ltd (“**Eyeota**”). This Agreement governs your access to and use of the data services (“**Service**”) set forth in the Order (which may include access to consumer segments, demographic and behavioural data, and other data provided by Eyeota as part of the Service (“**Eyeota Materials**”). By ordering, accessing, or using the Service, including the Eyeota Materials, you acknowledge that you have read, understood, and agree to be bound by the terms of this Agreement. Each Order (defined below) will be deemed to incorporate this Agreement as it is published by Eyeota on the effective date of such Order.

1. DEFINITIONS.

- 1.1. “**Company Service**” means an advertising delivery service operated by the Company that allows its customers to dynamically purchase media across advertising exchanges through a single interface, as well as facilitating the analytics of the audiences receiving such advertising.
- 1.2. “**Non-PII**” means data or information that is not connected, correlated, or able to be identified with any PII (including data or information that is collected anonymously, is aggregated, or from which identifying information has been removed).
- 1.3. “**PII**” means information that can be used to identify, contact, or locate a natural person, including, without limitation, a natural person’s name, email address, Social Security number, and telephone number.
- 1.4. “**Targeting Segment**” means a behavioural, demographic or other groupings of audience segments that you purchase under this Agreement as identified in the Order.
- 1.5. “**User**” means a user of the Company Service.

2. DATA USAGE AND RESTRICTIONS.

- 2.1. Service Terms. A description of the Service and the fees that you will pay to access and use the Service will be described in the written insertion orders or other orders executed by you and Eyeota from time to time (each, an “**Order**”).
- 2.2. Data Use
 - (a) Full Use. Subject to the Company’s compliance with the terms of this Agreement, if the Company has purchased Full Use Access to the Eyeota Materials as part of the Service under an Order, Eyeota grants the Company a permission to use the Eyeota Materials on a non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted herein), worldwide basis, solely with the Company Service to provide advertising, marketing, analytical and reporting services to Users, in addition to using the Eyeota Materials for data modelling.
 - (b) Ad-Targeting Use. Subject to the Company’s compliance with the terms of this Agreement, if the Company has purchased Ad-Targeting Use under an Order, Eyeota grants the Company a permission to use the Eyeota Materials on a non-exclusive, non-transferable, non-sublicenseable (except as otherwise permitted herein), worldwide basis solely with the Company Service to provide targeted advertising, targeted marketing, and reporting services to approved Users.
 - (c) Data Feed Use. Subject to the Company's compliance with the terms of this Agreement if the Company has purchased Data Feed Use under and Order, Eyeota grants the Company a permission to use the Eyeota Materials on a non-exclusive, non-transferable, non-sublicenseable (except as otherwise permitted herein), worldwide basis solely with the Company Service to derive new work and products, or to enhance current Company products and services from the Eyeota Materials, and which are to be

specified under the Order, and which are to be derived or enhanced in a manner that is compliant with relevant laws and regulations.

(d) Listening Rights. Subject to the Company's compliance with the terms of this Agreement, if the Company has purchased a Listen Only Access to the Eyeota Materials as part of the Service under an Order, Eyeota grants the Company a permission to use the Eyeota Materials on a non-exclusive, non-transferable, worldwide basis, solely for internal analysis purposes.

3.3. Restrictions. Except as permitted above, the Company will not distribute, disclose, resell, transfer, assign or provide access to the Eyeota Materials to any third party without the prior written consent of Eyeota. Without limiting the foregoing, the Company does not have the right to use the Eyeota Material or any code or tag provided by Eyeota outside of the term of, and for reasons other than those specifically prescribed in this Agreement.

3. OTHER RESTRICTIONS.

3.1. Approval. Unless otherwise stated within an Order, before the Company provides access to the Eyeota Materials to any User, the Company will deliver to Eyeota the name of such User and obtain approval for such access from Eyeota. Promptly following such delivery, Eyeota will notify the Company whether it approves or denies the provision of access to the Eyeota Materials to such User (which such approval or denial will be in Eyeota's sole discretion). If a User is not approved or denied by Eyeota, such User will be deemed denied.

3.2. No-PII. The Company will not connect, correlate, or use the Eyeota Materials with any PII nor permit any other party to do so.

3.3. Unauthorized Use. The Company will immediately notify Eyeota of any unauthorized use of the Eyeota Materials of which it becomes aware, and the Company will reasonably cooperate with Eyeota in actions undertaken to protect proprietary rights in the Eyeota Materials.

3.4. No Tracking. The Company will not use any Flash cookie or any embedded tracking mechanism in connection with the users whose data is provided to the Company hereunder.

3.5. Professional Services. You may request that Eyeota provide certain professional services that are ancillary to the data or platform provided under this Agreement, such as integration or customization. In such event, the parties will enter into a Statement of Work that sets forth the scope and description of the professional services, deliverables, parties' responsibilities, completion dates, fees and payment terms, and any other relevant information.

4. OWNERSHIP. The Materials (defined below) are provided through the course of the Service, not sold, by Eyeota to you. Except as expressly granted in this Agreement, as between the parties, Eyeota owns and reserves all right, title, and interest in and to the Materials and all intellectual property therein. You acknowledge that as between you and Eyeota, the Materials, and all copies, derivative works, compilations, and collective works of the Materials, and any know-how and trade secrets related to the Materials, are confidential and are the sole and exclusive property of Eyeota. "**Materials**" means the Eyeota Materials, software code, work product, reports, or other output or results, designs, methods, inventions, know-how, techniques, applications, or other materials or technology that Eyeota uses or makes available to you under or in connection with this Agreement, or any enhancements to or modifications of the foregoing.

5. OBLIGATIONS.

5.1. Compliance with Law. You will use the Materials only in compliance with all applicable laws, rules, regulations, statutes, and orders, including those regarding privacy.

5.2. No Reverse Engineering or Distribution. You will not, directly or indirectly: (a) reverse engineer, decompile, or disassemble the Materials; (b) copy, rent, sell, lease, or distribute the Materials; (c) modify or create any derivative works based upon the Materials; or (d) remove, obscure, or alter any patent, trademark, or copyright notices relating to the Materials.

5.3. No Disruption. You will not, directly or indirectly use the Materials in any manner or for any purpose that is meant to disrupt, harm, or allow unauthorized access to any person, information, account, system, service, or network.

6. PRIVACY POLICIES. At all times during the term of this Agreement, each of you and Eyeota will have and adhere to a privacy policy that is conspicuously posted on its web site and that reflects its current data use and privacy practices, and complies with all applicable laws and regulations. Each party shall also provide disclosure in their respective privacy policy of the nature and operation of their business and give clear instructions enabling users to opt-out from data collection and targeted advertising (including a conspicuous link to its opt-out web site or page).

7. FEES.

7.1. Fees. You will pay Eyeota the fees set forth in each Order.

7.2. Multiple Targeting Segments. If the Company chooses to use more than one Targeting Segment to target any given campaign, the Company will be charged for all segments used. In circumstances where billing for multiple segments is not possible for technical reasons, the Company will be charged for the higher priced Targeting Segment.

7.3. Payment Terms. If the Company is required to provide Eyeota with a report setting forth the usage of Eyeota Materials in order for Eyeota to invoice the company for the Service, the Company will provide Eyeota with such a report within 14 days after the end of each calendar month during the Term. The report will be broken down by authorized User and by transaction showing the fees generated during such month, data segment purchased, impressions served, advertiser, campaign, ad target country and campaign buyer country. The Company Service will be the system-of-record for all fees incurred by the Company for use of the Eyeota Materials. Following the receipt of such a report, Eyeota will invoice the Company who will make payment of fees to Eyeota within 30 days after the invoice date. If no such report is needed in order for Eyeota to invoice the Company, Eyeota will invoice the Company when it has compiled all relevant monthly usage information and the Company will make payment of fees to Eyeota within 30 days after the invoice date. All fees are exclusive of all federal, state, local and other taxes, duties, tariffs, levies and similar assessments. The Company will make all payments in U.S. dollars, except when agreed otherwise, by wire transfer of immediately available funds to the following:

Beneficiary Name:	EYEOTA Pte. Ltd.
Beneficiary Address:	12A upper Circular Road, Singapore 058410
Bank Name:	DBS Bank Ltd
Bank Address:	12 Marine Boulevard, marina Bay Financial Centre Tower3, Singapore 018982
SWIFT Address:	dbsssgsg
<i>Account numbers</i>	
Payment in USD:	0288-000392-01-7-022
Payment in EUR:	0010-002093-01-9-022
Payment in AUD:	0010-002091-01-5-022
Payment in GBP:	0010-002092-01-7-022
Payment in SGD:	288-900439-4
Bank Code:	7171
Bank Branch Code (Singapore transfers only):	288

7.4. Late Payment. Interest at the rate of two points above prime rate, or, if lower, the maximum rate allowed by applicable law, shall be charged on any late payments.

7.5. Audit. During the term of the Agreement and for three years thereafter, the Company agrees to keep all records supporting the reports you provide to Eyeota under this Agreement. Eyeota may, at any time during the term of this Agreement or within one year after its expiration or termination, cause an audit and/or inspection to be

made of such records in order to verify the provided reports. If the audit uncovers a shortfall in payment of fees, you will promptly pay Eyeota such shortfall, and, if such shortfall is more than 5% of the correct total due, you will reimburse Eyeota for the costs of the audit.

8. TERM AND TERMINATION.

8.1. Term. Unless terminated earlier as permitted hereby, this Agreement will begin on the effective date of the Order and continue for the Service term set forth in any Order.

8.2. Termination for Material Breach or Default. Either party may terminate this Agreement upon 30 days' prior notice if another party materially breaches or defaults in its performance under this Agreement and does not cure such breach or default within such 30 notice period.

8.3. Effect of Termination. If this Agreement expires or is terminated for any reason, no party will have any further obligations to perform under this Agreement or any liability with respect thereto (except the payment of fees accruing prior to the date of expiration or termination). The Company shall delete all Eyeota Materials immediately upon termination or expiration of the applicable Order or this Agreement. Notwithstanding the foregoing, Sections 8.3 (Effect of Termination), 11 (Indemnification), 10 (Limitations of Liability), 13 (Confidentiality) (but only respecting information disclosed prior to expiration or termination), and 14 (General) of this Agreement, and any provisions that by their terms are to survive, will survive any expiration or termination of this Agreement.

9. WARRANTIES.

9.1. Mutual Warranties. Each party represents and warrants to the other that: (a) this Agreement constitutes a valid and binding agreement enforceable against it; (b) it has all rights and authority to enter into this Agreement and no authorization or approval from any third party is required in connection with performance of this Agreement; and (c) during the term of this Agreement it will comply with all applicable laws, rules, and regulations, including those governing privacy.

9.2. Your Warranties. You represent and warrant to Eyeota that you: (a) are now and will continue throughout the term of this Agreement to be in full compliance with all laws applicable to your business and the rules and regulations of any governmental or quasi-governmental regulatory body or agency that has jurisdiction over the your business activities or products in any country in the world (each, a "**Governmental Authority**") and (b) are not presently the subject of any investigation or prosecution by any Governmental Authority in connection with your products, services, or advertising and, to the best of your knowledge, no such investigation or prosecution is threatened; (c) have disclosed to Eyeota the existence of any past formal or informal Governmental Authority investigation involving you or, if you are an organization, your officers, directors, or principals (and if you become involved or are named in any action, investigation, complaint or other proceeding by or before any Governmental Authority, or any private party, you will immediately provide notice to Eyeota of such action, investigation, complaint or other proceeding, in which event Eyeota may terminate this Agreement immediately upon written notice to you.

9.3. Additional Warranties. Additional warranties and representations may be made by the parties in the Supplemental Terms.

10. DISCLAIMER. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN SECTION 9, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NO PARTY HERETO WARRANTS AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY OR AGAINST INFRINGEMENT. NO PARTY HERETO WARRANTS THAT THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY ARE ERROR-FREE OR THAT OPERATION OF SUCH PARTY'S PRODUCTS OR SERVICES WILL BE SECURE OR UNINTERRUPTED. EACH OF SECTION 10 AND 12 IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

11. INDEMNIFICATION.

11.1. By Eyeota. Subject to the other provisions of this Agreement, Eyeota will defend, indemnify, and hold you harmless against any loss or damage (including without limitation reasonable attorney's fees) incurred in connection with claims, demands, suits, or proceedings made or brought against you by a third party based on a claim: (a) that Eyeota has breached its representations or warranties made in Section 9 or (b) that any Material, as provided by Eyeota to you, infringes any patent issued as of the effective date of this Agreement or any other intellectual property rights, including the privacy rights. Eyeota will have no indemnification obligation for any infringement that arises out of or is based upon: (a) the combination, operation, or use of the Materials with any other information, data, software, or product not provided by Eyeota if the alleged infringement would have been avoided but for such combination, operation, or use; (b) designs, requirements, or specifications for the Materials required by or provided by you, if the alleged infringement would not have occurred but for such designs, requirements, or specifications; (c) use of the Materials outside of the scope of this Agreement, or otherwise in violation of any term of this Agreement; (d) your failure to comply with instructions provided by Eyeota, if the alleged infringement would not have occurred but for such failure; or (e) any modification of the Materials not made by Eyeota where such infringement would not have occurred absent such modification. If any third party claim is made or, in Eyeota's sole judgment, is likely to be made, Eyeota may, at its discretion, either: (a) procure for you the right to continue to use the Materials, as such use is specifically provided for in this Agreement; (b) replace or modify the Materials to avoid infringement; or (c) terminate any and all Orders upon written notice to you, and refund to you any paid but unused fees.

11.2. By the Company. The Company will indemnify, defend, and hold harmless Eyeota and its directors, officers, and employees from and against all losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and other legal expenses) ("**Damages**"), incurred by Eyeota in connection with: (a) the Company's breach of this Agreement, including the failure of any representation or warranty made by the Company in this Agreement; (b) the Company's provision of data to Eyeota, including, without limitation, liability for the infringement by such data of any third party privacy right or other intellectual property right; (c) any use of the Eyeota Materials by the Company or Users (other than Damages that result from the contents of the Eyeota Materials as delivered by Eyeota); and (d) any negligent or intentionally wrongful act of the Company or a User. This obligation will survive any expiration or termination of this Agreement.

11.3. Indemnification Conditions. Each party's obligations of indemnification under this Agreement will be conditioned upon: (a) prompt written notice by the indemnified party to the indemnifying party of the claim for which indemnity is sought; (b) reasonable information, assistance and cooperation by the indemnified party, at the indemnifying party's expense, in defending or responding to the claim as the indemnifying party may request; and (c) complete control and sole authority by the indemnifying party over the defense and settlement of the claim, subject to the indemnified party's approval of any such settlement, which will not be unreasonably withheld or delayed.

12. LIMITATIONS OF LIABILITY. EXCEPT FOR BREACH OF SECTION 13 (CONFIDENTIALITY) OR FOR LIABILITY FOR INDEMNIFICATION OBLIGATIONS OR FOR A PARTY'S INTENTIONAL TORTIOUS CONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TREBLE, SPECIAL, OR EXEMPLARY DAMAGES, OR FOR ANY COSTS OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, ANY LOSS OF USE, DATA OR PROFITS, OR ANY INTERRUPTION OF SERVICES, DOWNTIME OR BUSINESS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT FOR BREACH OF SECTION 13 (CONFIDENTIALITY), FOR LIABILITY FOR INDEMNIFICATION OBLIGATIONS OR FOR A PARTY'S INTENTIONAL TORTIOUS CONDUCT, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY WITH REGARD TO THE SUBJECT MATTER OF THIS AGREEMENT WILL NOT EXCEED ANY FEES PAID TO EYEOTA BY YOU UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ASSERTION OF THE RELEVANT CLAIM. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF THE ACTION, WHETHER BASED ON CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE REMEDY, AND WHETHER OR NOT ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION DESCRIBES A REASONABLE ALLOCATION OF RISK AND THAT, IN THE ABSENCE OF THESE LIMITATIONS OF LIABILITY, THE TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

13. CONFIDENTIALITY. Neither party will disclose the Confidential Information of the other party, or use the Confidential Information of the other party for any purpose other than to perform its obligations or exercise its rights under this Agreement, and will protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event will it exercise less than reasonable care in protecting the Confidential Information. “**Confidential Information**” of a party means all information and technology of such party including business and marketing plans, technology and technical information, designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually) and including the terms of all Orders and this Agreement. However, Confidential Information does not include any information that: (a) is or becomes generally known to the receiving party without its breach of any obligation owed to the other; (b) was independently developed by the receiving party without its breach of any obligation owed to the disclosing party; or (c) is received from a third party who obtained such Confidential Information without any breach of any obligation.

14. GENERAL.

14.1. Relationship. This Agreement will not be interpreted or construed as: (a) creating or evidencing any association, joint venture, partnership, or franchise between the parties; (b) imposing any partnership or franchise obligation or liability on any party; or (c) prohibiting or restricting any party from doing business with any third party.

14.2. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer upon any third party any rights, benefits, or remedies of any kind or character.

14.3. Assignability. No party may assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the other party (which consent will not be unreasonably delayed or withheld), except that a party may assign all of its rights and obligations under this Agreement to a successor (whether by sale, acquisition, merger, operation of law, or otherwise) if the successor agrees in writing to fulfill all of the assigning party’s obligations under this Agreement. After any such assignment, the non-assigning party may terminate this Agreement upon thirty (30) days prior written notice to the non-assigning party. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and permitted assigns.

14.4. Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by email, certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the addresses set forth in the relevant Order with the appropriate postage affixed. A party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier. In the case that notices are sent by email, notices are deemed to be given at the earlier of either a) the collection of an electronic read receipt by the sending party, or b) seven days from the date on which the notice was sent via email and with the condition that the sending party uses its best endeavours to attain confirmation of the receipt of the notice directly from the recipient. Notices to Eyeota should be sent to: Eyeota Pte Ltd, 12A Upper Circular Road, 058410, Singapore, FAO: Kevin Tan & Legal. Email notifications should also be sent to the Main Eyeota contact as outlined in any Order, as well as to legal@eyeota.com & accounts@eyeota.com

14.5. Force Majeure. No party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond such party's reasonable control (including, without limitation, any act or failure to act by the other party).

14.6. Governing Law. This Agreement will be deemed to have been made in Singapore, and will be governed by and interpreted in accordance with the laws of Singapore, without regard to the conflict of laws principles thereof and without regard to the United Nations Convention on the International Sales of Goods. The exclusive forums for all disputes and any other legal or equitable proceedings arising under or in connection with the Agreement are the courts and located in Singapore, and the parties expressly submit to the jurisdiction of any such court in connection with any such dispute or proceedings.

14.7. Waiver. The waiver by any party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party’s right to demand strict compliance in the future.

14.8. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

14.9. Interpretation. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. Headings have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement.

14.10. Entire Agreement. This Agreement is the final and complete expression of the agreement between these parties regarding its subject matter. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No employee, agent, or other representative of a third party data provider has any authority to bind such data provider with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.