

## **DATA SUBSCRIPTION AGREEMENT FOR SPIDERS AND BOTS**

This Data Subscription Agreement, dated as of \_\_\_\_\_, 2018 (the “Effective Date”), is by and between Interactive Advertising Bureau, Inc. (“IAB”) and \_\_\_\_\_ (“Subscriber”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subscriber and IAB hereby agree as follows:

### **1. SUBSCRIPTION; OBLIGATIONS; RESTRICTIONS ON USE; OWNERSHIP.**

**1.1 Subscription.** IAB and certain data contributors have collected and aggregated certain data regarding international spiders and bots (the “Data”). Subject to the terms and conditions of this Agreement, IAB hereby grants to Subscriber a limited, non-exclusive, non-transferable, revocable right to download (via secure FTP), access, and use the Data: (i) in connection with Subscriber’s internal business purposes; and (ii) in connection with services Subscriber provides to its clients and customers. IAB shall periodically update the Data for as long as it maintains the International Spiders and Bots List. It is the responsibility of Subscriber to check the FTP site and download the Data. In the event IAB provides the Data via an API feed, Subscriber shall be required to acknowledge and accept the terms and conditions governing such API feed.

**1.2 Subscriber Obligations.** In connection with its use of the Data, Subscriber shall: (i) comply with all applicable national, international, federal, state, and local laws, rules, and regulations and self-regulatory guidelines, including, without limitation, laws relating to privacy and unfair business practices; and (ii) establish, implement, and maintain reasonable physical, electronic, and procedural safeguards to maintain the security and confidentiality of the Data.

**1.3 Restrictions on Use of the Data.** Subscriber shall not (and shall not authorize or knowingly permit any third party to) make any use or disclosure of the Data that is not expressly permitted under this Agreement. Without limiting the foregoing, Subscriber shall not (and shall not authorize or knowingly permit any third party to): (i) publish the Data, in whole or in part; or (ii) resell, distribute, or sublicense the Data.

**1.4 Ownership.** Subject to its agreements with third parties, IAB owns and shall own all rights, title, and interest in and to the Data. Subscriber has no rights with respect to the Data other than those expressly granted hereunder.

### **2. TERM AND TERMINATION.**

**2.1 Initial Term and Renewal Terms.** The initial term of this Agreement begins on the Effective Date and shall continue for a period of one (1) year (the “Initial Term”). Upon expiration of the Initial Term or any Renewal Term, this Agreement shall automatically renew for successive one (1) year periods (each, a “Renewal Term” and collectively with the Initial Term, the “Term”), unless either party provides written notice to the other party of non-renewal at least thirty (30) days prior to the expiration of the then-current Term.

**2.2 Termination For Breach.** In the event of a material breach of this Agreement by a party, the other party may terminate this Agreement by giving fourteen (14) days prior, written notice to the breaching party; provided, however, that this Agreement shall not terminate if the breaching party has cured the breach before the expiration of such fourteen (14) day period. In addition, in the event Subscriber fails to pay any Fee (as defined below) in full when due, IAB may, at any time and without notice, suspend Subscriber’s access to the Data.

**2.3 Effect of Termination.** Upon termination of this Agreement: (i) Subscriber shall pay IAB for all amounts payable hereunder as of the effective date of termination if IAB is the party terminating the Agreement pursuant to Section 2.2; (ii) IAB shall refund Subscriber a pro-rata portion of any pre-paid Fee if Subscriber is the party terminating this Agreement pursuant to Section 2.2; and (iii) all rights granted hereunder to Subscriber shall immediately cease, and Subscriber shall immediately cease all access to the Data; provided, however, that Subscriber may retain any Data downloaded prior to the effective of termination and use such Data in accordance with the terms of this Agreement.

**2.4 Survival.** The following provisions shall survive termination of this Agreement: Section 1.3 (“Restrictions on Use of the Data”), Section 1.4 (“Ownership”), Section 2.3 (“Effect of Termination”), Section 3 (“Financial Terms”) (until all Fees and taxes due and payable hereunder are paid), Section 4 (“Disclaimer”), Section 5 (“Limitation of Liability”), Section 6 (“Indemnification”), Section 7 (“Miscellaneous Provisions”), and this Section 2.4 (“Survival”).

### **3. FINANCIAL TERMS.**

**3.1 Fee.** As consideration for the rights granted hereunder, Subscriber shall pay IAB the annual fee set forth on the IAB portal (the “Fee”). Subject to Section 2.3(ii), all Fees are non-refundable. IAB reserves the right to change the Fee for any Renewal Term on at least sixty (60) days’ notice prior to the commencement of such Renewal Term.

**3.2 Payment Terms.** For the Initial Term and any Renewal Terms, IAB shall issue Subscriber an invoice, which Subscriber may pay by check or on line with a credit card. Subscriber shall pay all invoices in full within thirty (30) days of receipt. Access to the Data during the Initial Term shall not be provided until full payment of the Fee has been received by IAB, after which access to the Data is usually initiated within seventy-two (72) hours. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments shall be made in U.S. dollars.

**3.3 Taxes.** The Fee does not include applicable transaction taxes. If IAB is required by law to pay any federal, state, county, local, or value added tax, sales and use tax, goods and services tax, or similar applicable taxes based on this Agreement, IAB shall ensure that such taxes are invoiced to Subscriber in accordance with applicable rules so as to allow Subscriber to reclaim such value-added and/or similar tax from the appropriate government authority. Nothing in this Agreement, however, shall require Subscriber to pay any payroll, franchise, corporate, partnership, succession, transfer, income, excise, profits, or income tax of IAB.

**4. DISCLAIMER.** SUBSCRIBER ACKNOWLEDGES THAT ALTHOUGH THE DATA CAN BE USED AS AN AID TO SUBSCRIBER AND ITS CLIENTS AND CUSTOMER TO MAKE INFORMED BUSINESS DECISIONS, THE DATA ARE NOT MEANT TO SUBSTITUTE LEGAL OR BUSINESS ADVICE OR SUBSCRIBER’S OR ITS CLIENTS’ AND CUSTOMERS’ EXERCISE OF THEIR OWN BUSINESS JUDGMENT. ANY SUCH DECISIONS OR JUDGMENTS ARE MADE AT SUBSCRIBER’S AND ITS CLIENTS’ AND CUSTOMERS’ SOLE DISCRETION AND ELECTION. IF THE DATA INCLUDE ESTIMATES OR PREDICTIONS OF FUTURE EVENTS OR BEHAVIORS, IAB MAKES NO GUARANTEES AS TO THE OCCURRENCE OF SUCH FUTURE EVENTS OR BEHAVIORS. THE DATA ARE PROVIDED “AS IS” AND “AS AVAILABLE,” AND IAB MAKES NO WARRANTY WITH RESPECT TO THE DATA OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT IAB

MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

5. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL IAB BE LIABLE TO SUBSCRIBER OR ANY OTHER PARTY FOR ANY DIRECT, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER IAB WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IAB'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER UNDER THIS AGREEMENT DURING THE PERIOD TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY SUBSCRIBER MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED.

6. **INDEMNIFICATION.** Subscriber shall indemnify, defend, and hold harmless IAB and its officers, directors, employees, attorneys, agents, licensors (collectively, the "Indemnified Parties") from and against any and all losses, liabilities, damages, fines, and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest, and penalties) incurred by such Indemnified Parties in connection with any third-party claim to the extent arising from Subscriber's use of the Data, except to the extent arising from IAB's breach of this Agreement or IAB's tortious acts or omissions.

7. **MISCELLANEOUS PROVISIONS.** The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable, or sub-licensable by either party, except with the other party's prior written consent. This Agreement shall be governed by and construed in accordance with the laws of the state of New York without regard to the conflict of law provisions thereof. All claims or disputes arising out of or in connection with this Agreement shall be heard exclusively by any of the federal or state courts of competent jurisdiction located in the Borough of Manhattan, New York City, New York. The parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. Any modification to this Agreement must be in a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither party has any authority of any kind to bind the other party in any respect whatsoever. This Agreement may be executed in counterparts (which may be exchanged by facsimile or PDF), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**Interactive Advertising Bureau, Inc.**

**Subscriber**

**By:** *Colleen Shields*

**By:** \_\_\_\_\_

**Print Name:** Colleen Shields

**Print Name:** \_\_\_\_\_

**Title:** Senior Manager Business Operations

**Title:** \_\_\_\_\_