



Flurry Real-Time Bidding Marketplace Terms of Service for Media Buyers

Last Updated: February 4, 2014

Acceptance of Terms

Flurry welcomes you ("Buyer," or "You,"). By enrolling in the Flurry RTB Service (as defined below), Buyer agrees that it has read, understands, and accepts the terms and conditions described below (the "Terms of Service") and Buyer agrees to be bound by these Terms of Service and all terms, policies and guidelines incorporated in the Terms of Service by reference, including, but not limited to, Flurry's Privacy Policy located at <http://www.flurry.com/about-us/legal/privacy.html> (or such other URL that Flurry may provide from time to time, "Privacy Policy") (collectively, the "Agreement"). The Flurry RTB Service is offered to Buyer conditioned on Buyer's acceptance without modification of this Agreement.

Modification of Agreement

Flurry reserves the right to change or modify any of the terms and conditions contained in this Agreement at any time, in its sole discretion, by posting changes at <http://www.flurry.com> (or such other URL that Flurry may provide from time to time) or by providing you written notice of any changes or modifications. Buyer's continued use of any part of the Flurry RTB Service following the posting of such changes or modifications (or receipt of notice of such changes or modifications, if applicable) will constitute Buyer's acceptance of such changes or modifications.

Description of the Flurry RTB Service

The "Flurry RTB Service" or "Service" means the automated real-time auction service that enables you to bid on and purchase inventory for the placement of Ads in the Flurry RTB Marketplace, a virtual marketplace where you may buy inventory for yourself or on behalf of third party advertisers ("Advertisers") from sellers. "Ads" means your text, graphic, rich media and other advertising materials. The Flurry RTB Service enables you to deliver Ads through the Service by responding to ad requests delivered through Flurry's real-time bidding application programming interface (the "API") with a CPM-based bid price for that impression (the "Bid"). Flurry may choose to accept Bids submitted by you based on performance standards such as ad response time, which generally apply to all media buyers on the Flurry RTB Marketplace. To register for the Flurry RTB Service, Buyer must complete the registration process at <http://www.flurry.com>.

As between you and Flurry, you are responsible for placing Ads through the Service and responding to your Advertisers in connection therewith. You acknowledge that Flurry is not liable for transactions executed by the Service as a result of errors made in entering information into the Service by or for you (for example, incorrectly entering pricing, targeting or budgeting information). You may not deliver any Ads through the Service that do not comply with Flurry's Content Guidelines located at <http://www.flurry.com/contentGuidelines.html> ("Content Guidelines") or do not comply with applicable law. Flurry may reject, refuse or block any Ads which do not comply with the Content Guidelines or any Flurry policies, or are determined to breach this Agreement or otherwise are inappropriate by Flurry in its sole discretion. A seller in the RTB marketplace may also preview and reject, refuse or block any Ads.



Fee and Payment

Flurry RTB Service is currently provided to Buyer free of charge. Flurry may change its fees and payment policies for the Flurry RTB Service from time to time. The changes will be posted at <http://www.flurry.com> (or such other URL that Flurry may provide from time to time) or may be provided to you by written notice. Flurry may conduct a credit evaluation. Our provision of the Service and your ability to use the Service may be contingent upon (i) successful completion of such credit evaluation; and (ii) there being no material changes to your credit status during your use of the Service.

You may submit Bids in U.S. dollar or another supported major currency by the Service such as GBP or EUR (and such Bids will be normalized to U.S. dollar using daily rates published by Citibank at noon Eastern Standard Time). The Service will run a second price auction, whereby the winning Bid is calculated as the sum of: (a) the second highest bid, and (b) one cent (US\$0.01). Once your Bid has been accepted, you have purchased such inventory which is non-refundable. Buyer will be billed on a monthly basis for all impressions purchased on the Flurry RTB Marketplace through the Service. All invoices shall be based on Flurry's reporting and denominated in U.S. dollars. You agree to pay all invoiced amounts within thirty (30) days from receipt of invoice. Such payments are due regardless of whether you have collected payment from your Advertisers.

Late payments will be subject to late fees at the rate of one and one half percent (1.5%) per month, or, if lower, the maximum rate allowed by law. If you fail to pay fees invoiced by Flurry within forty-five (45) days following the payment due date, Flurry will have the right to suspend performance of the Service and your access to the Service without notice to you; and such Service not to be reinstated until you pay all such overdue amounts. In addition, you also agree to pay any attorneys' fees and/or collection costs incurred by Flurry in collecting any past due amounts from you.

You are responsible for all your sales, use or other taxes, duties and tariffs applicable to you and/or your Advertiser in connection with your use of the Service. Any dispute regarding your invoice must be brought to Flurry's attention in writing within thirty (30) days from receipt of invoice.

Limited License

Flurry hereby grants to you a non-exclusive, limited, non-transferable, revocable and non-sublicensable license to use the Service and API in accordance with this Agreement. Your use of the Service and API is subject to this Agreement and does not include: (i) any resale, lease, rental, assignment or other transfer of rights of the Service or API; (ii) modification, revision, creation of derivative works from or otherwise making any derivative uses of the Service or API or any information or content therein; (iii) decompilation, reverse engineering of the Service or API; or (v) any use of the Service or API other than for its intended purpose. Flurry hereby reserves all rights not expressly granted herein. Any use of the Service or API other than as specifically authorized herein, without the prior written permission of Flurry, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark and other intellectual property laws. You acknowledge and agree that Flurry owns all right, title and interest in and to the Service and API, including all intellectual property and intellectual property rights therein and thereto (collectively "Flurry IP") and you acquire no right, title or interest in or to the Flurry IP.

You hereby grant to Flurry the limited right to use, reproduce and display your company name, trademarks, service marks and/or logos in connection with Flurry's performance of the Service and for limited public relations purposes of identifying you as a customer of Flurry in its press release, marketing publication or website.

Impression Attribute Data and Campaign Data



The Service provides you with certain real-time information and attributes regarding available impressions on the Flurry RTB Marketplace (“Impression Attribute Data”). Impression Attribute Data is passed to you with the bid request and may include information regarding the end user associated with viewing such impression. To the extent you have access to Impression Attribute Data, you agree that you will not use the Impression Attribute Data for any purpose other than for optimizing Bids submitted by you through the Service for inventory on the Flurry RTB Marketplace. Without limiting the generality of the foregoing, you represent and warrant that (a) you will not use any Impression Attribute Data to create or supplement user profiles or segments or inventory profiles or segments, (b) you will not append any Impression Attribute Data to any other information or data collected by you; and (c) you will not store Impression Attribute Data for more than 90 days after the date it was collected. As between you and Flurry, Flurry shall own all right, title and interest in and to the Impression Attribute Data and shall be treated as Confidential Information of Flurry. Notwithstanding anything to the contrary, you may only use or store the Impression Attribute Data as permitted by this Agreement for the impressions that you have won.

You acknowledge and agree that Flurry shall have the right to use and disclose all data derived from your use of the Service (“Campaign Data”) as part of Flurry's business operations and in connection with the Service, subject to the terms of its Privacy Policy. Flurry will not disclose to any third parties (other than its agents to provide the Service) any Campaign Data collected by the Service that is specifically attributable to you. You shall have the right to use Campaign Data for any lawful purpose that is consistent with your posted privacy policy; provided, that (i) such Campaign Data excludes any Impression Attribute Data (except where you win the Bid for the inventory to which such Impression Attribute Data relates) and (ii) you may not use Campaign Data to target across other advertising platforms, exchanges or inventory sources.

Reports and Results

Subject to the terms and conditions of this Agreement, you may remotely access, view and download the reports provided by Flurry, which will be stored at <http://www.flurry.com> (or such other URL that Flurry may provide from time to time) (“Reports”). Flurry shall own and retains all right, title and interest in and to Reports and all other results, data and/or information provided to you through the Service (collectively, “Results”). You may use the Reports only in connection with your use of the Service pursuant to this Agreement and not for any other purpose unless with prior written consent of an officer of Flurry. You hereby assign all right, title and interest in and to any feedback or suggestions you provide to Flurry regarding your use of the Service.

Flurry reserves the right to audit Buyer's use of the Flurry RTB Service and investigate any related activity in order to ensure Buyer's compliance with this Agreement. Such audit will be at Flurry's expense, subject to prior notice and during Buyer's normal business hours.

Privacy and Information Collected

You agree to obtain all necessary rights from your Advertisers to permit Flurry to store, and if and to the extent applicable, to serve the Ads. You must post, and contractually require each of your Advertisers to post, a privacy policy that complies with all applicable laws, rules, regulations and industry standards. You agree to, and will contractually require your Advertisers to, comply with all applicable laws relating to the collection of information from end users. You agree to obtain all end-user consents required by applicable law in connection with your use of the Service. If you retarget, your privacy policy shall (i) include the types of data being collected from end users for targeting purposes, (ii) describe any use by or disclosure to third parties of such data and the purpose of such use or disclosure, and (iii) include an opt-out mechanism from receiving targeted advertisement. Your Ad should include all applicable notices in accordance with advertising industry guidelines and self-regulatory principles and/or any applicable law.



You agree not to use the Service (i) in connection with any application, advertisement or service directed towards children, or (ii) to collect any personal information from children.

Representations and Warranties

You represent and warrant to Flurry that (a) you are a company appropriately licensed and legally permitted to conduct business; (b) you have all necessary right, power and authority to enter into this Agreement and to perform the acts required of you hereunder, including all rights from your Advertiser to permit Flurry to store and, if and to the extent applicable, to serve the Ads; (c) your use of the Service will comply with all applicable laws, statutes, ordinances, and regulations (including, without limitation, any relevant data protection or privacy laws) and your own posted privacy policy; (d) you will not, directly or indirectly, introduce viruses, spyware or other malicious code into the Flurry RTB Marketplace; (e) the Ads trafficked, delivered or otherwise placed by you, the use and display of such Ads as contemplated by this Agreement, and the content linked to from such Ads, will not (i) infringe, violate, misappropriate or otherwise breach any duty toward the rights of any third party, (ii) be false, deceptive, misleading, harmful, obscene, unethical, defamatory, libelous or threatening, or (iii) violate Flurry's Content Guidelines; (f) all appropriate consents and waivers have been or will be obtained from end users; and (g) you will at all times comply with all applicable Flurry terms of services and policies.

Confidential Information

"Confidential Information" includes any proprietary data, the terms of this Agreement and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within ten business days, indicated in writing as "confidential". Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes publicly known, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed or collected by the receiving party without the use of Confidential Information. Neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such.

Independent Contractor

Each party acts as an independent contractor and not a partner, joint venture, franchisee, agent, or employee of the other. Neither party shall represent their relationship with the other party as anything other than an independent contractor. Buyer will have no right or authority to control the manner or means by which the Service is accomplished.

Indemnity

Buyer agrees to indemnify, defend and hold harmless Flurry, its subsidiaries, affiliates, or any of their respective directors, officers, employees, agents and media sellers from and against any and all claims, liabilities, penalties, settlements, judgments, fees and expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) arising from (a) Buyer's violation of the terms of this Agreement; (b) any violation or failure by Buyer to comply with all laws and regulations in connection with the Service, whether or not described herein; (c) Buyer's or its agents' use of the Service other than as permitted in this Agreement, or (d) failure by Buyer or any of its Advertisers to (i) comply with applicable privacy laws, (ii) comply with its own privacy policy, or (iii) make adequate disclosures about its data collection practices.

Disclaimer of Warranties and Limitation of Liability



FLURRY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY REGARDING THE SERVICE TO THE FULL EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SERVICE IS PROVIDED "AS-IS" AND WITHOUT WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. FURTHER, FLURRY DOES NOT MAKE, AND HAS NOT MADE, ANY REPRESENTATION OR WARRANTY THAT THE SERVICE IS ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. FURTHERMORE, FLURRY MAKES NO REPRESENTATION OR WARRANTY AS TO THE BENEFIT THAT YOU WILL OBTAIN FROM USING THE SERVICE. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

IN NO EVENT WILL FLURRY, ITS SUBSIDIARIES, AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS (COLLECTIVELY THE "FLURRY PARTIES"), BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY UNDER ANY THEORY FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST INCOME, REVENUE OR PROFITS, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF THIS AGREEMENT OR THE SERVICES, EVEN IF FLURRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE. THE FLURRY PARTIES AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT OR THE SERVICES WILL NOT EXCEED ONE HUNDRED DOLLARS (US\$100). APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, THE FLURRY PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Other Restrictions

Buyer agrees not to contact the sellers of Inventory on the Flurry RTB Marketplace using information derived by Buyer under this Agreement for the purpose of (a) circumventing the Flurry RTB Marketplace and buying media directly from such sellers, or (b) identifying sellers to solicit for the sale of a product or service that competes with the Flurry RTB Marketplace.

Buyer shall not, directly or indirectly, authorize or encourage any third party to generate fraudulent impressions or fraudulent clicks, or take similar fraudulent actions or any other actions that interferes with, disrupts or interacts in an unauthorized manner with the Service (or servers and networks which are connected to the Service), in the use of the Service, including but not limited to, the use of robots, scrapers or other unauthorized automated query tools and/or computer generated search requests. Flurry may terminate your account at any time for any reason, including without limitation such fraudulent activity, in its sole discretion. Buyer may not use the Service in violation of United States export control laws.

Modifications to and Termination of the Service

Flurry reserves the right to discontinue offering the Service or to modify the Service at any time in its sole discretion. If Buyer is dissatisfied with any aspect of the Service at any time, Buyer's sole and exclusive remedy is to terminate using the Service by providing notice to Flurry. Notwithstanding anything contained in this Agreement to the contrary, Flurry may also, in its sole discretion, terminate or suspend Buyer's access to the Service at any time.

Waiver and Severability



If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect. Flurry's acquiescence in the breach of a provision of this Agreement or failure to act upon such breach does not waive Flurry's right to act with respect to subsequent or similar breaches. Likewise, the delay or failure of Flurry to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

Choice of Law and Forum

This Agreement and the relationship between Buyer and Flurry shall be interpreted in accordance with the laws of the State of California without regard to conflict of laws principles. Subject to the arbitration provision below, Buyer and Flurry hereby agree to submit, exclusively, to the personal jurisdiction of the state courts with jurisdiction over San Francisco, California and/ or the U.S. District Court for the Northern District of California.

Binding Arbitration

Certain portions of this Section are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. Each of Buyer and Flurry agrees that it intend that this Section satisfies the "writing" requirement of the Federal Arbitration Act.

Buyer or Flurry may elect to have any controversy, allegation or claim arising out of or relating to this Agreement or the Service, including but not limited to claims for indemnification, contribution, or cross-claims in a pending action involving one or more third parties (collectively, a "Dispute") finally and exclusively resolved by binding arbitration before a sole arbitrator under the rules and regulations of the American Arbitration Association. If an in-person arbitration hearing is required, then it will be conducted in San Francisco, California; but if the applicable arbitration rules or laws require the arbitration to be conducted in the "metropolitan statistical area" (as defined by the U.S. Census Bureau) where Buyer is a resident at the time the Dispute is submitted to arbitration, Flurry shall have the right to elect to proceed to arbitration in such location. All parties to the arbitration will have the right, at their own expense, to be represented by an attorney or other advocate of their choosing. Buyer and Flurry will pay the administrative and arbitrator's fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Flurry to pay a greater portion or all of such fees and costs in order for this Section to be enforceable, then Flurry will have the right to elect to pay the fees and costs and proceed to arbitration.

TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AGREES THAT (I) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER; (II) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; AND (III) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR ANY OTHER PERSONS.

BUYER AGREES TO WAIVE HIS/HER/ITS RIGHT TO A JURY TRIAL AND UNDERSTAND THAT, ABSENT THIS PROVISION, BUYER WOULD HAVE THE RIGHT TO SUE IN COURT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF BUYER OR FLURRY WANTS TO ASSERT A DISPUTE AGAINST THE OTHER, THEN BUYER OR FLURRY MUST COMMENCE IT



WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES – OR IT WILL BE FOREVER BARRED.

In the event either you or Flurry elects arbitration, for any Dispute where the total amount of the award sought is less than \$10,000 USD, the party requesting relief may further elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, and the specific manner shall be chosen by the party initiating the arbitration; (ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction.

Entire Agreement

This Agreement constitutes the entire agreement between Buyer and Flurry and governs Buyer's use of the Service, superseding any prior agreements between Buyer and Flurry with respect to the Service.

Survival

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance hereof by the parties hereunder, including but not limited to the provisions relating to Indemnity, Disclaimer of Warranties and Limitation of Liability, shall so survive the completion of the performance, cancellation or termination of this Agreement.