

## **DATA PROCESSING ADDENDUM**

This Data Processing Addendum (“**DPA**”) forms a part of the AppTap, LLC (“AppTap”) Advertisement Insertion Order and AppTap’s Advertiser Insertion Order Terms and Conditions found at [https://AppTap.com/https://www.iab.com/wp-content/uploads/2015/06/IAB\\_4As-tsandcs-FINAL.pdf](https://AppTap.com/https://www.iab.com/wp-content/uploads/2015/06/IAB_4As-tsandcs-FINAL.pdf), unless Partner has entered into a superseding written master subscription agreement with AppTap, in which case, it forms a part of such written agreement (in either case, the “**Agreement**”).

By signing the DPA, Partner enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws, in the name and on behalf of its Controller Affiliates (defined below). For the purposes of this DPA only, and except where indicated otherwise, the term “Partner” shall include Partner and Controller Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

In the course of providing the Services under the Agreement, AppTap may Process certain Personal Data (such terms defined below) on behalf of Partner and where AppTap Processes such Personal Data on behalf of Partner the Parties agree to comply with the terms and conditions in this DPA in connection with such Personal Data.

### **HOW TO EXECUTE THIS DPA:**

1. This DPA consists of two parts: the main body of the DPA, and Exhibit A, B and C (including Appendices 1 and 2).
2. This DPA has been pre-signed on behalf of AppTap. The Standard Contractual Clauses in Exhibit C have been pre-signed by AppTap as the data importer.
3. To complete this DPA, Partner must:
  - a. Complete the information in the signature box and sign on Page 6.
  - b. Complete the information as the data exporter on Page 10.
  - c. Complete the information in the signature box and sign on Pages 16, 18 and 19.
4. Send the completed and signed DPA to AppTap by email, indicating Partner’s URL(s)(as set out on the applicable Agreement), to [dpa@AppTap.com](mailto:dpa@AppTap.com).
5. If you do not sign and submit the DPA as described in steps 1 through 4, but, after May 25, 2018, continue to act pursuant to the Agreement and send Partner Data to AppTap, you agree that this DPA is legally binding.

Upon receipt of the validly completed DPA by AppTap at this email address, or by continuing to do business with AppTap, this DPA will become legally binding.

### **HOW THIS DPA APPLIES TO PARTNER AND ITS AFFILIATES**

If the Partner entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement. In such case, the AppTap entity that is party to the Agreement is party to this DPA.

If the Partner entity signing this DPA has executed an Insertion Order with AppTap or its Affiliate pursuant to the Agreement, but is not itself a party to the Agreement, this DPA is an addendum to that Order Form and applicable renewal Order Forms, and the AppTap entity that is party to such Order Form is party to this DPA.

If the Partner entity signing this DPA is neither a party to an Order Form nor the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Partner entity who is a party to the Agreement executes this DPA.

## 1. DEFINITIONS

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Controller”** means the entity which determines the purposes and means of the Processing of Personal Data.

**“Controller Affiliate”** means any of Partner’s Affiliate(s) (a)(i) that are subject to applicable Data Protection Laws of the European Union, the European Economic Area and/or their member states, Switzerland and/or between Partner and AppTap, and (ii) permitted to use the Services pursuant to the Agreement between Partner and AppTap, but have not signed their own Insertion Order and are not a “Partner” as defined under the Agreement, (b) if and to the extent AppTap processes Personal Data for which such Affiliate(s) qualify as the Controller.

**“Data Protection Laws”** means all laws and regulations, including laws and binding regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

**“Data Subject”** means the identified or identifiable person to whom Personal Data relates.

**“GDPR”** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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).

**“Personal Data”** means any information that relates to an identified or identifiable natural person, to the extent that such information is protected as personal data under applicable Data Protection Laws.

**“Partner Data”** means all Personal Data and information submitted by Authorized Users of the Partner to AppTap pursuant to the Agreement

**“Processing”** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Processor”** means the entity which Processes Personal Data on behalf of the Controller.

**“AppTap”** means the AppTap entity which is a party to this DPA, as specified in the section “HOW THIS DPA APPLIES” above, being AppTap, LLC, organized under the laws of the State of Florida, United States of America.

**“Services”** means AppTap and/or its Affiliates’ proprietary technology and/or services for enabling and optimizing publishers and advertisers’ ability to sale and purchase advertising inventory on certain mobile applications and mobile/desktop websites, including via programmatic auction (if applicable) and any kind of mailings, including all sorts of messaging.

**“Standard Contractual Clauses”** means the agreement executed by and between Partner and AppTap, LLC and attached hereto as Exhibit C pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

**“Sub-processor”** means any entity engaged by AppTap to Process Personal Data in connection with the Services.

**“Supervisory Authority”** means an independent public authority which is established by an EU Member State pursuant to the GDPR.

## 2. PROCESSING OF PERSONAL DATA

- 2.1 Roles of the Parties.** The parties acknowledge and agree that with regard to the Processing of Personal Data, Partner (acting as an Publisher) and AppTap (acting as a Processor/Advertiser) each agree and acknowledge that where a party Processes Personal Data under or in connection with the Agreement it alone determines the purposes and means of such Processing as a Data Controller (as defined under applicable Data Protection Laws). The parties acknowledge and agree that with regard to the Processing of Personal Data, Partner and/or AppTap will engage Sub-processors pursuant to the requirements set forth in Section 4 “Sub-processors” below.
- 2.2 Partner’s Processing of Personal Data.** Partner shall, in its use of the Services and provision of instructions, Process Personal Data in accordance with the requirements of applicable Data Protection Law. Partner shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Partner acquired Personal Data, including but not limited to providing adequate notices and obtaining legal consent from end users. Partner will on request provide records of all relevant consents obtained (or make his partners who warranted to provide) to AppTap.
- 2.3 AppTap’s Processing of Personal Data.** As Partner’s Processor, AppTap shall only Process Personal Data for the following purposes: (i) Processing in accordance with the Agreement and Services, which may include processing concerning clicks, actions and impressions data, IP Address, device identifiers, http headers, publisher details (such as site ID, partner ID, advertiser and publisher name), campaign details (such as campaign ID, creative ID), digital advertising identifier (such as a GAID or IDFA), name, gender, age, email address and such other data sets; and (ii) Processing to comply with other reasonable instructions provided by Partner (e.g., via email) that are consistent with the terms of the Agreement (individually and collectively, the “**Purpose**”). AppTap acts on behalf of and on the instructions of Partner in carrying out the Purpose.
- 2.4 Details of the Processing.** The subject-matter of Processing of Personal Data by AppTap is the Purpose. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Exhibit B (Description of Processing Activities) to this DPA.

## 3. RIGHTS OF DATA SUBJECTS

- 3.1 Data Subject Requests.** AppTap shall, to the extent legally permitted, promptly notify Partner if AppTap receives any requests from a Data Subject to exercise the following Data Subject rights: access, rectification, restriction of Processing, erasure (“right to be forgotten”), data portability, objection to the Processing, or to not be subject to an automated individual decision making (each, a “**Data Subject Request**”). Taking into account the nature of the Processing, AppTap shall assist Partner by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of Partner’s obligation to respond to a Data Subject Request under applicable Data Protection Laws. In addition, to the extent Partner, in its use of the Services, does not have the ability to address a Data Subject Request, AppTap shall, upon Partner’s request, provide commercially reasonable efforts to assist Partner in responding to such Data Subject Request, to the extent AppTap is legally permitted to do so and the response to such Data Subject Request is required under applicable Data Protection Laws. To the extent legally permitted, Partner shall be responsible for any costs arising from AppTap’s provision of such assistance, including any fees associated with provision of additional functionality.

## 4. SUB-PROCESSORS

- 4.1 Appointment of Sub-processors.** Partner acknowledges and agrees that AppTap may engage third-party Sub-processors in connection with the provision of the Services. As a condition to permitting a third-party Sub-processor to Process Personal Data, AppTap will enter into a written agreement with each Sub-processor containing data protection obligations that provide at least the same level of protection for Personal Data as those in this DPA, to the extent applicable to the nature of the Services provided by such Sub-processor. Partner acknowledges that AppTap is located in the United States and is involved in providing the Services to Partner either directly or through the provision of support to AppTap. In either case, Partner agrees to enter into the Standard Contractual Clauses set out in Exhibit C and acknowledges

that sub-processors may be appointed by AppTap in accordance with Clause 11 of Exhibit C.

- 4.2 List of Current Sub-processors.** Subject to applicable law, Partner may request information about sub-processors by e-mailing [dpa@AppTap.com](mailto:dpa@AppTap.com). AppTap will evaluate the request in accordance with applicable law and make commercially reasonable efforts to provide the information requested after evaluating Partner's stated legal basis for the information.

## **5. SECURITY**

- 5.1 Controls for the Protection of Partner Data.** AppTap shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Partner Data), confidentiality and integrity of Partner Data. AppTap regularly monitors compliance with these measures.

- 5.2 Third-Party Certifications and Audits.** Upon Partner's request, and subject to the confidentiality obligations set forth in the Agreement, AppTap shall make available to Partner (or Partner's independent, third-party auditor) information regarding AppTap's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits. Partner may contact AppTap in accordance with the "Notices" Section of the agreement to request an on-site audit of AppTap's procedures relevant to the protection of Personal Data, but only to the extent required under applicable Data Protection Law. Partner shall reimburse AppTap for any time expended for any such on-site audit at AppTap's then-current rates, which shall be made available to Partner upon request. Before the commencement of any such on-site audit, Partner and AppTap shall mutually agree upon the scope, timing, and duration of the audit, in addition to the reimbursement rate for which Partner shall be responsible. All reimbursement rates shall be reasonable, taking in to account the resources expended by AppTap. Partner shall promptly notify AppTap with information regarding any non-compliance discovered during the course of an audit, and AppTap shall use commercially reasonable efforts to address any confirmed non-compliance.

## **6. PARTNER DATA INCIDENT MANAGEMENT AND NOTIFICATION**

AppTap maintains security incident management policies and procedures. AppTap shall notify Partner of any breach relating to Personal Data (within the meaning of applicable Data Protection Law) of which AppTap becomes aware and which may require a notification to be made to a Supervisory Authority or Data Subject under applicable Data Protection Law or which AppTap is required to notify Partner under applicable Data Protection Law (a "**Partner Data Incident**"). AppTap shall provide commercially reasonable cooperation and assistance in identifying the cause of such Partner Data Incident and take commercially reasonable steps to remediate the cause to the extent the remediation is within AppTap's control. The obligations herein shall not apply to incidents that are caused by Partner, Authorized Users and/or any Non-AppTap Products.

## **7. RETURN AND DELETION OF PARTNER DATA**

Upon termination of the Services for which AppTap is Processing Personal Data, AppTap shall, upon Partner's request, and subject to the limitations described in the Agreement, return all Partner Data to Partner or securely destroy them and demonstrate to the satisfaction of Partner that it has taken such measures, unless applicable law prevents it from returning or destroying all or part of Partner Data. AppTap agrees to preserve the confidentiality of any retained Partner Data and will only actively Process such Partner Data after such date in order to comply with the laws it is subject to.

## **8. APPLICATION OF THIS DPA TO CONTROLLER AFFILIATES**

- 8.1 Contractual Relationship.** The parties acknowledge and agree that, by executing the DPA in accordance with "HOW TO EXECUTE THIS DPA", Partner enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Controller Affiliates, thereby establishing a separate DPA between AppTap and each such Controller Affiliate subject to the provisions of this Agreement and this Section 8 and Section 9. Each Controller Affiliate agrees to be bound by the obligations under this DPA and, to the extent application, the Agreement. For the avoidance of doubt, a Controller Affiliate is not and does not become a party to the Agreement,

and is only a party to the DPA. All access to and use of the Services by Controller Affiliates must comply with the terms and conditions of the Agreement and any violation of the terms and conditions of the Agreement by a Controller Affiliate shall be deemed a violation by Customer.

**8.2 Communication.** The Partner that is the contracting party to the Agreement shall remain responsible for coordinating all communication with AppTap under this DPA.

## **9. LIMITATION OF LIABILITY**

Each party's liability, taken together in the aggregate, arising out of or related to this DPA, whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party under the Agreement and all DPAs together.

For the avoidance of doubt, AppTap's total liability for all claims from the Partner arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under the Agreement, including by Partner and, in particular, shall not be understood to apply individually and severally to Partner.

## **10. EUROPEAN SPECIFIC PROVISIONS**

**10.1 GDPR.** With effect from 25 May 2018, AppTap will Process Personal Data in accordance with the GDPR Requirements directly applicable to AppTap's provisioning of Services.

**10.2 Transfer Mechanisms.** For transfers of Personal Data under this DPA from the European Union, the European Economic Area and/or their member states and Switzerland to countries which do not ensure an adequate level of data protection within the meaning of applicable Data Protection Laws of the foregoing territories, to the extent such transfers are subject to such applicable Data Protection Laws:

1. The Standard Contractual Clauses set forth in Exhibit C to this DPA apply, subject to Exhibit A.

## **11. PARTIES TO THIS DPA**

The Section "HOW THIS DPA APPLIES" specifies which AppTap entity is party to this DPA. In addition, AppTap, LLC is a party to the Standard Contractual Clauses in Exhibit C. Notwithstanding the signatures below of any other AppTap entity, such other AppTap entities are not a party to this DPA or the Standard Contractual Clauses.

## **12. LEGAL EFFECT**

This DPA shall only become legally binding between Partner and AppTap when the formalities steps set out in the Section "HOW TO EXECUTE THIS DPA" above have been fully completed or, after May 25, 2018, Partner continues to act pursuant to the Agreement and sends Partner Data to AppTap. If Partner has previously executed a data processing addendum with AppTap, this DPA supersedes and replaces such prior Data Processing Addendum.

## **13. GOVERNING LAW**

This DPA and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of the State of Florida, United States of America.

### **List of Exhibits**

Exhibit A: Additional Data Transfer Terms

Exhibit B: Description of Processing Activities

Exhibit C: Standard Contractual Clauses

The parties' authorized signatories have duly executed this DPA:

**On behalf of Partner:**

Name (written out in full): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**On behalf of AppTap, LLC:**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT A**  
**ADDITIONAL DATA TRANSFER**  
**TERMS**

**1. ADDITIONAL TERMS TO STANDARD CONTRACTUAL CLAUSES**

- 1.1. Partners covered by the Standard Contractual Clauses.** The Standard Contractual Clauses and the additional terms specified in this Exhibit A apply to (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and its Controller Affiliates and, (ii) all Affiliates of Partner established within the European Economic Area, Switzerland and the United Kingdom, which have signed Order Forms for the Services. For the purpose of the Standard Contractual Clauses and this Section 1, the aforementioned entities shall be deemed “data exporters”.
- 1.2. Instructions.** This DPA and the Agreement are Partner’s complete and final instructions at the time of execution of the DPA for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the Standard Contractual Clauses, the following is deemed an instruction by the Partner to process Personal Data: (a) Processing in accordance with the Agreement and applicable Insertion Orders(s); (b) Processing initiated by Authorized Users in their use of the Services; and (c) Processing to comply with other reasonable instructions provided by Partner (e.g., via email or support requests) where such instructions are consistent with the terms of the Agreement.
- 1.3. Appointment of new Sub-processors and List of current Sub-processors.** Pursuant to Clause 5(h) of the Standard Contractual Clauses, Partner acknowledges and expressly agrees that AppTap may engage third-party Sub-processors in connection with the provision of the Services. AppTap shall make available to Partner the current list of Sub-processors in accordance with Section 4.2 of this DPA.
- 1.4. Notification of New Sub-processors and Objection Right for new Sub-processors.** Pursuant to Clause 5(h) of the Standard Contractual Clauses, Partner acknowledges and expressly agrees that AppTap may engage new Sub-processors as described in Sections 4.1 of the DPA.
- 1.5. Copies of Sub-processor Agreements.** The parties agree that copies of the Sub-processor agreements that must be provided by AppTap to Partner pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by AppTap beforehand; and, that such copies will be provided by AppTap, in a manner to be determined in its discretion, and including pursuant to a confidentiality agreement, only upon request by Partner.
- 1.6. Audits and Certifications.** The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications:  
Upon Partner’s request, and subject to the confidentiality obligations set forth in the Agreement, AppTap shall make available to Partner (or Partner’s independent, third-party auditor) summary information regarding AppTap’s compliance with the obligations set forth in this DPA. Pursuant to Data Protection Law and upon written request explaining the legal basis for audit, Partner may contact AppTap in accordance with the “Notices” Section of the Agreement to request an audit of AppTap’s procedures relevant to the protection of Personal Data, but only to the extent required under applicable Data Protection Law. Partner shall reimburse AppTap for any time expended for any such on-site audit at AppTap’s then-current rates, which shall be made available to Partner upon request. Before the commencement of any such on-site audit, Partner and AppTap shall mutually agree upon the scope, timing, and duration of the audit, in addition to the reimbursement rate for which Partner shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by AppTap. Partner shall promptly notify AppTap with information regarding any non-compliance discovered during the course of an audit, and AppTap shall use commercially reasonable efforts to address any confirmed non-compliance.

- 1.7. **Certification of Deletion.** The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by AppTap to Partner only upon Partner's request and to the extent possible if Partner provides specific data from a data subject in order for AppTap to identify and delete the relevant Partner Data.
- 1.8. **Conflict.** In the event of any conflict or inconsistency between the body of this DPA and any of its Schedules (not including the Standard Contractual Clauses) and the Standard Contractual Clauses in Exhibit C, the Standard Contractual Clauses shall prevail.



**EXHIBIT B**  
**DESCRIPTION OF PROCESSING**  
**ACTIVITIES**

**Data subjects**

Partner may submit personal data to the Services, the extent of which is determined and controlled by Partner and which may include, but is not limited to, personal data relating to the following categories of data subject:

- Authorized Users;
- employees of Partner;
- consultants of Partner;
- contractors of Partner;
- agents of Partner; and/or
- third parties with which Partner conducts business.

**Categories of data**

The personal data transferred concern the following categories of data:

Any personal data comprised in Partner Data, as defined in the Agreement.

**Special categories of data**

Partner may not submit personal data to AppTap through the Services, the extent of which is determined and controlled by Partner in compliance with applicable Data Protection Law and which may concern the following special categories of data, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade-union membership;
- genetic or biometric data;
- health; and
- sex life.

**Processing operations**

The personal data transferred will be processed in accordance with the Agreement and any Insertion Order and may be subject to the following processing activities:

- storage and other processing necessary to provide, maintain, and improve the Services provided to Partner;
- to provide Partner and technical support to Partner; and
- disclosures in accordance with the Agreement, as compelled by law.

**EXHIBIT  
C**

**Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting

organisation:.....

Address:.....

Tel.:..... ; fax:..... ; e-mail:.....

Other information needed to identify the organisation:

.....  
.....

(the data **exporter**)

And

Name of the data importing organisation: **AppTap, LLC.**

11911 Freedom Drive  
8<sup>th</sup> Floor  
Reston, VA 20194

Tel.: fax: .....; e-mail: **dpa@AppTap.com**

Other information needed to identify the organisation:

.....  
.....

(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

## Clause 1

### Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the Data Exporter'* means the controller who transfers the personal data;
- (c) *'the Data Importer'* means the processor who agrees to receive from the Data Exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the Data Importer or by any other subprocessor of the Data Importer who agrees to receive from the Data Importer or from any other subprocessor of the Data Importer personal data exclusively intended for processing activities to be carried out on behalf of the Data Exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the Data Exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## Clause 3

### Third-party beneficiary clause

1. The data subject can enforce against the Data Exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the Data Importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the Data Exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the Data Exporter and the Data Importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire

legal obligations of the Data Exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### Clause 4

##### **Obligations of the Data Exporter**

The Data Exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the Data Exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the Data Importer to process the personal data transferred only on the Data Exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the Data Importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the Data Importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the Data Exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the Data Importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### Clause 5

##### **Obligations of the Data Importer**

The Data Importer agrees and warrants:

- (a) to process the personal data only on behalf of the Data Exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Exporter of its inability to comply, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Data Exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the Data Exporter as soon as it is aware, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the Data Exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the Data Exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the Data Exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the Data Exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Data Exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the Data Exporter;
- (h) that, in the event of subprocessing, it has previously informed the Data Exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the Data Exporter.

## Clause 6

### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the Data Exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the Data Exporter, arising out of a breach by the Data Importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the Data Exporter has factually disappeared or ceased to exist in law or has become insolvent, the Data Importer agrees that the data subject may issue a claim against the Data Importer as if it were the Data Exporter, unless any successor entity has assumed the entire legal obligations of the Data Exporter by

contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The Data Importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the Data Exporter or the Data Importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the Data Exporter and the Data Importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the Data Exporter or the Data Importer, unless any successor entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

#### Clause 7

##### **Mediation and jurisdiction**

1. The Data Importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the Data Importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the Data Exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### Clause 8

##### **Cooperation with supervisory authorities**

1. The Data Exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the Data Importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the Data Exporter under the applicable data protection law.

3. The Data Importer shall promptly inform the Data Exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the Data Importer, or any subprocessor, pursuant to paragraph 2. In such a case the Data Exporter shall be entitled to take the measures foreseen in Clause 5 (b).

#### Clause 9

##### **Governing Law**

The Clauses shall be governed by the law of the Member State in which the Data Exporter is established.

#### Clause 10

##### **Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on

business related issues where required as long as they do not contradict the Clause.

## Clause 11

### **Subprocessing**

1. The Data Importer shall not subcontract any of its processing operations performed on behalf of the Data Exporter under the Clauses without the prior written consent of the Data Exporter. Where the Data Importer subcontracts its obligations under the Clauses, with the consent of the Data Exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the Data Importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the Data Importer shall remain fully liable to the Data Exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the Data Importer and the subprocessor shall also provide for a third- party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the Data Exporter or the Data Importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Exporter is established.
4. The Data Exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the Data Importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the Data Exporter's data protection supervisory authority.

## Clause 12

### **Obligation after the termination of personal data processing services**

1. The parties agree that on the termination of the provision of data processing services, the Data Importer and the subprocessor shall, at the choice of the Data Exporter, return all the personal data transferred and the copies thereof to the Data Exporter or shall destroy all the personal data and certify to the Data Exporter that it has done so, unless legislation imposed upon the Data Importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the Data Importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The Data Importer and the subprocessor warrant that upon request of the Data Exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the Data Exporter:**

Name (written out in full): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**On behalf of the Data Importer:**

Name (written out in full): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_



## **Appendix 1 to the Standard Contractual Clauses**

### **Data Exporter**

The Data Exporter is a Partner of the Data Importer's mobile advertising, data, app recommendations and discovery services and/or technologies.

### **Data Importer**

The Data Importer is a provider of data-driven advertising and recommendation services and/or technologies.

### **Data subjects**

Data Exporter may submit personal data to the Data Importer through the Services, the extent of which is determined and controlled by the Data Exporter in compliance with applicable Data Protection Law and which may include, but is not limited to, personal data relating to the following categories of data subject:

- Authorized Users;
- employees of the Data Exporter;
- consultants of the Data Exporter;
- contractors of the Data Exporter;
- agents of the Data Exporter; and/or
- third parties with which the Data Exporter conducts business.

### **Categories of data**

The personal data transferred concern the following categories of data:

Any personal data comprised in Partner Data: "Partner Data" means all data and information submitted by Authorized Users to the Services and includes clicks, actions and impressions data, IP Address, device identifiers, http headers, publisher details (such as site ID, partner ID, advertiser and publisher name), campaign details (such as campaign ID, creative ID), digital advertising identifier (such as a GAID or IDFA), name, gender, age, email address and such other data sets.

### **Special categories of data**

Data Exporter may not submit personal data to the Data Importer through the Services, the extent of which is determined and controlled by the Data Exporter in compliance with Applicable Data Protection Law and which may concern the following special categories of data, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade-union membership;
- genetic or biometric data;
- health; and
- sex life.

### **Processing operations**

The personal data transferred will be processed in accordance with the Agreement and any Order Form and may be subject to the following processing activities:

- storage and other processing necessary to provide, maintain and improve the Services provided to the Data Exporter;
- to provide Partner and technical support to the Data Exporter; and
- disclosures in accordance with the Agreement, as compelled by law.

DATA EXPORTER:

Name: \_\_\_\_\_

Authorised Signature \_\_\_\_\_

DATA IMPORTER:

Name: \_\_\_\_\_

Authorised Signature \_\_\_\_\_

## Appendix 2 to the Standard Contractual Clauses

Technical and organisational security measures implemented by the Data Importer in accordance with Clauses 4(d) and 5(c):

The Data Importer has implemented and will maintain appropriate technical and organisational measures to protect the personal data against misuse and accidental loss or destruction.

DATA EXPORTER:

Name: \_\_\_\_\_

Authorised Signature \_\_\_\_\_

DATA IMPORTER:

Name: \_\_\_\_\_

Authorised Signature \_\_\_\_\_