

## **dentsu UK Programmatic Standard Terms and Conditions**

### **1. Definitions**

In this Agreement, the following definitions are used:

**Ad or Ads** means any advertisement or advertisements promoting the products and/or services of Advertiser.

**Ad Tag** means a piece of HTML on a webpage that will contact an Ad server and request an Ad.

**Advertiser** means the Advertiser whose services/products are the subject of the Ads and who appoints the Agency in accordance with clause 3 (Appointment).

**Advertiser Personal Data** means personal data provided to the Agency by or on behalf of the Advertiser, or generated or collected on the Advertiser's behalf in connection with the performance of the Services. Advertiser Personal Data may include (without limitation) the following categories of data: browsing information, contact information, financial information, social media information and user account information, as more specifically set out in Annex A (Processing Instructions) to Schedule 1 (Data Protection Terms) of the Agreement.

**Agency** means the media agency appointed by Advertiser to procure the Services on its behalf in accordance with an Insertion Order.

**Agreement** means these terms of business and the schedules and annexures appended hereto, together with any terms appearing in an Insertion Order except, to the extent any such terms expressly conflict, these terms of business and the schedule(s) and annexures appended hereto shall prevail.

**Applicable Law** means (i) any and all laws, statutes, regulations, by-laws, orders, ordinances and court decrees that apply to the performance and supply of the Services or the processing of Advertiser Personal Data, including the Data Protection Legislation, and (ii) the terms and conditions of any applicable approvals, consents, exemptions, filings, licences, authorities, permits, registrations or waivers issued or granted by, or any binding requirement, instruction, direction or order of, any applicable government department, authority or agency having jurisdiction in respect of that matter.

**Confidential Information** means information that concerns the financial and commercial terms of this Agreement or that relates to any Party's business plans, intentions, operations, processes, media plans, marketing surveys, research and data, product information, know-how, trade secrets, market opportunities, business affairs and any other similar information, but excluding any information that: (i) is, or later rightfully becomes, available to the public; (ii) was in the recipient's rightful possession prior to receipt of the information from the discloser; (iii) is later disclosed to the recipient by a third party who has no obligation of confidentiality; (iv) is independently developed by the recipient without the use or benefit of the Confidential Information; or (v) is required to be disclosed by applicable law or regulation or pursuant to a court order or other legal process of competent jurisdiction.

**Content** means images, graphics, text, data, links or other objects supplied by or on behalf of the Advertiser for inclusion in the Ads.

**Cookie** means a parcel of text sent by a server to the cookie file in a user's browser and then sent back unchanged by the user each time it accesses that server. HTTP cookies are used for authentication, session tracking, and storing non-Personally Identifiable Information about specific users, such as site preferences or buying habits.

**Data** means all data (aggregated or non-aggregated), statistics, code or similar information provided by the Advertiser or generated or collected by the Agency or the Services Network in performing the Services that directly relate to the Advertiser (including but not limited to any Advertiser Personal Data).

**Data Protection Legislation** means:

(a) to the extent the UK GDPR applies, all laws relating to data protection, the processing of personal data, and privacy and/or electronic communications in force from time to time in the UK including without limitation the UK GDPR, and the Data Protection Act 2018 (and regulations made thereunder) ("**UK Data Protection Legislation**"); and/or

(b) to the extent the EU GDPR applies, all laws relating to data protection, the processing of personal data, and privacy and/or electronic communications in force from time to time in the European Union and a member state of the European Union to which the Advertiser and Agency is subject, including without limitation the EU GDPR;

and all other regulatory requirements in force from time to time which apply to a Party relating to data protection, the processing of personal data, privacy and/or electronic communications; and the guidance and codes of practice issued by the relevant regulatory authority.

**dentsu international** means those companies that operate under the 'dentsu international' umbrella brand, including Dentsu UK Limited, Dentsu Ireland Limited, Merkle One Limited, Merkle Three Limited, Paragon Digital Services Limited, and Paragon Digital Services Pvt. Ltd., amongst others.

**EU GDPR** means the General Data Protection Regulation ((EU) 2016/679).

**Insertion Order** means an insertion order or similar approval document such as a media authorisation form, media plan or other written document acceptable to the Agency which is submitted online, by email or otherwise to the Agency by the Advertiser requesting the Services.

**Inventory** means the advertising web-space of publishers and other media owners and related data.

**Parties** means the parties to this Agreement from time to time and **Party** shall mean any one of them.

**Personally Identifiable Information** means information that could be used on its own to directly identify, contact or precisely locate an individual.

**Products** means certain products which may be offered in conjunction with the Services, including, but not limited to: audience data management; audience targeting across IP enabled devices (display, mobile and video) and audience reporting and performance analysis; real-time bidding; display; video; mobile; real-time optimisation; Facebook Exchange; lead generation; CPC/CPA campaigns; native content distribution; audience analysis; search re-targeting; audience discovery; and campaign reporting/performance analysis.

**Pixel** means a snippet of code that calls for a 1x1 transparent pixel to be delivered to a webpage by a third party server to allow the third party server to record information such as the IP address of the user's computer, URL of the page, and time the page was viewed.

**Services** means digital media services, including delivery of certain Products and the purchase of Inventory within Ad exchanges and other media sources by the Agency via the Services Network, as more particularly set out in an Insertion Order.

**Services Network** means any third parties (excluding dentsu international) that the Agency engages or makes purchases from in relation to the display of Ads and the provision of the Services, including: publishers, media owners, audience centres, demand-side platform providers, Ad servers, data partners, brand safety providers, creative providers and/or Ad exchanges.

**Services Technology Stack** means the technologies utilised by the Agency and the Services Network to provide the Services which primarily enable Ads to be targeted at members of a target audience identified on the basis of the websites they visit, activity on such websites, such as their purchasing activity, together with features such as the gender and location of the audience members.

**Technologies** include Cookies, Ad Tags, Pixels and similar other forms of computer code.

**UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

**Website** means a website owned or operated by the Advertiser, including any links to such website that may be incorporated in the Ads.

**Year** means the twelve (12) month period following the date of the first Insertion Order and each anniversary thereof.

References to "in writing" include in written form, by email or by online acceptance.

## **2. Services**

The Agency and the Services Network leverage the Services Technology Stack in order to offer programmatic buying and real time bidding of display, video and mobile media and, when they become internet enabled, other media channels.

## **3. Appointment**

Advertiser appoints the Agency to provide the Services, using the Services Network and Services Technology Stack. In connection with the provision of the Services, the Agency may subcontract any or all of its rights and obligations under this Agreement to any member(s) of dentsu international and/or the Services Network, and the Advertiser's consent in this regard shall take precedence over any other terms which may be in place between the Advertiser and the Agency or other member of dentsu international, which conflict, or are inconsistent with scope of appointment in this clause 3.

This Agreement shall bind the Advertiser upon the execution of an Insertion Order and, by executing an Insertion Order, the Advertiser confirms that it has accepted this Agreement.

This Agreement applies to the exclusion of all other terms and conditions governing the provision of the Services, including any agreements between the Agency and the Advertiser.

## **4. Provision of the Services**

The Advertiser and the entities within the Services Network are separate and distinct legal entities and trade as legal principal as a matter of law. Following submission of an Insertion Order, the Advertiser shall supply the

Agency or Services Network, or procure the supply to the Agency or the Services Network of, the Content necessary to provide the Services detailed in such Insertion Order for inclusion in the Ads. In case of delay by Advertiser in providing such Content, the Agency shall not have any liability to the extent that it is unable to deliver the Services by the agreed dates.

The Agency has implemented measures and has engaged third parties with expertise in brand safety. Such brand safety measures seek to prevent the display of Ads on websites that are of a pornographic, defamatory, obscene or illegal nature. The Agency's brand safety policy can be found here: <https://legal.dentsu.com/uki-clients#uk-programmatic-brandsafety>.

Notwithstanding the Agency's acknowledgement of the importance for Content to appear in a brand safe environment, the Ads are displayed on websites as determined by the Services Technology Stack operated by third parties. Consequently, the display of Ads is not ultimately within the control of the Agency and, as such, the Agency cannot guarantee that such brand safety measures are successful in every instance.

The Agency will promptly take steps to remove any Ads that are displayed on websites in a manner that does not comply with the brand safety policy referenced above, upon becoming aware of such display.

The Products are procured from third parties and so the Agency can only warrant that the Products will be provided using reasonable skill and care.

The Agency will not be held responsible for any delays or errors with the proper implementation of Technologies associated with a particular Advertiser campaign.

The Agency makes no warranties of any kind with respect to the Services, the Services Technology Stack or the Services Network or any data supplied thereby, whether express or implied, including any implied warranties as to merchantability, noninfringement, non-interruption, accuracy or fitness for a particular purpose.

## **5. Invoicing and Payment**

The Advertiser shall pay the Agency the amounts appearing in an Insertion Order.

All amounts are due to the Agency by the 25th day following the month of the Ads appearing.

The Agency shall also be entitled to separately invoice for: (i) all related out-of-pocket costs, administrative fees, or expenses incurred by the Agency in performing the Services; (ii) interest on any outstanding balance owed to the Agency at the rate of 4% above the base rate of Barclays Bank Plc from the date the invoice became due for payment until the date it is paid in full; (iii) any costs incurred by the Agency in recovering debts owed by the Advertiser; and (iv) any administrative compliance fee because of an act or omission of the Advertiser to supply Ads or Content in accordance with the Agency's reasonable instructions.

## **6. Intellectual Property and Data**

No Party shall acquire any intellectual property rights of the other in connection with the provision of the Services and each Party remains the sole owner of any and all intellectual property rights it owned or used prior to the execution of this Agreement.

The Advertiser hereby grants the Agency a worldwide, royalty-free, sub-licensable licence for the period in which the Services are rendered for the Agency and the Services Network to amend, adapt, use, distribute and/or position the Content or any part thereof for the purposes of promoting (including without limitation for the purposes of creating hyperlinks to) the Content and the Ads to deliver the Services agreed in an Insertion Order or as otherwise agreed in writing between the Parties ("**Licence**").

The Licence shall expire upon completion of the Services. Notwithstanding the foregoing, Advertiser acknowledges and agrees that the nature of the Services is such that it is not possible to (i) prevent subsequent sharing, copying or modification by third parties of Content placed on the internet by or on behalf of the Agency in accordance with this Agreement; or (ii) remove, takedown or expunge content from the internet once propagated, and the Agency shall have no liability for any sharing, copying or modification of Content (whether or not it has already been modified by or on behalf of the Agency in accordance with this Agreement) by third parties nor responsibility for removing or procuring the removal of Content (whether or not it has already been modified by or on behalf of the Agency in accordance with this Agreement) from the internet upon completion of the Services or termination or expiry of this Agreement.

Advertiser hereby waives in favour of Agency and all its assignees and successors in title all moral rights in the Content to which Advertiser may be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time and under all similar legislation from time to time in force anywhere in the world to the extent necessary for the Agency and the Services Network to exploit the Licensed Rights subject to the terms of the foregoing licence.

The Advertiser shall retain ownership of all Data. The Agency shall have a worldwide, royalty free, non-exclusive, transferable licence to use and otherwise process Data in order to provide, operate, maintain and enhance the Services, the Services Technology Stack and any Products or programs connected to the provision of the Services including, without limitation, the right to disclose Data with entities of the Services Network and, where necessary,

to sub-licence the same rights to media owners and sub-contractors strictly in connection with the performance of the Services. The licence granted under this provision to the Agency is granted on the following conditions: (i) Data collected specifically in respect of the Advertiser will not be used for the benefit of another advertiser; and/or (ii) following termination or expiry of the Agreement, the Agency shall have the right, for a period of 6 months from such termination or expiry, to use the Data for the purposes of internal reporting (including the compilation of statistics), evaluating the Services, and improving the Services Technology Stack, and to disclose the Data if required by applicable law or regulation or pursuant to a court order or other legal process. Advertiser will not share or pool the Data, with the data of other advertisers

In performing the Services, the Agency may be required to contract with external providers and/or media owners that service the Services Network and who may utilise all or some of the Technologies for media targeting purposes and may insert the same on a Website. Any Data supplied to such providers and/or media owners will be used only for performing the Services. The Parties agree and acknowledge that the Advertiser shall be solely responsible in relation to maintaining a privacy policy that covers the Services and, in particular, but without limitation, discloses that third parties may place Technologies on the browsers of visitors to its Website(s) and may send their own Cookies to the visitors' Cookie file. These Technologies allow the Services Technology Stack to serve Ads. The Agency shall use reasonable endeavours to ensure that each Ad will incorporate an icon that will include information for visitors on how to optout of being retargeted.

It is the Parties' intention that the Data will not include Personally Identifiable Information, but the Parties acknowledge that personal data may be processed by the Agency (and in turn by its subcontractors), in the provision of the Services. To the extent that any Data contains personal data, the Advertiser will, unless otherwise stated in the Agreement and/or otherwise agreed between the Parties, be acting as data controller. The Agency will only use the Advertiser Personal Data in accordance with the documented instructions of the Advertiser where the Agency is processing Advertiser Personal Data as Advertiser's data processor.

The Advertiser warrants and represents that any instructions communicated to the Agency, under this Agreement, accurately reflect the Advertiser's instructions and the Agency will not be responsible or liable for any inaccuracies.

The terms "**data controller**", "**data processor**", "**data subject**", "**personal data**" and "**pseudonymised data**" shall have the meanings given to them in the Data Protection Legislation. Data Protection Terms will apply to the Services and this Agreement as set out in Schedule 1 (Data Protection Terms).

## **7. Warranties**

Each Party warrants and represents to the other that it has the right, power and authority to enter into this Agreement, grant the rights, give the undertakings and perform the obligations required under this Agreement.

The Advertiser agrees and acknowledges that it will be solely responsible for the Content and the Advertiser warrants and represents that it possesses all consents, licences and other rights necessary to promote the Content and that the Content, including all Websites which promote the Content: (i) is not misleading, inaccurate, indecent, libellous or unlawful; (ii) does not violate the rights of any third party; (iii) shall not harm or adversely affect the operation of the Services Technology Stack or any webspaces of any third party, publisher or media owner in which it is displayed; (iv) complies at all times with all applicable laws, statutes or regulations, advertising and marketing codes of practice and standards in any jurisdiction in which its Ads are displayed; and (v) does not give access via hyperlinks to any website containing material that is obscene, defamatory or contrary to any applicable law or regulation.

The Advertiser shall defend, indemnify, and hold the Agency harmless from and against any proceedings, damages, costs, liabilities and expenses (including court costs and legal fees), suffered or incurred as a result of any breach of the warranty given by the Advertiser in the preceding paragraph of this clause 7.

## **8. Confidentiality**

Each Party agrees to take commercially reasonable precautions to protect from disclosure the Confidential Information that it receives from the other.

## **9. Termination and Suspension**

This Agreement shall remain in effect while any Services are being rendered to Advertiser. Notwithstanding, the Agreement may be terminated by any Party on not less than 30 days' written notice to the other for any or no reason, or immediately where one Party is in material breach of this Agreement, which includes, without limitation, non-payment of any amounts due, or is, or is about to become insolvent, enter into an arrangement with its creditors or process having similar effect, in these circumstances the non-breaching Party may terminate this Agreement with immediate effect.

Any termination of this Agreement will not affect the Parties' rights and obligations hereunder arising prior to the date of termination and, notwithstanding any such termination, the Advertiser will remain fully responsible and liable for all charges, expenses and fees incurred or earned prior to the date of termination. Notwithstanding any other

provision in this Agreement or any other applicable agreement, in the event any Party gives notice of termination, the Agency will not be required to place or purchase any media time and/or space pursuant to an Insertion Order, subsequent to the date of the notice of termination, unless the Advertiser advances the funds or pre-pays the payment for such media time and/or space. In the event that the Advertiser requests the cancellation of bookings after the cancellation deadlines, the Agency will use all reasonable endeavours to obtain acceptance of such cancellation. However, the Agency cannot guarantee acceptance of such. Should the Advertiser require any cancellation or amendment to the booking of campaigns which result in additional costs, e.g. retrospective rate adjustments, cancellation charges or lower discounts from the media, the Advertiser will be required to reimburse the Agency for the additional costs incurred during and after the termination of this Agreement and compensate the Agency by paying a cancellation fee equivalent to the sum of any additional costs incurred by the Agency as a result of cancellation of that Insertion Order.

If the Advertiser fails to pay any fees or costs invoiced by the Agency within thirty (30) days following the payment due date, the Agency shall have the right to suspend performance of the Services without notice to the Advertiser, such Services not to be reinstated until the Advertiser pays all such overdue amounts.

## **10. Limitation of Liability**

The Agency's aggregate liability to the Advertiser under or in connection with this Agreement (including all Insertion Orders), howsoever arising and whether caused by tort (including negligence), breach of contract, under any indemnity or otherwise, whether or not such loss or damage is foreseeable, foreseen or known will be limited to one hundred thousand Pounds Sterling (£100,000) per Year.

In no event shall the Agency be liable for any:

- (i) loss of actual or anticipated income, savings or profits, loss of contracts or business, loss of goodwill or reputation (whether direct or indirect); or
- (ii) for any special, indirect, or consequential loss or damage of any kind,

howsoever arising and whether caused by tort (including negligence), breach of contract, under any indemnity or otherwise, whether or not such loss or damage is foreseeable, foreseen or known. No Party shall be entitled to recover more than once for the same loss or losses.

The exclusions and limitation of liability set out in this section or elsewhere in this Agreement do not apply to liability arising from fraud, fraudulent misrepresentation, death or personal injury caused by negligence or anything else which cannot be excluded or limited by law.

## **11. General**

Excluding payment obligations, each Party will be excused from performing obligations contained in this Agreement while such performance is prevented by an act of God, fire, flood, earthquake, transportation disruption, war, insurrection, labour dispute, or any other occurrence beyond the reasonable control of that Party.

Other than as expressly stated herein, this Agreement contains the entire agreement between the Parties relating to the Services and supersedes any previous agreements or understanding whether written or oral, in particular any agreement between the Advertiser and the Agency in respect of the Services. Any variation to this Agreement shall have no effect unless expressly agreed and accepted in writing by an authorised representative of the Agency.

Each Party shall be and act as an independent contractor and not as partner or joint venturer of the other.

For the avoidance of doubt, other than in respect of any audit conducted in accordance with paragraph 8.3 of Schedule 1 (Data Protection Terms), nothing in this Agreement shall permit, create or confer any right of audit in favour of the Advertiser.

During the term of this Agreement and for six (6) months following expiry or termination, the Advertiser shall not solicit or entice away from the Agency or employ or attempt to employ any person who is, or has been, engaged by the Agency (including without limitation dentsu international or any other sub-contractor(s)) in connection with the provision of the Services, as a director, officer, employee or contractor.

Where employment results from breach of the aforementioned restrictions, the Advertiser shall pay the Agency, or at the Agency's direction the relevant sub-contractor, a sum equivalent to thirty percent (30%) of the annual remuneration of the relevant director, officer, employee or contractor, with such sum recognised to be the equivalent of replacement recruitment costs. Nothing in this provision shall prohibit employment which the Advertiser can demonstrate to result from a general, public recruitment campaign that is not directly aimed at the Agency's or its subcontractor's directors, officers, employees or contractors.

Nothing in this Agreement shall create or confer any rights or other benefits in favour of any person other than the Parties to this Agreement from time to time. The Parties to this Agreement do not require the consent of any third party to rescind or vary this Agreement at any time.

This Agreement, its substance, formation, interpretation and any disputes, actions or other claims or liabilities arising out of or in connection with it (whether contractual or non-contractual) shall be governed by and construed in accordance with the laws of England and Wales, without reference to conflicts of laws principles and the Parties submit to the exclusive jurisdiction of the Courts of England and Wales. Notwithstanding the preceding, the Agency may seek injunctive or other equitable relief from any court or authority of competent jurisdiction.

## SCHEDULE 1: DATA PROTECTION TERMS

### 1. Introduction

- 1.1.If the Services are altered during the term of the Agreement and the altered Services involve new or amended processing of Advertiser Personal Data, the Parties will ensure that this Schedule is updated as appropriate before such processing commences.
- 1.2.If there is any conflict or inconsistency between this Schedule and the Agreement, this Schedule will take precedence and apply to the extent of the conflict or inconsistency.
- 1.3.In respect of all processing of Advertiser Personal Data carried out pursuant to the Agreement the Parties agree that Agency is the processor and that the Advertiser is the controller.
- 1.4.The Parties shall comply with and process all Advertiser Personal Data in accordance with applicable Data Protection Legislation.
- 1.5.In the event of a contradiction or inconsistency between:
  - 1.5.1. the Agreement and any applicable Transfer Mechanism, then the applicable Transfer Mechanism will prevail; or
  - 1.5.2. an applicable Transfer Mechanism and another applicable Transfer Mechanism, the Transfer Mechanism which affords the highest level of protection to the rights and freedoms of the data subjects will prevail,

in each case, solely to the extent of such contradiction or inconsistency.

### 2. Definitions

- 2.1.Capitalised terms which are defined in the Agreement shall have the same meaning in this Schedule (and Annexures appended hereto) and for the purposes of this Schedule and its annexures, the following capitalised terms shall have the meanings given below:

**Advertiser Personal Data** shall have the meaning given to it in the Agreement.

**Appropriate Safeguards** means such legally enforceable mechanism(s) for the transfer of personal data as may be permitted under Data Protection Legislation from time to time.

**DP Losses** means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material and non-material damage); and
- (b) to the extent permitted by Applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a court or regulatory authority; compensation to a data subject ordered by a court or regulatory authority; and the costs of compliance with investigations by a regulatory authority.

**Non-Adequate Recipient** means a recipient of Advertiser Personal Data which is established in a country or territory which has not been recognised by a relevant competent supervisory authority or another competent authority (including the European Commission) as providing an adequate level of protection to personal data and which recipient is not governed by the GDPR for the transfer and further processing of Advertiser Personal Data.

**Processing Instructions** has the meaning set out in paragraph 3.2.1 of this Schedule.

**Restricted Transfer** means a transfer of Advertiser Personal Data to a Non-Adequate Recipient which may be rendered permissible under Data Protection Legislation where a Transfer Mechanism is validly used in order to make and govern the transfer.

**Security Incident** means the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of, or access to, Advertiser Personal Data while in the custody of Agency or a Sub-Processor.

**Sub-Processor** means a third party processor engaged by the Agency for carrying out processing activities in respect of the Advertiser Personal Data on behalf of the Advertiser.

**Standard Contractual Clauses** or **SCCs** means a set of contractual provisions approved or otherwise recognised by a relevant competent supervisory authority as enabling an international transfer or personal data to be made in compliance with Data Protection Legislation including, in the EU, the contractual provisions found in decision 2021/914 of the European Commission ("**EU SCCs**"), and to the extent the EU SCCs cannot be relied on to lawfully transfer personal data that is protected under the UK GDPR, the standard contractual clauses adopted pursuant to or permitted under Article 46 of the UK GDPR (as detailed in Annex C (Compliance with UK Data Protection Legislation) to Schedule 1 (Data Processing Terms) of this Agreement).

**Transfer Mechanism** means any means of transferring personal data from a data exporter to a data importer, permitted under the Data Protection Legislation, including the Standard Contractual Clauses.

### 3. Processing

3.1. In connection with the Agency's delivery of the Services (and any related technical support), the Agency may undertake processing of the Advertiser Personal Data.

3.2. To the extent the Agency is processing Advertiser Personal Data the Agency shall:

3.2.1. unless Applicable Law requires otherwise, only process Advertiser Personal Data on and in accordance with the Advertiser's instructions set out in this Schedule (in particular Annex A (Processing Instructions) to this Schedule 1 (Data Processing Terms)) and/or as otherwise documented in writing ("**Processing Instructions**");

3.2.2. unless prohibited by Applicable Law, notify the Advertiser if Applicable Law requires it to process Advertiser Personal Data other than in accordance with Processing Instructions (such notification to be given before such processing commences); and

3.2.3. notify the Advertiser if, in its opinion, the processing of Advertiser Personal Data in accordance with Processing Instructions infringes Data Protection Legislation.

3.3. The Advertiser authorises Agency to engage Sub-Processors detailed in (i) the 'Permitted Sub-Processors and Transfers' section of Annex A (Processing Instructions) to this Schedule 1 (Data Processing Terms), (ii) the Insertion Order(s) and/or (iii) any other Processing Instructions document, to process Advertiser Personal Data, provided that the Agency:

3.3.1. enters into a contract which binds the Sub-Processor to substantially similar obligations with respect to the processing of Advertiser Personal Data as to which Agency is bound by this Schedule, and

3.3.2. Agency agrees that if a Sub-Processor fails to fulfil its obligations under the contract required by paragraph 3.3.1 of this Schedule, Agency shall remain fully liable to the Advertiser for the Sub-Processor's performance.

3.4. The Advertiser authorises Agency to transfer Advertiser Personal Data to a Sub-Processor in a country outside the European Economic Area provided that:

3.4.1. the Sub-Processor is engaged in accordance with paragraph 3.3; and

3.4.2. the transfer is (to the extent required by Data Protection Legislation) effected by way of Appropriate Safeguards and is otherwise compliant with Data Protection Legislation.

3.5. After the business purposes for which Advertiser Personal Data was processed have been fulfilled (or earlier upon the Advertiser's written request) Agency shall, at the Advertiser's option, either delete or return all Advertiser Personal Data within its control, and delete any existing copies of the same (unless storage of such copies is required by Applicable Law).

### 4. Third Party Controllers

4.1. The Advertiser acknowledges that certain of the Advertiser Personal Data will be processed by third parties as an independent controller (hereinafter, "**Third Party Data Controllers**"), solely where this is required for the Third Party Data Controller's own compliance with Data Protection Legislation.

4.2. The Advertiser acknowledges that nothing in this paragraph 4 shall result in the Agency acting as a controller or joint controller of Advertiser Personal Data.

4.3. The Advertiser permits the Agency to engage with Third Party Data Controllers in the fulfilment of the Services provided that the Agency enters into terms with the Third Party Data Controllers designed to ensure that in processing Advertiser Personal Data in accordance with this paragraph 4, the Third Party Data Controller will:

4.3.1. maintain appropriate data minimisation, pseudonymisation and/or anonymisation measures;

4.3.2. comply with the obligations of a controller under Data Protection Legislation; and

4.3.3. if it receives a request from or on behalf of a data subject of Advertiser Personal Data to exercise any rights under Data Protection Legislation in relation to Advertiser Personal Data, without undue delay forward it to the Advertiser (via the Agency).



## **5. Advertiser Warranties**

5.1. The Advertiser warrants and represents that:

- 5.1.1. the processing of Advertiser Personal Data by the Advertiser will be carried out in accordance with Data Protection Legislation;
- 5.1.2. Agency is entitled to process Advertiser Personal Data pursuant to the Agreement for the purpose of providing the Services and such use will comply with Data Protection Legislation;
- 5.1.3. all Advertiser Personal Data provided by the Advertiser to Agency is necessary, accurate and up-to date;
- 5.1.4. all Processing Instructions shall at all times be in accordance with Data Protection Legislation; and
- 5.1.5. it is satisfied that the:
  - 5.1.5.1. Agency's processing operations are suitable for the purposes for which the Advertiser proposes to use the Services and engage Agency to process Advertiser Personal Data; and
  - 5.1.5.2. Agency has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Legislation.

## **6. Security and Delegation**

6.1. The Agency shall:

- 6.1.1. implement and maintain throughout the term of the Agreement appropriate technical and organisational measures intended to protect Advertiser Personal Data against accidental, unauthorised or unlawful access, disclosure, alteration, loss, damage or destruction; and
- 6.1.2. take reasonable steps to ensure that its personnel do not process Advertiser Personal Data other than in accordance with Processing Instructions (unless required to do so by Applicable Law) and are obligated to maintain the security and confidentiality of any Advertiser Personal Data to which they have access.

## **7. Notifications**

7.1. The Agency shall, without undue delay, notify the Advertiser if:

- 7.1.1. it becomes aware of a Security Incident; or
- 7.1.2. it receives a request from or on behalf of a data subject of Advertiser Personal Data to exercise any of the rights given to data subjects by Data Protection Legislation.

7.2. The Agency shall (at the Advertiser's expense) provide such further information and assistance as the Advertiser reasonably requires in handling and responding to such notifications in accordance with its obligations under Data Protection Legislation.

## **8. Inspections and Assistance with Regulators**

8.1. If requested by Advertiser and subject to reasonable written advance notice from the Advertiser, Agency shall prepare a report containing all the necessary information regarding its processing of Advertiser Personal Data. Agency shall allow the Advertiser or Advertiser's independent adviser to inspect such report in accordance with Data Protection Legislation. Access to the report is subject to:

- 8.1.1. all information obtained or generated by the Advertiser or its independent adviser in connection with the report is kept strictly confidential (save for disclosure to a regulatory authority or as otherwise required by Applicable Law);
- 8.1.2. Agency shall give the Advertiser such information as is reasonably necessary to verify that Agency is in compliance with its obligations under Data Protection Legislation; and

co-operate and assist the Advertiser with any data protection impact assessments and consultations with any regulatory authority that the Advertiser reasonably considers are relevant pursuant to Data Protection Legislation in relation to the Advertiser Personal Data.

8.2. Agency's costs in relation to this paragraph 8 shall be borne by the Advertiser.

8.3. The Advertiser may require Agency to conduct an audit or inspection of the Sub-Processor's systems and processes in relation to the processing of Advertiser Personal Data. The cost of such an audit or inspection shall be borne by the Advertiser.

## **9. Indemnity and limitation of liability**

9.1. The Advertiser shall indemnify and keep indemnified Agency in respect of all DP Losses suffered or incurred by, awarded against or agreed to be paid by, Agency and any Sub-Processor arising from or in connection with any:

9.1.1. non-compliance by the Advertiser with Data Protection Legislation;

9.1.2. processing carried out by the Agency or any Sub-Processor pursuant to any Processing Instruction that infringes Data Protection Legislation; or

9.1.3. breach by the Advertiser of any of its obligations under this Schedule,

except to the extent that the Agency is liable under paragraph 9.2.

9.2. Subject to the limitation in paragraph 9.3, the Agency shall indemnify the Advertiser for DP Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Schedule:

9.2.1. only to the extent caused by the processing of Advertiser Personal Data under this Schedule and directly resulting from the Agency's breach of this Schedule; and

9.2.2. in no circumstances to the extent that any DP Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Schedule by the Advertiser.

9.3. Each Parties' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Schedule or any collateral contract shall in all circumstances be limited to 100% of the fees paid or payable during the 12 months preceding the event triggering paragraph 9.1 or 9.2.

**ANNEX A: PROCESSING INSTRUCTIONS**

<p align="center"><b>Subject Matter, Nature and Purpose of processing</b></p> <p><i>The Agency is processing Advertiser Personal Data for the purpose of delivering to the Advertiser the Services described in the Agreement.</i></p>		<p align="center"><b>Advertiser Personal Data</b></p>
<p><i>The subject matter of data processing is as indicated below:</i></p>	<p><i>The specific processing activities to be carried out by Agency in respect of such Advertiser Personal Data are:</i></p>	<p><i>The subject matter of the processing of Advertiser Personal Data under this Agreement could comprise of the following data types/categories:</i></p>
<p><b>Programmatic</b></p>	<p>The process by which digital advertising is purchased, potentially with the assistance of first- and third-party data sources to enhance audience targeting.</p>	<p>Website log data/files; Cookie ID; IP address; Keywords/Ad targeting criteria; pseudonymised data</p>
<p><b>Ad Audience Measurement</b></p>	<p>The process of verifying the audience that an Ad was delivered against.</p>	<p>Keywords/Ad targeting criteria; pseudonymised data</p>
<p><b>Ad Effectiveness Management</b></p>	<p>The process by which the effectiveness of an online Ad campaign is measured to provide feedback and reports to the Advertiser.</p>	<p>Geo-location or other location data; Keywords/Ad targeting criteria; pseudonymised data</p>
<p><b>Ad Verification Management</b></p>	<p>The process of verifying whether an Ad was delivered correctly.</p>	<p>Cookie ID; IP address</p>
<p><b>Duration</b></p> <p>The duration of the processing described herein corresponds to the duration of the Agreement.</p>		
<p><b>Data Subjects</b></p> <p>The Advertiser Personal Data indicated relates to the following data subjects:</p> <p><input type="checkbox"/> Advertiser’s personnel</p> <p><input checked="" type="checkbox"/> Advertiser’s consumers</p> <p><input checked="" type="checkbox"/> Prospective consumers</p> <p><input checked="" type="checkbox"/> Focus groups</p> <p><input checked="" type="checkbox"/> Contacts or leads acquired or licenced from Third Parties</p>		
<p><b>Specific Restrictions</b></p> <p>The processing of Advertiser Personal Data shall be subject to the terms of the Agreement.</p>		
<p><b>Processor Data Protection Officer</b></p> <p>Data Protection Officer, Dentsu UK Limited, 10 Triton Street, Regents Place, London, NW1 3BF.  <a href="mailto:ukidpo@dentsu.com">ukidpo@dentsu.com</a></p> <p><b>Advertiser Data Protection Officer</b></p> <p>As notified to the Agency by the Advertiser in writing.</p>		
<p><b>Permitted Sub-Processors and Transfers</b></p>		
<p><b>Sub-Processors</b></p>		

Please refer to the list of Sub-Processors found here: <https://legal.dentsu.com/uki-clients#uk-programmatic-subprocessors>

The Agency will notify the Advertiser at least 1 week in advance of the identity of any new Sub-Processor and of any changes to the Sub-Processors (such notification to be made either via updates to the webpage <https://legal.dentsu.com/uki-clients#uk-programmatic-subprocessors> or in writing (which may include email) from time to time), thereby giving the Advertiser sufficient time to be able to object to such changes prior to the engagement of the concerned Sub-Processor(s).

## **Transfers**

### *Transfers between the Advertiser and Agency*

To the extent that, in order to enable the Agency to deliver the Services, any Restricted Transfer is required of Advertiser Personal Data between the Advertiser (acting as an 'exporter') and the Agency (acting as an 'importer') or between the Agency (acting as an 'exporter') to the Advertiser (acting as an 'importer'), the Parties agree that an appropriate Transfer Mechanism will govern such Restricted Transfer(s), which may include any relevant provisions of the Standard Contractual Clauses.

Where the EU SCCs are the appropriate Transfer Mechanism to govern a Restricted Transfer, Annex B (Incorporation of EU SCCs) to Schedule 1 (Data Processing Terms) of this Agreement will apply to such Restricted Transfers.

Where the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses are the appropriate Transfer Mechanism to govern a Restricted Transfer, Annex C (Compliance with UK Data Protection Legislation) to Schedule 1 (Data Processing Terms) of this Agreement will apply to such Restricted Transfers.

### *Onward transfers between the Agency and Sub-Processors*

The Advertiser agrees that where the Agency engages a Sub-Processor in accordance with paragraph 3.3 of Schedule 1 (Data Processing Terms) for carrying out specific processing activities on behalf of the Advertiser and those processing activities involve a Restricted Transfer of Advertiser Personal Data, the Agency and the Sub-Processor can ensure compliance with the Data Protection Legislation by entering into a Transfer Mechanism, provided the conditions for the use of the chosen Transfer Mechanism for that Restricted Transfer are met.

Where any updates or amendments to, or replacement of, a Transfer Mechanism is approved by the competent authority/ies during the term of the Agreement ("**New Transfer Mechanism**"), the Agency will work to agree and to put in place a New Transfer Mechanism and the Agency shall have no liability under the Agreement as a result of the suspension of a Transfer Mechanism.

## ANNEX B: INCORPORATION OF THE EU SCC'S

Where the EU SCCs are required for a Restricted Transfer, the Parties agree to be bound by the EU SCCs, which are, upon signature of the Insertion Order, incorporated into the Agreement subject to the terms set out below:

EU SCC Clause reference	Interpretation
Clause 7 – Optional docking clause	Clause is not included.
Clause 9 – Use of sub-processors	OPTION 2: GENERAL WRITTEN AUTHORISATION is chosen and the time period for prior notice of Sub-Processor changes is set out in Annex A (Processing Instructions) to Schedule 1 (Data Protection Terms) of this Agreement.
Clause 11 - Redress	The optional paragraph within Clause 11 is removed.
Clause 17 – Governing law	<p>OPTION 1 is chosen for MODULE ONE, MODULE TWO AND MODULE THREE, and the Member State where the Advertiser is located shall be included into Clause 17 where a Member State is required to be specified.</p> <p>England and Wales shall be included into Clause 17 in the event MODULE FOUR applies.</p>
18 – Choice of forum and jurisdiction	<p>Ireland shall be included into Clause 18 where a Member State is required to be specified for MODULE ONE, MODULE TWO AND MODULE THREE.</p> <p>England and Wales shall be included into Clause 18 in the event MODULE FOUR applies.</p>
Part A, Annex I – list of Parties	<p>For transfers from the Advertiser to the Agency, the Advertiser identified as the data exporter and for transfers from the Agency to the Advertiser, the Agency identified as the data exporter; and</p> <p>For transfers from the Advertiser to the Agency, the Agency identified as the data importer and for transfers from the Agency to the Advertiser, the Advertiser identified as the data importer.</p>
Part B, Annex I – description of transfer	Populated with the relevant details of Annex 1 and Annex 2 of this Agreement.
Part C, Annex I – competent supervisory authority	'Irish DPC' shall be included where a competent supervisory authority is required to be specified.
Annex II – technical and organisational measures	As set out in paragraph 6.1.1 of Schedule 1 (Data Processing Terms) of this Agreement.
Annex III – list of sub-processors	<p>Populated with the list of Sub-Processors found here:</p> <p><a href="https://www.dentsu.com/uk/en/subprocessors">https://www.dentsu.com/uk/en/subprocessors</a>.</p>

## ANNEX C: COMPLIANCE WITH UK DATA PROTECTION LEGISLATION

Where a Restricted Transfer involves Advertiser Personal Data or Agency-Controlled Personal Data that is subject to the UK Data Protection Legislation, the Parties agree to be bound by the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses (VERSION B1.0, in force 21 March 2022) (the “**Addendum**”) which is, upon signature of the Insertion Order, incorporated into the Agreement together with the following information:

**Table 1** is populated with the Parties to the Agreement and the contact details found in Annex A (Processing Instructions) to this Schedule 1 (Data Protection Terms).

**Table 2** has the following option selected: ‘*The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information*’, and the details below shall read as follows:

**Date:** *The same date as the Agreement between the Parties pursuant to which the Restricted Transfer takes place.*

**Reference (if any):** *The EU SCCs as incorporated and populated by the terms set out in Annex B (Incorporation of the EU SCCs) to Schedule 1 (Data Protection Terms) of the Agreement.*

**Table 3** is populated with the relevant details found in the Insertion Order(s), Schedule 1 (Data Protection Terms) of this Agreement and Annex A (Processing Instructions) to Schedule 1 (Data Protection Terms) of this Agreement.

**Table 4** has the following option selected: ‘*Data Exporter*’.