

## TD DATA PROCESSING ADDENDUM

<b>Controller:</b>	The company agreeing to these terms " <b>Company</b> "
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and

<b>Processor:</b>	" <b>The Trade Desk</b> " or " <b>TD</b> "
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Have entered into a Master Services Agreement, UID2 Proof of Concept Agreement, insertion order, or other agreement in which TD provides services ("**Services**") to Company ("**Agreement**"). This TD Data Processing Addendum ("**DPA**"), supplements, is in addition to, and is hereby incorporated by reference into the Agreement.

This DPA reflects TD and Company's agreement on the terms governing TD's Processing of Company Personal Data under the Agreement in regions where Applicable Privacy Law applies and are in addition to any rights or obligations set forth in the Agreement. TD may make reasonable changes to this DPA from time to time, and such changes shall become effective immediately upon posting [here](#). If there is any conflict between the Agreement and the terms of this DPA, this DPA will govern. Any capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement.

This DPA is dated as of the later of the date of last signature of a party below (the "**DPA Effective Date**").

### 1. DEFINITIONS

1.1 "**Advertising Purposes**" mean all activities under the Agreement that constitute Targeted Advertising or Cross-Contextual Behavioral Advertising under Applicable Privacy Law in addition to any advertising-related uses that constitute a Business Purpose under Applicable Privacy Law (such as frequency capping, measurement, and fraud detection and prevention).

1.2 "**Applicable Privacy Law**" means all applicable privacy and data security laws, including state, federal and extraterritorial or international laws as well as all regulations applicable to the Services being provided under the Agreement. "Applicable Privacy Laws" include, for example, the EU General Data Protection Regulation 2016/679 ("GDPR") and national laws implementing the GDPR; the GDPR as it forms part of retained EU law in the United Kingdom, as defined in European Union (Withdrawal) Act of 2018, as amended ("UK GDPR"); the EU Privacy and Electronic Communications Directive 2002/58/EC, as implemented; and the California Consumer Privacy Act of 2018 as amended by the California Privacy Rights Act of 2020 (collectively, the "CCPA"), and any statute or regulations promulgated thereunder.

1.3 "**Authenticate**" means to use reasonable means to determine that a request to exercise Consumer data rights afforded under Applicable Privacy Law is being made by, or on behalf of, the Consumer who is entitled to exercise such Consumer rights with respect to the Personal Data at issue.

1.4 "**Auditing Party**" means a party chosen by Company to conduct an audit under this DPA.

1.5 "**Company Personal Data**" means any Personal Data Processed by TD on Company's behalf when TD is acting as a Processor/Service Provider to Company.

1.6 "**Process**" or "**Processing**" means any operation or set of operations that are performed on Company Personal Data, whether or not by automated means, such as the 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 of Company Personal Data.

1.7 **“Processing Signal”** means any flag or signal mutually agreed by the parties in writing that indicates a Consumer has opted out of the Sale, Share, or Processing for purposes of Targeted Advertising of their Personal Data.

1.8 **“Security Incident”** means a breach of TD’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Company Personal Data transmitted, stored or otherwise Processed by TD. A “Security Incident” will not include unsuccessful attempts or activities that do not compromise the security of Company Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

1.9 **“Standard Contractual Clauses”** means Standard Contractual Clauses for the transfer of Personal Data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and the Council approved by European Commission Implementing Decision (EU) 2021/914 of 4 June 2021, as currently set out at [https://eurlex.europa.eu/eli/dec\\_impl/2021/914/oj](https://eurlex.europa.eu/eli/dec_impl/2021/914/oj) and equivalent clauses for international transfer of data issued by the Information Commissioner for the United Kingdom under S119A(1) Data Protection Act 2018.

1.10 **“Subprocessors”** means third-parties authorized under this DPA to have logical access to and Process Company Personal Data in order to provide parts of the Services and any related technical support.

The terms **“Business”**, **“Business Purpose”**, **“Controller”**, **“Consumer”**, **“Cross-Contextual Behavioral Advertising”**, **“Personal Data”**, **“Processor”**, **“Sale”** or **“Sell”**, **“Service Provider”**, **“Share”** or **“Sharing”**, **“Supervisory Authority”**, **“Targeted Advertising”** and **“Third Party”** as used in this DPA will have the meanings ascribed to them in Applicable Privacy Law. References in this DPA to **“Personal Data”** and **“Consumer”** include **“Personal Information”** and **“Data Subject”** respectively.

## 2. PROCESSING OF DATA

2.1 **Purpose of Processing.** The Company Personal Data is being provided, and TD is Processing the Company Personal Data, for Advertising Purposes on Company’s behalf and/or in furtherance of the Services noted in the applicable Agreement. **Exhibit A (Scope of Processing)** describes the subject matter and details of the Processing of Company Personal Data.

2.2 **Processor and Controller Responsibilities.** The parties acknowledge and agree that, except in circumstances where Section 2.10 applies, between TD and Company: (a) TD is a Processor or the equivalent of Company Personal Data under Applicable Privacy Law; (b) Company is a Controller or the equivalent of Company Personal Data under Applicable Privacy Law; and (c) each party will comply with the obligations applicable to it under Applicable Privacy Law with respect to the Processing of Company Personal Data.

2.3 **Authorization by Third-Party Controller.** If Company is a Processor to a third-party Controller, Company warrants to TD that Company’s instructions and actions with respect to Company Personal Data, including its appointment of TD as another Processor, have been authorized by the relevant Controller.

2.4 **Company Instructions.** Company instructs TD to Process Company Personal Data: (a) in accordance with the Agreement; (b) to provide the Services, Platform and any related technical support; (c) as further specified via Company’s use of the Services and Platform (including in the settings and other functionality of the Services and Platform) and any related technical support; and (d) to comply with other reasonable instructions provided by Company where such instructions are consistent with the terms of the

Agreement and this DPA. Company will ensure that its instructions for the Processing of Personal Data shall comply with Applicable Privacy Law.

**2.5 Company Processing.** Company may have the ability to take Company Personal Data from the Platform, including in transaction logs, event feeds, or other mechanisms. Company hereby acknowledges that it has the responsibility to ensure that it has a legal basis for any Processing of any data that it acquires from the Platform.

**2.6 TD's Compliance With Company Instructions.** TD shall only Process Company Personal Data in accordance with Company's instructions. If TD believes or becomes aware that any of Company's instructions conflict with any Applicable Privacy Law, TD shall timely inform Company. TD may Process Company Personal Data other than on the instructions of Company if it is required under applicable law to which TD is subject. In this situation, TD shall inform Company of such requirement before TD Processes the Company Personal Data unless prohibited from doing so by applicable law.

**2.7 TD Responsibilities.** TD will: (a) ensure that its personnel engaged in the Processing of Company Personal Data have committed themselves to confidentiality obligations; (b) implement appropriate technical and organizational measures to safeguard Company Personal Data taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons; (c) upon reasonable request by Company, make available all information in TD's possession necessary to demonstrate TD's compliance with its obligations under Applicable Privacy Law; and (d) taking into account the nature of the Processing and information available to TD, by appropriate technical and organizational measures, insofar as reasonably practicable, assist Company in meeting its obligations as a Controller under Applicable Privacy Law, provided that Company will be responsible for costs associated with Company's compliance.

**2.8 Company Personal Data Provided to TD.** Company shall have sole responsibility for the accuracy, quality, and legality of Company Personal Data and the means by which Company obtained the Personal Data. Without limiting anything in the Agreement and unless otherwise expressly agreed in the applicable Agreement, Company shall not: provide to TD, import into the Platform, or cause TD to Process any (a) information regarding an individual that would be considered protected, sensitive, special or similar under Applicable Privacy Law, including any information that could be deemed PHI as defined under the Health Insurance Portability and Accountability Act of 1996; or (b) Directly Identifying Information, including by using TD's ad tags or pixels. If Company provides or causes TD to Process any Directly Identifying Information, Company shall, at Company's sole cost: (a) immediately notify TD in writing; and (b) take all necessary steps to assist TD in removing Directly Identifying Information from TD's systems.

**2.9 Targeted Advertising.** Notwithstanding any contrary language regarding Company's obligations with respect to Consumer notice and choice set forth in the Agreement, Company shall ensure that all Consumers whose Personal Data is being disclosed to TD by Company for Processing for Targeted Advertising or Cross-Contextual Behavioral Advertising have been provided the right to opt-out of Processing of their Personal Data for Targeted Advertising or Sharing for Cross-Contextual Behavioral Advertising, as applicable. Company shall clearly and conspicuously disclose the nature of the Processing and the method by which a Consumer may exercise the right to opt-out of such Processing as established by Applicable Privacy Law. If a Consumer opts out, Company will either (i) not transmit Personal Data associated with such Consumer's opted-out identifier(s) to TD; or (ii) transmit a Processing Signal to TD in a mutually agreed-upon fashion anytime Company transmits Personal Data associated with such Consumer's opted-out identifier(s) to TD and TD will Process Company Personal Data associated with such Consumer's opted-out identifier(s) solely for those Advertising Purposes that do not constitute Targeted Advertising or Cross-Contextual Behavioral Advertising.

**2.10 CCPA Third Party Terms.** This Section 2.10 applies only when Personal Data made available under the Agreement (i) is subject to the CCPA; and (ii) is Shared or Sold as defined under the CCPA, including for Cross-Contextual Behavioral Advertising, either by Company to TD, or by TD to Company, as applicable:

2.10.1 A party is making Personal Data available to the other, and the party receiving the Personal Data shall only use the Personal Data, for Advertising Purposes;

2.10.2 The receiving party will comply with all applicable sections of the CCPA, including providing the same level of privacy protection to the Personal Data that the disclosing party makes available as is required of the disclosing party under the CCPA;

2.10.3 The disclosing party shall have the right to take mutually agreeable reasonable and appropriate steps (such as, through an attestation) to ensure that the receiving party uses the Personal Data Sold or Shared to it in a manner consistent with the disclosing party's obligations under the CCPA;

2.10.4 The disclosing party shall have the right to, upon reasonable suspicion of noncompliance and prior written notice, take reasonable and appropriate steps to stop and remediate receiving party's unauthorized use of Personal Data. If the disclosing party reasonably believes that the receiving party is using such Personal Data in an unauthorized manner, the disclosing party can notify the receiving party of such belief and the parties can work together in good faith to stop or, if necessary, remediate the allegedly unauthorized use of Personal Data; and

2.10.5 The receiving party shall notify the disclosing party if it makes a determination that it can no longer meet its obligations under the CCPA with respect to the Personal Data Sold or Shared to it pursuant to this Section 2.10.

**2.11 CCPA Service Provider Terms.** This Section 2.11 applies only when Company Personal Data made available under the Agreement (i) is subject to the CCPA; and (ii) the Consumer has opted-out of Company Selling or Sharing their Personal Data; and (iii) Company has transmitted such Company Personal Data with a Processing Signal to TD. In such instances, in addition to the terms set forth in Section 2.10 above, TD will solely Process the Personal Data for Advertising Purposes that constitute a Business Purpose under the CCPA (including Processing for purposes of auditing; security and integrity; debugging; short term, transient uses; and providing advertising or marketing services that do not constitute Cross Contextual Behavioral Advertising or profiling) and such Processing will be subject to the following:

2.11.1 TD will not Sell or Share such Company Personal Data Company makes available to it pursuant to the Agreement; and

2.11.2 Except for the purposes set forth in the Agreement and/or this DPA or as otherwise permitted for Service Providers under the CCPA, TD will not retain, use or disclose Company Personal Data that Company makes available to it outside of the direct business relationship between TD and Company or any additional purpose (including for any commercial purpose).

### **3. CONSUMER RIGHTS**

3.1 TD shall, subject to section 2.8 and with respect to Company Personal Data, provide Company with commercially reasonable cooperation in fulfilling Company's obligations to respond to Consumer requests to exercise Consumer rights under Applicable Privacy Law taking into account (i) the nature of the Processing and the information available to TD; (ii) the timing of the Consumer request; and (iii) the extent to which Company could respond to such requests itself through its use of, or receipt of or access to data from, the Services. Company shall be responsible for ensuring adequate Authentication of all Consumer requests.

3.2 TD shall, to the extent legally permitted, promptly notify Company if it receives a Consumer request specific to Company to exercise Consumer data rights including rights to access, correct, amend, seek deletion of or object to the Processing of Company Personal Data relating to such individual.

## 4. SUBPROCESSORS

4.1 **General Authorization.** Company agrees that TD may authorize third-parties to Process the Company Personal Data on its behalf in connection with fulfilling TD's obligations under the Agreement and/or this DPA. The Subprocessors that are currently authorized to access and Process Company Personal Data are listed [here](#) ("Subprocessor List"). This URL may change if TD updates its website or client-facing documentation, in which case Company will be notified of the change.

4.2 **New Subprocessors.** If TD engages a new Subprocessor, TD will notify Company by updating its Subprocessor List, informing Company of the change, and giving Company the opportunity to object to such Subprocessor. If, within 30 days of receipt of that notice, Company notifies TD in writing of any objections (on reasonable data protection grounds) to the proposed addition, the parties will work together to find a mutually agreeable solution. If no mutually agreeable solution is achieved, Company may immediately, and notwithstanding anything to the contrary in the Agreement, terminate the Agreement, subject to all applicable provisions in this DPA and the Agreement. TD will contractually impose data protection obligations on its Subprocessors that are at least equivalent to those data protection obligations imposed on TD under Applicable Privacy Law.

4.3 **TD Liability.** TD will remain liable for the acts and omissions of its Subprocessors to the same extent TD would be liable if performing the services of each Subprocessor directly under the terms of this DPA.

## 5. DATA TRANSFERS

5.1 **General Authorization.** Company acknowledges and agrees that Company Personal Data may be processed in jurisdictions other than the jurisdiction in which it was collected, including the United States, provided that all such transfers are compliant with the provisions on the transfer of Personal Data to third countries in accordance with Applicable Privacy Law such as, if necessary pursuant to transfers of Personal Data outside of the EEA, UK and Switzerland, the [Standard Contractual Clauses](#).

## 6. SECURITY INCIDENT

6.1 **Notification Obligations.** In the event TD becomes aware of any Security Incident that triggers the consumer and/or regulatory reporting requirements under Applicable Privacy Law, TD will notify Company of the Security Incident without undue delay. TD shall not be liable for Security Incidents to the extent they are caused by Company or Company's personnel or end users.

6.2 **Manner of Notification.** Notification(s) of Security Incidents, if any, will be delivered to one or more of Company's business, technical or administrative contacts by any means TD selects, including via email. It is Company's sole responsibility to ensure it maintains accurate contact information on TD's support systems at all times.

6.3 **No Admission.** TD's notification of or response to a Security Incident under this Section will not be construed as an acknowledgement by TD of any fault or liability with respect to the Security Incident.

## 7. TERM; DESTRUCTION OF COMPANY PERSONAL DATA

7.1 **Term of DPA.** This DPA will take effect on the DPA Effective Date and will remain in full force and effect so long as the Agreement remains in effect and for a commercially reasonable time thereafter while TD winds down and ceases its processing of Company Personal Data.

7.2 **Destruction of Company Personal Data.** Prior to the termination of the Agreement, upon Company's reasonable request to delete Company Personal Data, TD will facilitate such deletion, insofar as possible taking into account the nature and functionality of the Services and unless Applicable Privacy Law or other applicable law requires storage. Upon termination of the Agreement and within thirty (30) days from the termination of the Agreement (unless a longer period is agreed in writing by the parties), TD will (a) cease all Processing of Company Personal Data; and (b) at the choice of Company, either return to

Company or destroy all Company Personal Data, except to the extent that TD is required under Applicable Privacy Law or other applicable law to keep a copy of the Company Personal Data. After such thirty (30) day period, TD has no obligation to Company to retain any Company Personal Data.

## **8. DEMONSTRATING COMPLIANCE**

**8.1 Audits.** TD will allow an Auditing Party to conduct audits solely as necessary to fulfill Company's obligations under Applicable Privacy Laws no more than once yearly. TD may object to any Auditing Party on the basis of TD's reasonable opinion that the Auditing Party is not suitably qualified or independent, is a competitor of TD, or is otherwise manifestly unsuitable, in which case Company will appoint another Auditing Party. After receipt by TD of a request for an audit from Company, TD and Company will discuss and agree in advance on the Auditing Party, a reasonable start date of no less than four (4) weeks from TD's approval of the Auditing Party, the scope and duration of, and the data protection controls applicable to, the audit. The audit must be conducted during regular business hours, subject to TD's policies, and may not unreasonably interfere with TD's business activities. Any audits are at Company's sole cost and expense.

**8.2 Notification of Non-Compliance.** Company shall promptly notify TD with information regarding any non-compliance discovered during the course of an audit.

**8.3 Limits on Auditing Party.** Nothing in the Agreement or this DPA will require TD either to disclose to an Auditing Party or Company, or to allow an Auditing Party or Company to access: (i) any data of any other customer of TD; (ii) TD's internal accounting or financial information; (iii) any trade secret of TD; (iv) any premises or equipment not controlled by TD; or (v) any information that, in TD's reasonable opinion, could: (A) compromise the security of TD's systems or premises; (B) cause TD to breach its obligations under Applicable Privacy Law or the rights of any third party, or (C) any information that an Auditing Party seeks to access for any reason other than the good faith fulfillment of Company's obligations under Applicable Privacy Law. Company shall contractually impose, and designate TD as a third-party beneficiary of, contractual terms that prohibit any Auditing Party from disclosing the existence, nature, or results of any audit to any party other than Company or TD unless such disclosure is required by applicable law.

## **9. REMEDIES; PARTIES**

**9.1 Limitation of Liability.** Except as set forth in Section 9.3 below, (a) in no event will either party be liable for any indirect, incidental, consequential, punitive, special or exemplary damages, whether or not such damages are foreseeable or a party has been advised of the possibility thereof, and (b) in no event will either party's maximum aggregate liability for damages arising from breach of this DPA (including indemnity obligations set out in Section 9.2 below) exceed US\$5,000,000 (five million US dollars).

**9.2 Mutual Indemnification.** Except as set forth in Section 9.3 below, TD and Company shall each indemnify, defend and hold harmless each other, and their respective directors, officers, employees and agents (and successors, heirs and assigns) ("Representatives") against any Liabilities incurred by such indemnified party in connection with any third party claim arising out of or relating to a breach of this DPA by the indemnitor. The indemnified party will provide the indemnitor with prompt notice of any claim (provided that the failure to promptly notify shall only relieve indemnitor of its obligation to the extent it can demonstrate material prejudice from such failure) and at the indemnitor's expense, provide assistance reasonably necessary to defend such claim. The indemnitor will not enter into a settlement that would result in liability to the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed.

**9.3 Company Personal Data.** Notwithstanding anything to the contrary in this DPA or the Agreement, TD shall have no indemnification obligations to Company to the extent any Liability arises from Company's breach of Section 2.8 (Company Personal Data Provided to TD). Company shall be required to indemnify TD for any Liabilities arising from any such breach and such indemnification obligations shall not be subject to the limitation of liability set forth in Section 9.1.

9.4 **Parties to this DPA.** Nothing in this DPA shall confer any benefits or rights on any person or entity other than the parties to this DPA.

## **Exhibit A**

### **Scope of Processing**

#### **1. Subject Matter of the Processing of Company Personal Data**

TD will Process Company Personal Data of Consumers for Advertising Purposes and to perform the Services under the Agreement.

#### **2. Duration of the Processing of Company Personal Data**

TD will Process Company Personal Data until the expiration or termination of the Agreement, unless prohibited by Applicable Privacy Law or as otherwise set forth in the DPA.

#### **3. Nature and Purpose of the Processing of Company Personal Data**

The nature and purpose of the Processing of Company Personal Data will be to Process for Advertising Purposes and to perform the Services under the Agreement.

#### **4. Types of Company Personal Data**

The types of Company Personal Data Processed by TD for the purposes of the Agreement may include the following:

- IP addresses;
- Device identifiers;
- Cookie identifiers;
- UID2s;
- Advertising identifiers;
- Other online identifiers;
- Precise Location information;
- Web browsing, interest, and demographic data associated with online identifiers; and
- Other Company Personal Data that Company authorizes TD to Process under the applicable Agreement.

#### **5. Categories of Consumers**

The categories of Consumers about whom TD will Process Company Personal Data include:

- Company's customers,
- End users of Company's websites, mobile applications, and/or other online properties, and
- End users who receive or interact with advertisements served by Company or eligible for advertisements from Company.