

TD DATA PROCESSING AGREEMENT

Controller:	The client agreeing to these terms " Company "
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and

Processor:	" The Trade Desk " or " TD "
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have entered into a Master Services Agreement, insertion order, or other applicable agreement for Services ("**Agreement**") and the terms of this TD Data Processing Agreement ("**DPA**") are incorporated by reference therein.

This DPA reflects TD and Company's agreement on the terms governing Processing of Company Personal Data. TD may make reasonable changes to this DPA from time to time, and such changes shall become effective immediately upon posting at <https://www.thetradedesk.com/general/dpa> (or a successor URL). If there is any conflict between the Agreement and the terms set forth in this DPA, this DPA will govern.

This DPA is dated as of the later of (i) May 25, 2018 or (ii) the date of last signature of a Party to the Agreement, (such later date, the "**DPA Effective Date**").

1. DEFINITIONS.

1.1 "Audience Tools" means the functionality provided in the Platform that enables advertising campaigns to be targeted to particular types of users (e.g., avid golfers). Audience Tools may utilize audience data provided by Company (i.e., first party data), third parties (e.g., BlueKai) or TD. For clarity, any audience data provided by Company shall constitute Company Data.

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

1.3 "Business and Campaign Data" means the data generated by Company's use of the Services and the transactions under the Agreement. Business and Campaign Data does not include Company Data or TD Data.

1.4 "Company Data" means the data Company imports into the Platform, including but not limited to information about advertising campaigns and Company's account. Company is the sole owner of Company Data and TD may use the Company Data solely to provide Services to Company under the Agreement.

1.5 "Company Personal Data" means any Personal Data Processed by TD on behalf of Company in TD's provision of Services.

1.6 "Data Protection Legislation" means the GDPR, any legislative or regulatory amendments or successors thereto, and any applicable implementing local legislation within the EEA, as well as equivalent Swiss and UK privacy laws.

1.7 "Directly Identifying Information" means Personal Data that directly identifies or reasonably can be used to identify an individual, including name, raw (unhashed) email address, postal address, phone number, or government identifier. For the avoidance of doubt, the following data are not Directly Identifying Information: (a) cookie identifiers; (b) advertising identifiers assigned by mobile devices; (c) IP addresses; (d) other forms of device identifiers; and (e) demographic, interest, or browsing behavior data associated with such identifiers.

1.8 “EEA” means the European Economic Area and the UK.

1.9 “GDPR” means the General Data Protection Regulation (EU) 2016/679 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, and any amendment or replacement to it.

1.10 “Platform” means the TD hosted platform.

1.11 “Privacy Shield” means the EU-U.S. Privacy Shield legal framework and the Swiss-U.S. Privacy Shield legal framework.

1.12 “Process” or “Processing” means any operation or set of operations which is 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.

1.13 “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. “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.

1.14 “Services” means the services and functionality provided by the Platform, any campaign management services, tags and pixels, and any other services TD provides to Company.

1.15 “Standard Contractual Clauses” means the standard contractual clauses for the transfer of personal data to third countries currently adopted by the European Commission, or any successor clauses thereto.

1.16 “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.

1.17 “TD Data” means all data residing in the Platform that does not constitute Company Data, Business and Campaign Data, or third-party data underlying the Audience Tools.

The terms “Controller”, “Data Subject”, “Personal Data”, “Processor”, and “Supervisory Authority” as used in this DPA will have the meanings ascribed to them in the GDPR.

2. **PROCESSING OF DATA.**

2.1 **Application of Data Protection Legislation.** This DPA will only apply to the extent that the Data Protection Legislation applies to the Processing of Company Personal Data, including if: (a) the Processing is in the context of the activities of an establishment of Company in the EEA or Switzerland; and/or (b) Company Personal Data is Personal Data relating to Data Subjects who are in regions where Data Protection Legislation applies and the Processing relates to the offering to them of goods or services or the monitoring of their behavior in those regions.

2.2 **Purpose of Processing.** The purpose of data Processing under the Agreement is the provision of the Services pursuant to the Agreement. **Exhibit A (Scope of Processing)** describes the subject matter and details of the Processing of Company Personal Data.

2.3 **Processor and Controller Responsibilities.** The parties acknowledge and agree that: (a) TD is a Processor of Company Personal Data under the Data Protection Legislation; (b) Company is a Controller or Processor, as applicable, of Company Personal Data under the Data Protection Legislation; and (c) each party will comply with the obligations applicable to it under the Data Protection Legislation with respect to the Processing of Company Personal Data.

2.4 **Authorization by Third-Party Controller.** If Company is a Processor, 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.

2.5 **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 the Data Protection Legislation.

2.6 **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.

2.7 **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 Data Protection Legislation, 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 by applicable law.

2.8 **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; and (c) taking into account the nature of the Processing and information available to TD, take reasonable measures to assist Company in ensuring compliance with Articles 32 to 36 of the GDPR, but Company will be responsible for costs associated with its compliance.

2.9 **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, Company shall not: provide to TD, import into the Platform, or cause TD to Process any 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.

3. **DATA SUBJECT RIGHTS**

3.1 TD shall, subject to section 2.9, provide Company with commercially reasonable cooperation in fulfilling Company's obligations to respond to Data Subject requests made under Data Protection Legislation taking into account (i) the nature of the Processing and the information available to TD, (ii) 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, or (iii) the extent to which the Data Subject is able to help him- or herself through features, settings, or publicly available information. TD shall, to the extent legally permitted, promptly notify Company if it receives a request from a Data Subject specific to Company for access to, correction, amendment, deletion of or objection to the Processing of Company Personal Data relating to such individual.

3.2 TD may build Platform features for the purpose of giving Data Subjects' transparency and control over, including access to, data associated with their devices. Company hereby warrants that it has rights to instruct and does instruct TD to include Company Personal Data in such features. TD makes no claim or guarantee regarding the extent to which such features fulfill requirements of Data Protection Legislation.

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 by TD to access and Process Company Personal Data are listed at <https://atlassian.thetradedesk.com/confluence/display/TTDKP/The+Trade+Desk+Subprocessors> ("Subprocessor List"). This URL may change if TD updates its website or client-facing documentation, in which case you 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 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 this DPA.

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 agrees that TD may, subject to Section 5.2, store and Process Company Personal Data in the United States of America and any other country in which TD or any of its Subprocessors maintains facilities. TD shall ensure that any such transfer is done under a valid legal framework, such as Privacy Shield for transfers to the US.

5.2 **Privacy Shield.** TD will ensure that it remains self-certified under Privacy Shield and the scope of TD's certification includes Company Personal Data. When Company receives data from TD that originated in regions where Data Protection Legislation is applicable, unless another legal mechanism for transfer, such as Standard Contractual Clauses, applies, Company will provide at least the same level of protection for the data as is required by any applicable trans-border frameworks such as the E.U.-U.S. or Swiss-U.S. Privacy Shield Framework or promptly notify TD if at any time it is unable to do so.

6. SECURITY INCIDENT

6.1 **Notification Obligations.** In the event TD becomes aware of any Security Incident that is likely to result in a risk to the rights and freedoms of natural persons, 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 Data Protection Legislation 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) return to Company or destroy all Company Personal Data, except to the extent that TD is required under Data Protection Legislation to keep a copy of the Company Personal Data. After such thirty (30) day period, TD has no obligation to retain any Company Personal Data, unless required by Data Protection Legislation.

8. **Demonstrating Compliance**

8.1 **Audits.** At Company's sole cost, TD will allow an Auditing Party to conduct audits solely as necessary to fulfill Company's obligations under Data Protection Legislation 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 receipt of the request for such audit, 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. TD may charge a fee based on TD's reasonable, non-diminis costs for the audit.

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 Data Protection Legislation 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 Data Protection Legislation. Company shall contractually impose, and designate TD as a 3rd party beneficiary of, contractual terms that prohibit any third-party 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 for violations of 2.9, (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 each party's maximum aggregate liability for damages arising from this DPA exceed US\$5,000,000 (five million US dollars). For the avoidance of doubt, nothing herein is intended to limit any limitation of liability set forth in the Agreement.

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 liability, damage, loss or

expense (including reasonable attorneys' fees and costs) ("Liabilities") incurred by such indemnifying party as a result of a breach of any obligations or restrictions 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. With respect to any governmental or regulatory investigation or claim, the indemnified party shall have the option to have sole control of the defense and any settlement negotiations at the indemnifying party's expense.

9.3 **Company Personal Data.** Notwithstanding anything to the contrary in this DPA or this Agreement, TD shall have no indemnification obligations to Company to the extent of any Liability arising from Company's breach of Section 2.9 (Company Personal Data Provided to TD). Company shall be required to indemnify TD for any Liabilities arising from any such actions and such indemnification obligations shall not be subject to the limitation of liability set forth in Section 9.1.

9.4 Where the Agreement includes IAB Standard Terms and Conditions for Internet Advertising ("**IAB Terms**"), Sections 9.1 ("Limitation of Liability") and 9.2 ("Mutual Indemnification") of this DPA amend and supersede applicable IAB Terms unless Company has otherwise agreed with TD on such terms in the Agreement.

9.5 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 Data Subjects in order 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 Data Protection Legislation.

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 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 include the following:

- IP addresses;
- Cookie identifiers;
- Advertising identifiers;
- Other online identifiers;
- Location information;
- Web browsing, interest, and demographic data associated with online identifiers; and
- Other Company Personal Data that Company authorizes TD to Process under this DPA, provided, however, that the Agreement does not permit Company to provide, and does not authorize the Processing of, special categories of personal data or data that directly identifies or reasonably can be used to identify an individual, including name, raw (unhashed) email address, postal address, phone number, or government identifier (all of which constitutes Directly Identifying Information).

5. Categories of Data Subjects

The categories of Data Subjects 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.