



U.S. PRIVACY ANNEX

This U.S. Privacy Annex forms part of the Publisher Standard Terms.

1. INTERPRETATION AND APPLICATION.

- 1.1 The definitions and rules of interpretation set out in the Standard Terms will apply in this U.S. Privacy Annex, unless otherwise defined below.
- 1.2 The following definitions and rules of interpretation apply in this U.S. Privacy Annex:
 - 1.2.1 "**Advertiser**" shall have the meaning assigned to it in the Standard Terms.
 - 1.2.2 "**Advertiser Processing**" means Processing of Personal Information for the purpose of: (i) Awin's and Publisher's provision of services or functionality to the Advertiser in connection with the Publisher's promotion or display of the Advertiser Materials under the Agreement; and (ii) Transaction Queries. "Advertiser Processing" excludes JC Processing.
 - 1.2.3 "**Business**" (or "**Controller**") means an entity that determines the purposes and means of Processing of Personal Information. "**Consumer**" means the individual to whom Personal Information relates.
 - 1.2.4 "**Cross Device Tracking**" means the Processing of Personal Information for the purposes of understanding a consumer's online journey from the Publisher Service to the Advertiser's website, made after viewing or clicking an advertisement, when this journey is commenced on one device, but a Transaction is completed on another device.
 - 1.2.5 "**JC Processing**" means Processing of Personal Information for the purposes of Tracking, Cross-Device Tracking and Reporting. "**Network Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Information transmitted, stored or otherwise Processed, affecting Personal Information
 - 1.2.6 "**Personal Information**" means any information that identifies, relates to, describes, is capable of being associated with or could reasonably be linked, directly or indirectly, with a Consumer, or as otherwise defined by U.S. Data Protection Laws, including any equivalent terminology such as "Personally Identifiable Information", to the extent Processed by Awin in connection with the provision of the Services to Publisher under the Agreement. "**Processing**" means any operation or set of operations performed, whether by manual or automated means, on information or on sets of information, such as the collection, use, storage, disclosure by transmission, dissemination or otherwise making available, alignment or combination, analysis, restriction, deletion, or modification of information. "**Referral**" the referral of a consumer from a Publisher Service to the Advertiser's website.
 - 1.2.7 "**Reporting**" means the Processing of Personal Information for the purposes of reporting on the Publisher's and Advertiser's use of Awin's services and related performance in connection with the display or promotion of the Advertiser Materials on the Publisher Service under the Agreement, and "Reports" shall be interpreted accordingly.
 - 1.2.8 "**Service Provider**" (or "**Processor**") means an entity that Processes Personal Information on behalf of a Business or Controller.
 - 1.2.9 "**Tracking**" means the Processing of Personal Information relating to consumer journeys across websites/online services on a single device, for the purposes of attributing the Referral of that consumer to the Advertiser's website by Publisher including to (i) understand a consumer's online journey to a Publisher Service and from a Publisher Service to the Advertiser's website, made after viewing or clicking an advertisement; (ii) match the arrival of a consumer at the Advertiser's website to an online journey from a Publisher Service; and (iii) be informed when a Transaction has been completed, receive basic information

about the nature of that Transaction, and attribute that transaction to the respective Referral.

- 1.2.10 **"Transaction"** means either: (i) a purchase by a consumer of a product from the Advertiser; or (ii) the provision of information by a consumer to the Advertiser, for the purposes of generating a sales lead for the Advertiser, to be used in the Advertiser's subsequent marketing efforts, in each case after the consumer has visited a Publisher Service.
- 1.2.11 **"Transaction Queries"** means the Processing of Personal Information in relation to the submission of requests from a Publisher to an Advertiser for the payment of commission in respect of a Transaction which was not tracked by Awin, or which was not validated by the Advertiser.
- 1.2.12 **"U.S. Data Protection Laws"** means any applicable local, state and federal laws, rules and regulations in the United States relating to the use, collection, retention, storage, security, disclosure, transfer, sale or other Processing or Personal Information, including but not limited, as and when applicable, the California Consumer Privacy Act (the **"CCPA"**), the California Privacy Rights Act (the **"CPRA"**), the Virginia Consumer Data Protection Act (the **"VCDPA"**), the Colorado Privacy Act (the **"CPA"**), the Connecticut Data Protection Act (the **"CTDPA"**), the Utah Consumer Privacy Act, (the **"UCPA"**) and any similar laws including any amendments and any final implementing regulations to any of the foregoing that are in effect or that become effective on or after the effective date of this U.S. Privacy Annex; and
- 1.2.13 the terms **"Business Purpose"**, **"Sell"**, **"Sale"**, **"Sold"**, **"Share"**, **"Sharing"** and **"Third Party"** have the meanings given to them in U.S. Data Protection Laws.

1.3 This U.S. Privacy Annex applies in respect of the Personal Information provided or made available by or on behalf of the Publisher to Awin pursuant to the Agreement.

1.4 In the event of inconsistencies between the provisions of this U.S. Privacy Annex and the Standard Terms, this U.S. Privacy Annex shall take precedence, unless explicitly agreed otherwise in writing.

2. DATA PROTECTION.

2.1 Awin and the Publisher will comply with their respective obligations under U.S. Data Protection Laws. Each party will provide the other party any co-operation reasonably requested to enable the other party's compliance with U.S. Data Protection Laws.

2.2 The Publisher will not provide any Personal Information to Awin without Awin's prior written consent, unless as anticipated by Awin in its ordinary operation of the Network of publishers and advertisers to facilitate, amongst other things, affiliate and performance marketing.

2.3 Awin will notify Publisher if it determines that it can no longer meet its obligations under applicable U.S. Data Protection Laws.

2.4 Neither party will do or omit to do any act which may cause the other party to be in breach of any of its obligations under U.S. Data Protection Laws.

3. ROLE OF THE PARTIES; RESTRICTIONS.

3.1 **JC Processing.** In respect of the Processing of Personal Information under the Agreement for the purposes of JC Processing, Awin shall act as a Business and/or a Controller in respect of the Processing of Personal Information, and the Publisher shall also act as a Business and/or a Controller in respect of the Processing of Personal Information.

3.2 **Advertiser Processing.** In respect of the Processing of Personal Information under the Agreement for the purposes of Advertiser Processing:

3.2.1 the Publisher is the Business; and



- 3.2.2 Awin is the Service Provider of the Publisher, and is not a Business or a Third Party.
- 3.2.3 The Publisher confirms that such Processing of Personal Information by Awin on behalf of the Publisher shall be undertaken by Awin for the Publisher's own Business Purpose.
- 3.2.4 Awin shall not:
 - (a) Sell Personal Information;
 - (b) Share Personal Information with any third party for cross-context behavioral advertising;
 - (c) retain, use, or disclose Personal Information it receives from the Publisher under the Agreement for any purpose other than for the specific purpose of performing the Services, including retaining, using, or disclosing such Personal Information for a commercial purpose other than providing the Services;
 - (d) retain, use, or disclose the Personal Information outside of the direct business relationship between the Awin and the Publisher; or
 - (e) to the extent prohibited by U.S. Data Protection Laws, combine Personal Information with other information that Awin receives from or on behalf of another person or persons, or collects from its own interaction with the Consumer.
- 3.3 Entry by Awin into this U.S. Privacy Annex shall constitute a certification that Awin understands the restrictions in Clause 3.2.4 of this U.S. Privacy Annex and will comply with them.
- 4. **PUBLISHER'S RIGHTS.** Upon the Publisher's reasonable request, Awin will make available such written information in Awin's possession as is reasonably necessary for the Publisher to conduct and document data protection assessments in accordance with U.S. Data Protection Laws. The Publisher will have the right to: (i) take reasonable and appropriate steps to help ensure that Awin uses Personal Information Processed under the Agreement in a manner consistent with the Publisher's obligations under and to the extent required by U.S. Data Protection Laws, and (ii) upon reasonable prior written notice, to take reasonable and appropriate steps to stop and remediate unauthorized use of such Personal Information under and to the extent required by applicable U.S. Data Protection Laws.
- 5. **PUBLISHER RESPONSIBILITIES.** The Publisher warrants and undertakes for the Term that:
 - 5.1 it shall provide Consumers with information about how Personal Information is being Processed by or on behalf of the Publisher, which shall at a minimum include all the information required by U.S. Data Protection Laws, in a concise, transparent and easily accessible form, using clear and plain language;
 - 5.2 it has provided all notices and opt-out options and obtained all necessary consents, if any, required under U.S. Data Protection Laws in order to provide or make available Personal Information to Awin for the purposes described in the Agreement;
 - 5.3 it shall not provide or make available to Awin any Personal Information that includes (i) a social security number, passport number, driver's license number, or similar identifier, credit card or debit card number, employment, financial or health information; (ii) Personal information relating to an individual under sixteen (16) years of age; (iii) Personal Information relating to any individual that has exercised a right to opt-out; or (iv) any other information which may be subject to additional protections under applicable laws or regulations including, but not limited to, the Gramm-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA) or the Children's Online Privacy Protection Act (COPPA), or which could give rise to notification obligations under data breach notification laws, without Awin's prior written approval;
 - 5.4 its marketing of any Advertiser or its Products will comply with U.S. Data Protection Laws; and
 - 5.5 the Publisher Service will be operated in accordance with U.S. Data Protection Laws.



- 6. CONSUMER RIGHTS.** Each party shall fulfil its obligations with respect to requests to exercise Consumer rights under U.S. Data Protection Laws. Awin will provide the Publisher with any co-operation reasonably requested by the Publisher to enable the Publisher's compliance with this U.S. Privacy Annex.
- 7. SECURITY AND CONFIDENTIALITY OF DATA.** Awin shall, in relation to Personal Information, implement and maintain reasonable security measures, procedures and practices appropriate to the nature of the Personal Information and adequate under U.S. Data Protection Laws to protect such information from unauthorized access, destruction, use, modification or disclosure.
- 8. PERSONAL INFORMATION BREACH.** In the event of a Network Breach, Awin shall:

 - 8.1 notify the Publisher without undue delay upon becoming aware of the Network Data Breach; and
 - 8.2 not issue a press release or communicate with any member of the press in respect of the Network Data Breach, without having obtained prior written approval by the Publisher.
 - 8.3 The parties shall co-operate to take reasonable commercial steps for the investigation, mitigation and remediation of the Network Data Breach.
- 9. LIMITATION OF LIABILITY.** Each party shall be liable for any breaches of U.S. Data Protection Laws for which such party is responsible and accordingly there shall be no joint or several liability between the parties in respect of such breaches.
- 10. CHANGES TO THIS U.S. PRIVACY ANNEX.** Awin may on at least 7 days' written notice to the Publisher (including by the posting of a notice on the Interface) make binding variations to this U.S. Privacy Annex, which Awin reasonably considers to be necessary or desirable to address the requirements of U.S. Data Protection Laws and/or changes to the manner of its Processing. The Publisher will be deemed to have agreed to such variations by continuing to receive the Services following expiry of the 7 day period following issuance of the notice.
- 11. MISCELLANEOUS.** Should any provision of this U.S. Privacy Annex be invalid or unenforceable, then the remainder of this U.S. Privacy Annex shall remain valid and in force. The invalid or unenforceable provision shall be amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, construed in a manner as if the invalid or unenforceable part had never been contained in the U.S. Privacy Annex. Third parties shall not be entitled to enforce any of the terms of this U.S. Privacy Annex. The governing law and jurisdiction of this U.S. Privacy Annex shall be the same as that of the Agreement.