

GDPR ANNEX

This GDPR 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 GDPR Annex, unless otherwise defined below.
- 1.2. The following definitions and rules of interpretation apply in this GDPR Annex:
 - 1.2.1. "**MasterTag**" means Awin's JavaScript code, which may be integrated into the Publisher Service for the purposes of the Publisher receiving certain services and/or enabling Plugin Integration.
 - 1.2.2. "**Plugin**" means the technology of a Plugin Operator, which integrates with the Publisher Service through MasterTag, and which is used to enable the delivery of the services of the Plugin Operator.
 - 1.2.3. "**Plugin Integration**" means the Processing of Personal Data under the Agreement (and any related or ancillary agreements with any third parties and/or between the parties) for the purposes of facilitating the integration of the Publisher Service with a Plugin, by use of the Awin technology, such as the MasterTag.
 - 1.2.4. "**Plugin Operator**" means a third party adtech provider.
 - 1.2.5. "**SCCs Addendum**" means standard contractual clauses addendum which can be found here <https://www.awin.com/gb/legal/publisher-scc>.
 - 1.2.6. "**Subprocessor**" any person (excluding an employee of either party) appointed by or on behalf of either party to Process Personal Data on behalf of such party or otherwise in connection with the Agreement.
 - 1.2.7. The terms "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Process**" and "**Processing**" have the meanings given to them in the GDPR.
 - 1.2.8. References in this GDPR Annex to Articles or terms of the GDPR shall mean those Articles or terms, and/or any corresponding Articles or terms of the UK GDPR, where the UK GDPR is applicable to the processing activities carried out under this Agreement.
- 1.3. This GDPR Annex applies to the extent that the parties are Processing Personal Data in connection with the Agreement.
- 1.4. In the event of inconsistencies between the provisions of this GDPR Annex and the Standard Terms, this GDPR Annex shall take precedence, unless explicitly agreed otherwise in writing.

2. DATA PROTECTION AND COOKIES

- 2.1. Awin and the Publisher will comply with their respective obligations under Data Regulation. Each party will provide the other party any co-operation reasonably requested to enable the other party's compliance with this GDPR Annex.

General

- 2.2. In accordance with Data Regulation, the Publisher will, on behalf of Awin, to comply with ePrivacy consent requirements, obtain the prior, freely given, specific, informed, unambiguous and revocable consent of any Visitors to any cookies or other tracking technologies served by Awin on the Visitor as a result of a Click.

- 2.3. Awin may request information (including consent records/logs) from the Publisher to objectively verify whether the Publisher has complied with clause 2.2, and the Publisher shall promptly (and no later than 14 days following Awin's written request) make such information available to Awin.
- 2.4. The Publisher will not provide any Personal Data to Awin without Awin's prior written consent, unless anticipated by Awin in its ordinary operation of the Network.
- 2.5. In respect of any Processing under the Agreement for which Awin and the Publisher are joint Controllers (whether together, or with any Advertiser) ("**JC Processing**"):
- 2.5.1. Each party will provide the other party any co-operation reasonably requested to enable the other party's compliance with Data Regulation.

Transparency

- 2.5.2. The Publisher shall take appropriate measures to provide Data Subjects with information about how Personal Data is being Processed by or on behalf of the Publisher, which shall at a minimum include all the information required by Articles 13, 14 and 26 of the GDPR, in a concise, transparent and easily accessible form, using clear and plain language, and specify an appropriate contact point which Data Subjects can use if they have any questions regarding the Publisher's compliance with Data Regulation or wish to exercise their rights under Data Regulation ("**Publisher Privacy Policy**").
- 2.5.3. Awin shall take appropriate measures to provide Data Subjects with information about how Personal Data is being Processed by or on behalf of Awin, which shall at a minimum include all the information required by Articles 13, 14 and 26 of the GDPR, in a concise, transparent and easily accessible form, using clear and plain language, and specify an appropriate contact point which Data Subjects can use if they have any questions regarding Awin's compliance with Data Regulation or wish to exercise their rights under Data Regulation ("**Awin Privacy Policy**").
- 2.5.4. The Publisher shall include a hyperlink to the current Awin Privacy Policy ([link](#)) in the Publisher Privacy Policy.

Personnel

- 2.5.5. Each party shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to Personal Data, ensuring in each case that access is:
- 2.5.5.1. strictly limited to those individuals who need to know and/or access the relevant Personal Data; and
- 2.5.5.2. as strictly necessary for the purposes of the Agreement and to comply with Data Regulation in the context of that individual's duties.
- 2.5.6. Each party shall ensure that all individuals referred to in Clause 2.5.5 are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Security and Confidentiality of Data

- 2.5.7. Each party shall in relation to the Personal Data, implement appropriate technical and organisational measures to ensure an appropriate level of security, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. In doing so, each party shall take into account:
- 2.5.7.1. the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing; and

- 2.5.7.2. the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 2.5.8. In assessing the appropriate level of security, each party shall in particular take account of the risks that are presented by Processing, including from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.

Processors and Subprocessors

- 2.5.9. With respect to a proposed Processor or Subprocessor that a party wishes to engage, such party shall:
 - 2.5.9.1. before the Processor or Subprocessor first Processes Personal Data, carry out adequate due diligence to ensure that the Processor or Subprocessor is capable of providing the level of protection for Personal Data required by applicable Data Regulation; and
 - 2.5.9.2. ensure that the arrangement with such a Processor or Subprocessor, is governed by a written contract including terms meet the requirements of Article 28(3) of the GDPR.

Data Subject Rights

- 2.5.10. Each party shall fulfil their obligations to respond to requests to exercise Data Subject rights under the Data Regulation. Unless otherwise agreed in writing between the parties, the first recipient of any request by a Data Subject to exercise their rights under Data Regulation shall be primarily responsible for its response. Each party will provide the other party any co-operation and information reasonably requested to enable the other party's compliance with this Clause 2.5.10.

Personal Data Breach

- 2.5.11. Each party shall:
 - 2.5.11.1. notify the other party without undue delay upon becoming aware of a Personal Data Breach affecting Personal Data ("**Network Data Breach**");
 - 2.5.11.2. provide the other party with sufficient information to allow it to meet any obligations to report or inform Data Subjects of the Network Data Breach under or in connection with the Data Regulation;
 - 2.5.11.3. meaningfully consult with the other party in respect of the external communications and public relations strategy related to the Network Data Breach;
 - 2.5.11.4. subject to Data Regulation and Clause 2.5.11.1, not notify any data protection regulator of the Network Data Breach without having notified the other party; and
 - 2.5.11.5. 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 other party.
- 2.5.12. The notification set out in Clause 2.5.11.1 shall as a minimum:
 - 2.5.12.1. describe the nature of the Network Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
 - 2.5.12.2. describe the likely consequences of the Network Data Breach; and
 - 2.5.12.3. describe the measures taken or proposed to be taken to address the Network Data Breach.

- 2.5.13. The Publisher shall co-operate with Awin and take such reasonable commercial steps as are directed by Awin to assist in the investigation, mitigation and remediation of each Network Data Breach.

Data Transfers

- 2.5.14. Each party shall only transfer Personal Data to countries outside of the European Economic Area where this is in compliance with Data Regulation.

- 2.5.15. Where,

- (a) Awin transfers Personal Data to the Publisher; and
 - (b) the Publisher or any of the Publisher's offices or operations are based outside of the European Economic Area,
- such transfer of Personal Data shall be subject to the SCCs Addendum.

- 2.6. To the extent that the Publisher is a Data Controller and Awin is a Data Processor, (or, as applicable, the Publisher is a Data Processor and Awin is a Subprocessor), including in respect of any Plugin Integration ("**Publisher Processing**"):

- 2.6.1. the Publisher warrants and undertakes for the Term that any Processing under the Agreement, undertaken by Awin or any Advertiser acting as a Data Processor on behalf of the Publisher acting as a Data Controller, including any Processing of Personal Data relating to the Publisher and any Authorised Users, complies with Data Regulation and that it holds any rights or consents necessary for the transfer outside of the European Economic Area of Personal Data by Awin or any Advertiser and where the transfer of Personal Data under Clause 2.5.15 is undertaken for Publisher Processing, the Publisher hereby instructs Awin to transfer Personal Data outside of the European Economic Area;

- 2.6.2. Awin will:

- 2.6.2.1. Process Personal Data for the purposes of Plugin Integration only, or otherwise in accordance with the Publisher's instructions, including in respect of the deletion or return of Personal Data;

- 2.6.2.2. allow for and contribute to one reasonable written audit per calendar year on at least 30 days prior written notice by the Publisher and during normal business hours, to the extent necessary to demonstrate compliance with this Clause 2.6.2, provided that any costs incurred by either party in relation to any written audits are borne by the Publisher;

- 2.6.2.3. engage Subprocessors in a manner consistent with Clause 2.5.9 and in accordance with Article 28(4) of the GDPR and, in addition, ensure that the contract between the Subprocessor and Awin includes terms which offer at least the same level of protection for Personal Data as those set out in this GDPR Annex in respect of Publisher Processing and;

- 2.6.2.4. comply with Clauses 2.5.5 –2.5.9 and 2.5.11 –2.5.14.

- 2.6.3. The Publisher hereby grants a general authorisation to Awin under Article 28(2) of the GDPR to engage Subprocessors. Awin shall inform the Publisher of any intended changes concerning the addition or replacement of Subprocessors. The Publisher may reasonably object in writing to such an intended change within 14 days of the notification thereof by Awin. Following an objection by the Publisher, Awin may within 30 days of receipt of the objection either:

- 2.6.3.1. notify the Publisher that the intended change shall not be implemented in relation to the Agreement; or

- 2.6.3.2 cease the relevant Publisher Processing immediately on written notice to the Publisher.

2.7. To the extent that Awin is a Data Controller and the Publisher is a Data Processor, (or, as applicable, Awin is a Data Processor and the Publisher is a Subprocessor) ("**Awin Processing**"):

2.7.1. Awin warrants and undertakes for the Term that any Processing under the Agreement, undertaken by Publisher or any Advertiser acting as a Data Processor on behalf of Awin acting as a Data Controller, including any Processing of Personal Data relating to Awin, complies with Data Regulation and that it holds any rights or consents necessary for the transfer outside of the European Economic Area of Personal Data by Publisher or any Advertiser and where the transfer of Personal Data under Clause 2.5.15 is undertaken for Awin Processing, Awin hereby instructs the Publisher to transfer Personal Data outside of the European Economic Area;

2.7.2. the Publisher will:

2.7.2.1. Process Personal Data only in accordance with Awin's documented instructions, including in respect of the deletion or return of Personal Data;

2.7.2.2. assist Awin in all respects necessary to enable Awin to comply with Data Regulations;

2.7.2.3. promptly notify Awin if it receives any request from a Data Subject to exercise his or her rights under Data Regulation, and provide Awin any co-operation and information reasonably requested to enable Awin to respond to such requests;

2.7.2.4. make available to Awin all requested information in respect of Personal Data, including, on at least 30 days prior written notice and during normal business hours, permitting Awin or any relevant Advertiser, or any of their auditors or advisors, to attend the Publisher's premises in order to inspect the Publisher's systems and records to the extent determined by Awin or any relevant Advertiser to be necessary to demonstrate the Publisher's compliance with this GDPR Annex;

2.7.2.5. engage Subprocessors in a manner consistent with Clause 2.5.9 and in accordance with Article 28(4) of the GDPR and, in addition ensure that the contract between the Subprocessor and the Publisher includes terms which offer at least the same level of protection for Personal Data as those set out in this GDPR Annex in respect of Awin Processing; and

2.7.2.6. comply with Clauses 2.5.5 –2.5.9 and 2.5.11 –2.5.14.

2.7.3. Awin hereby grants a general authorisation to the Publisher under Article 28(2) of the GDPR to engage Subprocessors. The Publisher shall inform Awin of any intended changes concerning the addition or replacement of Subprocessors. Awin may reasonably object in writing to such an intended change within 14 days of the notification thereof by the Publisher. Following an objection by Awin, the Publisher may within 30 days of receipt of the objection either:

2.7.3.1. notify Awin that the intended change shall not be implemented in relation to the Agreement; or

2.7.3.2. cease the relevant Awin Processing immediately on written notice to Awin.

2.8. The Publisher shall not use any reports generated by use of the Interface to create Visitor profiles, as defined under GDPR.

2.9. The Publisher will not do or omit to do any act which may cause Awin to be in breach of any of its obligations under the Data Regulation.

3. GENERAL

Changes

- 3.1. 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 the Agreement, including this GDPR Annex, which Awin reasonably considers to be necessary to address the requirements of Data Regulation.

4. LIMITATION OF LIABILITY

- 4.1. Each party shall be solely liable for any costs, claims, losses, damages, expenses or fines arising from:
- 4.1.1. its breach of Data Regulation;
 - 4.1.2. its breach of this GDPR Annex or the Agreement;
 - 4.1.3. Processing of Personal Data in its possession; and
 - 4.1.4. events for which it is responsible;
- and accordingly there shall be no joint liability between the parties in respect of such breaches.
- 4.2. Awin shall not be liable for any breaches of Data Regulation arising in respect of Processing by or in connection with any third party adtech provider whose technology may be integrated with the Publisher Service by use of the Awin's technology (as applicable from time to time).
- 4.3. In addition to the limitations outlined in this Clause 4, each party's liability under this GDPR Annex shall be limited in a manner consistent with any limitations of liability set out in the Agreement.