

# **GENERAL TERMS AND CONDITIONS ONLINE MEDIA**

## **Media Impact GmbH & Co. KG**

(Valid from November 2023)

The following General Terms and Conditions (hereinafter "the GTC") govern the relationship between the marketer and the client for the placing and execution of advertising orders for online media marketed by the marketer, unless agreed otherwise in text form. In so far as these do not fall within the scope of the General Terms and Conditions Newspapers / Magazines, the GTC also shall apply for advertising orders for applications ("Apps") and mobile websites and e-papers marketed by the marketer. The client can access, print out and also download and store these GTC at any time under <https://www.mediaimpact.de/en/agb>.

### **1. Definitions**

1.1 "Offer" within the meaning of these GTC is the marketer's offer for the placing and publishing of one or more advertising materials in media, information and communications services, in particular the World Wide Web (hereinafter jointly "online media") for the purpose of dissemination. Unless expressly marked as a binding offer, the marketer's offers are non-binding and are subject to the proviso of the offered services being available.

1.2 "Advertising order" within the meaning of these GTC is a client's offer on the placing and publishing of one or more adverts or other advertising material (hereinafter referred to collectively as "advertising material" or "advert") of an advertiser or other advertising space buyer (hereinafter referred to collectively as "advertiser") in online media for the purpose of dissemination. A client can be an agency or an advertiser itself.

1.3 Advertising material within the meaning of these GTC can comprise inter alia one or more of the following elements: an image and/or text, sequence of sounds and/or moving images (inter alia banner, video), graphic or text from which the partner's offer is linked, or from the inclusion of the partner's contents in the online media.

1.4 "Marketer" is Media Impact GmbH & Co. KG for all online media it markets, even if they are operated by third parties.

In the case of the marketing of B.Z. and/or BILD BERLIN-BRANDENBURG online media by Axel Springer SE, this shall take the place of Media Impact GmbH & Co. KG. In the case of the marketing of Axel Springer Auto Verlag GmbH online media by Axel Springer SE, this shall take the place of Media Impact GmbH & Co. KG. In the case of marketing of COMPUTER BILD Group online media by Axel Springer SE, this shall take the place of Media Impact

GmbH & Co. KG. In the case of marketing of SPORT BILD Group online media by Axel Springer SE, this shall take the place of Media Impact GmbH & Co. KG. In the case of the regional marketing of online media by Axel Springer SE, this shall take the place of Media Impact GmbH & Co. KG. Regional marketing arises if an advertising order is performed by regional marketing offices. The pertinent marketer can be found in the order confirmation.

1.5 "Usage-based online advertising" within the meaning of these GTC is any online advertising material addressed to a certain target group by means of personal data of the actual or presumed assignment.

## **2. Conclusion of contract**

2.1 In the case of an advertising order, a contract comes about, unless expressly agreed otherwise in a specific case, through publication of the advertising material (in the case of several advertising materials the first advertising material) in the online media marketed by the marketer or the marketer's confirmation in text form.

In so far as the marketer makes a binding offer, the contract comes about through the client's declaration of acceptance.

2.2 If the advertising order only determines a total advertising volume, the marketer shall carry out the size and scheduling of the individual advert placements depending on availability in liaison with the client, otherwise at its due discretion taking the client's interest into account. The client shall ensure that the contractual placements are also booked within the term of the contract.

2.3 In so far as agencies place advertising orders, the contract comes about with the agency, subject to differing agreements in text form. The agency undertakes to provide the marketer with a commercial register extract which shows the brokering of advertising orders as proof of trade and a proof of mandate upon request.

2.4 Advertising orders from advertising and media agencies shall only be accepted for advertising clients with an exactly defined name. Advertising for the products or services of advertisers other than named during the booking shall require the marketer's prior consent in text form in every case.

2.5 In so far as the marketer has orders or closings marketed via third parties, those third parties shall act as the marketer's agent and for the latter's account.

2.6 In so far as the granting of agency commission is not excluded, a 15% agency fee on the net invoice value, i.e., on the invoice total without value-added tax and after deduction of

discounts, shall be paid for all orders for the booking of advertising space placed via an advertising agency accredited by the marketer. Excluded herefrom are setup fees, technical costs and also remunerations for creative services and all targeting products.

2.7 Changes and additions to a contract and also deviations from these GTC shall require the text form. For changes and additions to contracts, this shall also apply for revoking the written form clause.

2.8 In the case of agency bookings, the marketer reserves the right to pass on booking confirmations to the agency's client, too.

2.9 If a client books advertising material under a contract with the marketer for online media which are marketed not only by the marketer, and/or advertising material above and beyond online advertising material, the marketer cannot give any binding commitment on the scheduled placing of the advertising material. All and any details about publication dates are thus to be understood as subject to change.

### **3. Publication of adverts**

3.1 The design and editorial control over the websites marketed by the marketer lies with the pertinent online media. The marketer therefore reserves a postponement right with respect to booked advertising material and also the right to change the structure of the pages and/or the designation of the areas at any time. If adverts are to be published only on certain publication dates or in specific positions of the online media, this shall require an express agreement with the marketer. A minor relocation of the online advertising material within the agreed environment is possible, if the relocation has no significant negative influence on the advertising impact of the advertising material. The orders for such adverts must be received by the marketer in such good time that the client can be informed before publication if the order cannot be executed in that manner. Classified adverts shall be published under the appropriate heading without this requiring an express agreement.

3.2 Independently of the publication in online media, the marketer is entitled but not obligated to also publish placed advertising orders within the framework of what is technical possible in other online media of the marketer and companies affiliated with it. The templates available for the online media can thereby be adapted to the pertinent requirements.

3.3 Advertising material shall be offered and delivered by the marketer on a multiscreen basis (website, mobile website, App, accelerated mobile pages, and suchlike) by default. The marketer is thereby free in the allocation of the advertising material over the channels. Upon

consultation and corresponding adjustment of the offer, the marketer shall restrict the display to certain channels or distribute the display by arrangement.

3.4 Advertising material shall also be delivered to non-consent traffic (coverages without or with only partial granted user consent or coverages with user opt-out of processing of personal data).

3.5 Exclusion of competing adverts is never assured.

3.6 The marketer shall post the online advertising material in the advertising space - apart from special contractual agreements - during the booked time period and/or until the booked media performance is reached. The marketer shall report the number of ad impressions and/or ad clicks delivered during the campaign to the client in a format specified by the marketer. In the case of long-term campaigns, there shall be a monthly actual statement. In the case of short-falls, the marketer shall - in so far as possible and reasonable - carry out an additional delivery as per the ad impressions agreed with the client. The additional delivery shall be effected - subject to any special agreements in text form - during or following the time period agreed in the contract.

3.7 Insofar as the marketer is obliged to continuously optimize the clients advertising campaigns, the marketer will regularly evaluate the available campaign reports from social media posts or other advertising media and, if necessary, with regard to campaign goals and the achievement of the clients targeted key performance indicators (KPI) and in consultation with the client, make possible optimizations, for example when targeting the advertising measures or adapting the advertising material.

3.8 The number determined by the marketer's adserver shall be definitive for measuring the settlement-relevant metrics (e.g. ad impressions, views). The client shall be entitled to prove that the actual number differs therefrom. Any deviation of not more than 10% shall be irrelevant in all and any case, however.

3.9 If the client proves a deviation pursuant to Clause 3.6 of the actual numbers from the numbers determined by the marketer of more than 10%, the number of the settlement-relevant metrics exceeding the 10% deviation (hereinafter "excess deviation") shall be governed by the following provision:

The client has to report the excess deviation to the marketer without undue delay and, in so far as possible, during the campaign period by email to [ads@axelspringer.de](mailto:ads@axelspringer.de). The parties shall jointly analyse the reason for the excess deviation and strive to remedy the cause of it. In so far

as the cause is established to be an error in the marketer's determination of the number of the settlement-relevant metrics, then those numbers which the marketer would have determined without the established error shall be deemed definitive. If the cause cannot be clearly established, the parties shall average the number of settlement-relevant metrics accordingly.

3.10 On non-consent traffic, the client cannot as a rule measure with a personal reference. Tracking or measurement is not possible without users' consent to the processing of their personal data. The marketer, on the other hand, can measure the settlement-relevant metrics (e.g. ad impressions, views) on the websites without personal reference through its technical connection. Accordingly, Clauses 3.6 and 3.7. shall not apply for this traffic. Non-consent traffic shall be settled pursuant to the marketer's numbers.

#### **4. Duties of the client, labelling advertising materials and the marketer's right of refusal.**

4.1 The client shall be responsible for the contents provided, in particular his advertising material and the websites to which the advertising material points, being so designed that they do not breach statutory provisions and in particular comply with youth protection, press, competition, data protection, criminal and media services law provisions.

4.2 In the event of a breach of Clause 4.1, the client shall hold the marketer free and harmless from all and any costs incurred by the marketer as a result, including legal defence costs, in their entirety upon first request. The marketer owes no duty to examine the advertising material prior to placing and publishing the same.

4.3 The placing of use-based online advertising for the client/ advertiser presupposes that the client/advertiser is certified to the IAB Europe OBA Framework ("EDAA-OBA certification"). With the order to place use-based online advertising, the client/advertiser confirms that it holds such EDAA-OBA certification. The client/advertiser undertakes to prove corresponding certification to the marketer upon demand. The client/advertiser undertakes to heed updated standards such as IAB Europe TCF 2.0 1. (or later) and the current version of the Tracking Guidelines (<https://www.mediaimpact.de/de/unkategorisiert/uebersicht-tracking-guidelines-whitelist>)

4.4 The marketer reserves the right to refuse adverts or other advertising material in particular if their contents breach laws or official regulations or their contents have been objected to by the German Advertising Council in complaint proceedings or their publication breaches rights of third parties or the interests of the marketer due to the content, the design, the origin or the technical form. Adverts can also be rejected, if they do not meet the Tracking Guidelines (retrievable at <https://www.mediaimpact.de/en/tracking-guidelines-media-impact-for->

[advertisers-and-agencies-for-use-on-the-platforms-we-market](#)). Any refusal of an advertising material shall be notified to the client without undue delay. In the case of advertising materials whose appearance resembles the editorial design of the online media, the marketer reserves a right of objection within the scope of its journalistic remit. Advertising material with an editorial design must be clearly distinct from the basic font of the online media and be marked with the word "advert". Advertising materials which are not apparent as adverts due to their design can be clearly marked as such by the marketer with the word "advert".

4.5 Advertising material containing the advertising of or for third parties (joint advertising) shall require the marketer's prior consent in text form in each individual case. The advertisers are to be named. The marketer reserves the charging of a joint-advertising surcharge and/or different discount rate.

4.6 The client has to keep the websites to be linked by the advertising material in place during the entire term of the contract.

4.7 If the client has already been given or is given a written warning or has already rendered or renders a cease-and-desist declaration because of the content of advertising material, the client undertakes to inform the marketer to that effect without undue delay. If the client breaches this duty, the marketer shall not be liable for the harm incurred by the client from a repeated publication of the challenged advert (contents).

4.8 The marketer shall be entitled to suspend the placing and publishing of the booked advertising material, in so far as the client has changed the contents which are to be linked to from the banner by means of hyperlinks and/or there is a suspicion of unlawful advertising material and/or unlawful content on one of the linked web pages and/or of breach of rights of third parties and/or the client is in default with the payment of the remuneration. This shall apply in particular in cases of third-party rights being asserted against the marketer or the client for the placing and publishing of the booked advertising material or in the case of investigations by public authorities into such contents. This shall be without prejudice to the marketer's claim to remuneration.

## **5. Transfer of online advertising media**

5.1 It shall be the client's responsibility to supply corresponding compliant templates including all the contents, information, data, files and other materials required for the advertising material (hereinafter "templates"), in particular in the format or the technical marketer's specifications for creating and transmitting online advertising media (see the information about technical specifications for online advertising material, retrievable at

<https://www.mediaimpact.de/en/digital-formats> and the Tracking Guidelines specifications (<https://www.mediaimpact.de/en/tracking-guidelines-media-impact-for-advertisers-and-agencies-for-use-on-the-platforms-we-market>) completely, free of defects and viruses and also in good time, i.e., unless agreed otherwise, 5 working days before publication at the latest, and to mark the same appropriately for use by the marketer. If the marketer is commissioned to place use-based online advertising, the technical specifications to be met by the client can in particular stipulate that the advertising material to be placed shall be sent with the OBA icon already implemented. Undesired publication results which arise from the client's deviation from the marketer's recommendations shall not give rise to any claim for a price reduction. The marketer owes no duty to check the contents for completeness and correctness.

5.2 The client shall bear the marketer's costs for changes to the layouts requested or caused by the client.

5.3 Before sending layouts digitally, the client shall ensure that the files sent are free from computer viruses. To that end, the client is in particular obligated to use customary anti-virus programs which represent the current technical state of the art. If the marketer discovers sources of harm of the aforementioned nature on a file sent to it, the marketer shall no longer use that file and erase the same, in so far as this is required to prevent or limit harm (in particular to avoid the source of harm spreading to the marketer's IT system), without the client being entitled to demand damages in this context. The marketer reserves the right to resort to the client for damages if the marketer has suffered harm or losses from such sources of harm infiltrated by the client.

5.4 If the advertising material is delivered late, incomplete and/or not compliant with the technical specifications or the Tracking Guidelines, the marketer shall be entitled to fill the envisaged positions differently until there is proper and compliant delivery. The contract shall then be rendered later at the marketer's discretion. The client shall nevertheless be obligated to pay the full booking price.

5.5 If an advertising order is not carried out or carried out wrongly, because the client has breached participation duties, in particular supplying templates late, incompletely and/or with defects or wrongly labelled or the same were deleted pursuant to Clause 5.3 or technical specifications or the Tracking Guidelines were not implemented, the marketer shall still have a claim to the agreed remuneration.

5.6 Independently of the delivery of the digital advertising material, an order in text form with motif marking has to be placed. Supplying the advertising material alone shall not constitute the placing of an order.

5.7 The parties shall each nominate a responsible person for coordination of the contents.

5.8 In exceptional cases, the marketer can permit the provision of advertising materials via an external adserver. In such cases, the marketer reserves the right to view those advertising banners before their placing and to refuse such placing where appropriate. The client undertakes to present the marketer with those advertising banners for audit and also to inform the marketer about any retrospective changes.

## **6. Defects**

6.1 If the publication of the advert does not meet the contractually owed quality or performance, the client shall be entitled to reduction of payment or a satisfactory replacement advert, albeit only to the extent that the purpose of the advert was impaired. The marketer shall have the right to refuse a replacement advert or replacement publication if (a) this requires an effort that is grossly disproportionate to the client's interest in performance with regard to the content of the obligation owed and the principles of good faith, or (b) this would be possible for the marketer only with unreasonably high costs. If the marketer allows a reasonable grace period granted for the replacement advert or publishing the other advertising material to lapse or the replacement advert/replacement publication is once again not defect free, the client shall have a right to reduction of payment or cancellation of the order. In the case of minor defects in the advert or the publication of the other advertising material, cancellation of the order shall hereby be excluded.

6.2 The client shall check the advertising material without undue delay after the first placing. Notices of defects must be asserted against the marketer without undue delay after publication, unless the defect in question is not apparent, in which case the period shall be six months.

6.3 The marketer shall be liable for all harm, be it under breach of contractual duty or tort, subject to the following provisions:

(a) In the case of gross negligence, the liability towards entrepreneurs shall be limited to reimbursement of the typical foreseeable harm; this restriction shall not apply, in so far as the harm was caused by the marketer's legal representatives or senior employees.

(b) In the case of simple negligence, the marketer only shall be liable, if a cardinal contractual duty was breached, a guarantee was given or in the case of wilful deceit. Cardinal



contractual duties are such duties whose fulfilment renders the proper execution possible in the first place and on whose compliance the contractual partner does and may rely. In such cases, the liability is restricted to typical foreseeable harm. In the case of liability for typical foreseeable harm only, there shall be no liability for indirect losses, consequential losses or foregone profit.

6.4 All claims against the marketer under breach of contractual duties shall be time barred one year from the start of the statutory time period, unless they are based on intentional or grossly negligent behaviour.

6.5 In the case of claims under the Product Liability Act and also fatality, personal injury or impairment of health, the marketer shall have unlimited liability under the statutory provisions.

## **7. Preview links**

Preview links shall only be supplied upon express wish. The marketer shall take into account all error corrections reported to the marketer up to the placing or within the period set when the preview links are sent.

## **8. Payments**

8.1 There shall be monthly invoicing on the basis of the services rendered. Said invoicing can also relate to parts of the entire order. The final invoice shall be sent after all services have been rendered, unless agreed otherwise in the specific case. Terms of payment: due and payable immediately after receipt of invoice net cash, unless agreed otherwise in these GTC or in a specific case in text form. Cash discount of 1% of the invoice amount including VAT shall be granted upon advance payment of the total invoice amount before the start of performance or if a direct debit authorisation is issued when the order is placed at the latest. The marketer reserves the right to demand advance payment prior to publication in reasonable circumstances, such as the start of new business dealings. If settlement of invoice by direct debit has been agreed, the marketer undertakes to notify the client about the amount and debit date in advance. Said pre-notification shall be provided one working day before debiting at the latest.

8.2 The client can offset the marketer's claims only against uncontested or final and binding claims. The client may only exercise a right of retention in so far as the counterclaim is uncontested or final and binding and is based on the same contractual relationship.

8.3 The marketer can postpone further performance of the current advertising order or closing up to payment and demand advance payment for the remaining adverts.

8.4 Where there are justified doubts about the client's solvency, the marketer shall be entitled to make the appearance of further adverts dependent on advance payment of the amount, regardless of an originally agreed payment period, and on the settlement of outstanding invoiced amounts also during the term of a contract.

## **9. Specimen copy (screenshot)**

Upon request, the marketer shall supply a screenshot for adverts and other advertising material; the marketer reserves the right to demand separate reasonable remuneration therefor. If a specimen copy can no longer be procured, it shall be replaced by a legally binding certificate from the marketer on the publishing and dissemination of the advert.

## **10. Prices**

10.1 Prices are always quoted net of the pertinent statutory sales tax; this shall apply in particular for prices quoted in advertising orders.

10.2 The marketer shall be entitled to change prices at any time with effect for the future. Price changes for advertising contracts are effective, if they are announced by the marketer at least one month before publication of the advert; in that case the client shall have a right of rescission. The right of rescission must be exercised in text form within 14 days of receiving the change notification concerning the price increase. The right of rescission shall not apply for orders to be carried out under a recurring obligation. In such cases, changes to the price list shall become effective immediately, unless expressly agreed otherwise.

## **11. Affiliated companies**

If joint discounting applies for affiliated companies, this shall require proof in text form of the advertiser's affiliated status. Affiliated companies within the meaning of this Clause are companies between which there is capital participation of at least 50%. The affiliated status is to be proven for corporations by a public accountant's confirmation or presentation of the last annual financial statements, for partnerships by presentation of a commercial register extract upon the marketer's request. The group discount must be claimed when the contract is concluded at the latest. Later claiming shall not be recognized retrospectively. Group discounts outside the price list shall always require express confirmation in text form by the marketer. Group discounts shall only be granted for the duration of the affiliation. The ending of said affiliation is to be notified without undue delay; the ending of the affiliation shall also terminate the joint discounting.

## **12. Transfer of rights and guarantee**

12.1 The client shall be responsible for provided templates, in particular his advertising material and the websites to which the pertinent advertising material link, not breaching rights of third parties; the client in particular warrants to be the owner of all rights of use and exploitation required for the placing and publishing of the provided templates and the content published on his website and that he is entitled to dispose over the same. In the case of advert production by the marketer, the client also declares that he holds all rights required to produce the advert. He shall to that extent hold the marketer free and harmless from all claims of third parties upon first request. This also includes legal defence costs. The client undertakes to support the marketer with information and documents in the legal defence against third parties.

12.2 The client shall transfer to the marketer the non-exclusive copyrighted use, neighbouring, brand and other rights, in particular the rights of reproduction, dissemination, transmission, broadcasting, to make publicly accessible, for extraction from a database and retrieval including all known technical methods and all known forms of online media, required for production and publication of the advertising in print, online and telemedia of all and any kind, including Internet, for the provided contents to the extent necessary in terms of time and content for the performance of the order. The marketer shall also receive the perpetual right for own promotion of the marketer and the pertinent items, including the right to use the contents and the achieved campaign KPIs as a show or industry case, the right to storage in and retrieval from a database, the archiving right and the right to make the same publicly accessible, in each case in conjunction with the publishing product for own purposes and by third parties. Furthermore, the Client grants the Marketer the Artificial Intelligence Right, i.e. the right to further use the content supplied for the creation of the Advertising Media in an Artificial Intelligence-supported (machine) ("AI-supported") manner, also e.g. for the teaching of AI-supported software, for test purposes or for machine/software-supported processing. The aforementioned rights shall in all cases be transferred spatially unlimited and are freely transferable to third parties.

12.3 This granting of right shall apply expressly for use on fixed and mobile communications networks and devices, including all digital and analogue transmission and retrieval methods in particular via cable, wireless, fixed and mobile satellite networks and microwaves, all known and future transmission methods (in particular WAN, LAN, WLAN, broadband, UKW, GSM, GPRS, EDGE, UMTS, HSDPA, HSUPA and DVB-T and DVB-H) protocols and languages (such as TCP/IP, IP, HTTP, WAP, HTML, cHTML and XML) and including reproduction on all and any receiving devices, such as in particular stationary, mobile and ultramobile

computers, TV sets, set-top boxes, (hard-drive) video recorders, mobile telephones, tablets, mobile digital assistants (MDA), personal digital assistants (PDA) and mobile internet devices (MID), and encompasses use within the framework of telecommunications, telemedia and radio services (such as web and mobile portals, applications, widgets, RSS, SMS, MMS, email, messenger and notification services and regardless of whether the same are implemented as push or pull services) and within the framework of all and any form of advertising and/or publicity work (also using the content as an integral component of online advertising, for example within the framework of banners, videos, screenshots, audio samples, teasers, newsletters, titles and names for business activities, services or products of the marketer, the online media marketed by the marketer and/or by third parties).

12.4 All and any concepts and elements underlying the marketer's offers are protected by copyright and competition law and are to be treated by the client in confidence. Said concepts may in particular not be passed on to third parties either in this or any adapted form or be used by the client for own purposes outside the scope of the contract.

12.5 If a graphic file or in another manner the name, logo, company identifier, trademark, work title or other business designation is used in conjunction with the advertising material, the client shall grant the marketer the non-exclusive, non-transferrable right to use the graphic file or the corresponding mark in the pertinent advertising material for the term of the contract.

12.6 Advertising themes (promotions) designed by the marketer for the client may only be used for adverts in the titles/issues booked with the marketer to that end. No further rights shall be granted.

### **13. Term**

13.1 The contract shall end when the contractual term expires.

13.2 Should the parties not have agreed an express term of the contract, then placements for the advertising material are, in the case of doubt, to be called down by the client within half a year of the contract coming about.

13.3 This shall be without prejudice to the right to extraordinary termination for good cause after prior written warning. The termination is to be effected in writing. A right to termination without notice for good cause arises in particular, if one of the parties repeatedly breaches a cardinal contractual duty despite a written warning, fails to cease or rectify the consequences of an ongoing breach of contract within a reasonable period, a written warning or an injunction has been obtained against one and/or both parties and/or against an online medium marketed

by the marketer due to a contractually agreed performance or the marketer has a grounded suspicion that the client or the provided contents breach(es) valid legal provisions, in particular the Criminal Code, the Interstate Treaty on the Protection of Minors in the Media or the applicable advertising guidelines; a grounded suspicion arises once the marketer has indications based on facts for a breach of legal provisions, in particular from the initiation of preliminary proceedings against the marketer, the client and/or the online media marketed by the marketer or from the direction of the pertinent authority to give a statement. There shall also be grounds for termination without notice if enforcement measures are conducted against one of the contractual parties and not ceased within one month.

#### **14. Disruption of the contractual relationship through force majeure**

If the contract cannot be performed as a whole or in parts due to reasons for which the marketer is not answerable, in particular computer failure, force majeure, strike, statutory orders, disruptions arising in the scope of responsibility of third parties (e.g. other providers), network operators or service providers or comparable reasons, the parties agree here and now to fulfilment even after the contractual term ends. This shall be without prejudice to the claim for remuneration. If the contract cannot be performed as a whole or in parts due to reasons for which the client is answerable, the pertinent statutory provisions shall apply.

#### **15. Involvement of third parties**

The client shall require the marketer's prior consent in text form for full or partial transfer of his rights and duties under the advertising order. The marketer shall be entitled to resort to third parties to fulfil its obligations under the advertising order.

#### **16. Confidentiality and press**

16.1 Unless agreed otherwise in text form, the contractual parties shall treat details of the contractual relationship, in particular the prices and conditions, and also business secrets made known to them directly or indirectly by the pertinent other party during the performance of the contract in strict confidence. This shall not apply, if a disclosure is ordered by a court of law or public authority or is required to uphold rights against the pertinent other contractual party before a court of law. The marketer is furthermore entitled to disclose information in connection with the contract to third parties engaged in accordance with clause 15 as well as to affiliated companies in accordance with §§ 15 ff. German Stock Corporation Act (Aktiengesetz), provided that they are subject to a corresponding confidentiality agreement. The obligation shall exist throughout the term of the contract and indefinitely beyond any termination.

16.2 The marketer shall be entitled to pass on the gross advertising sales of the client and advertisers at the product level to Nielsen Media Research or comparable institutions for publication.

16.3 Press releases and other public statements to third parties about the business relationship between the marketer and the client or concerning the details of agreements reached shall require the marketer's prior release. This shall apply likewise for logo presentations for logos supplied by the marketer.

## **17. Data protection and use of anonymous data**

17.1 The parties are in agreement that the parties do not process any personal data of the other party within the framework of this contract. Excluded herefrom is the operational-commercial execution of this contract (such as storing the parties' contact partners).

17.2 Should a client or advertiser process personal data within the meaning of Art. 4 no. 1 GDPR from the placing of advertising materials in the online media and/or access information within the meaning of § 25 TTDSG stored on or store the same on end users' end devices (e.g. by using protocols like http(s), cookies, tracking pixels, fingerprinting or corresponding procedures in Apps) (hereinafter also collectively "processing"), the client warrants compliance with the following provisions.

a) Such processing must meet the requirements of the "Tracking Guidelines" and/or the "Tracking Guidelines for Native Integrations", retrievable at: (<https://www.mediaimpact.de/en/tracking-guidelines-media-impact-for-advertisers-and-agencies-for-use-on-the-platforms-we-market>) and shall always require prior release by the marketer. The client and advertiser shall thereby comply under their own responsibility with the pertinent applicable laws (including but not limited to the General Data Protection Regulation (GDPR), Federal Data Protection Act (FDPA), law on Regulation of Data Protection and Protection of Privacy in Telecommunications and Telemedia (TTDSG) and corresponding legislation of other countries) also in the case of release by the marketer.

The usage data may only be processed anonymously or pseudonymously; they may never be combined by the client and/or advertiser with information about the bearer of the pseudonym.

b) The client / advertiser is entitled to process the IP address of users of the online media on the scale required for the purpose of placing advertising materials in the online media (i.e., to establish connections and display contents), in compliance with data protection law

standards, albeit not unabridged for other purposes (e.g. analysis/tracking/marketing). The same shall apply in particular also for identifying browser fingerprints.

c) In so far as a client / advertiser processes personal data within the meaning of Art. 4 no. 1 GDPR from the placing of advertising materials in the online media, without the end user having actively initiated the same after due information, the further provisions of the Agreement Between Joint Controllers (see **Annex A**) shall apply, subject to expressly differing agreement.

17.3 Insofar as a CUSTOMER / Advertiser books the product "InfoSum TGX" for the play-out of personalised advertising media and in this context provides user IDs, the Data Protection Agreement attached as **Annex B** shall additionally apply.

## **18. Order cancellations before the start of performance**

The client can cancel contracts after they have been concluded subject to the following proviso: Contracts must be cancelled in text form for the attention of the client's contact person at the marketer. The marketer shall allow cancellation free of charge up to three weeks before the start of the agreed performance. Definitive for the date of the cancellation is receipt of the letter by the marketer. If this cancellation period is not met, the client has to pay 30% of the net order value plus VAT. Cancellation is hereby excluded once placement has begun.

The following forms of advertising shall be governed by different periods or compensation payments:

In the case of cross-media offers, competitions, influencer campaigns, cancellations six weeks before the agreed start of placement shall be free of charge. Thereafter, 30% of the net order value shall be payable. Cancellation is excluded after the agreed start of placement.

In the case of cooperations, cancellations are possible free of charge up to six weeks before the agreed start of placement. Thereafter, 70% of the net order value shall be payable. Cancellation is also excluded after the agreed start of placement. In the case of fixed date placements cancellations are possible free of charge up to three weeks before the agreed start of placement. Thereafter, 70% of the net order value shall be payable. Here too, cancellation is excluded after the agreed start of placement. Technical costs and costs for creative services incurred up to the date of the cancellation for the booking shall be invoiced to the client in full. Cancellation of advertising orders made in connection with sponsorship is excluded. This applies to all advertising services that are booked in connection with the sponsorship in terms of time or content.

## **19. Final provisions**

19.1 All and any additional terms and conditions stated in the price list shall apply in addition to these General Terms and Conditions.

19.2 Changes to the GTC shall be notified to the client in text form and also at <https://www.mediaimpact.de/en/> under “General Terms and Conditions”. They shall be deemed approved by the client, in so far as the latter does not object in text form within one month from notification.

19.3 The application of the client's general contractual or business terms and conditions is hereby expressly excluded. This shall apply even if the application of such conditions of the client were not expressly rejected and/or the marketer the renders performances without objection, i.e., advertising material is placed and published without objection.

19.4 Place of fulfilment is the marketer's registered offices. The legal forum is the marketer's registered offices. German law shall apply to the exclusion of the laws on the international sale of goods.



## Annex A

### Joint Control Arrangement

#### Agreement between Joint Controllers

#### According to Article 26 GDPR

This Agreement including its Appendices sets out the responsibilities between the Digital Offer Operator ("**PUBLISHER**") and the PARTNERS listed in this Tracking Whitelist (<https://www.mediaimpact.de/de/unkategorisiert/tracking-whitelist-uebersicht>) for Joint Controllership pursuant to Article 26 of the GDPR as described below, each with legal effect between the parties.

#### **1. Purposes and Legal Bases of Processing**

The purposes and respective legal bases for the processing of personal data on the Digital Offers of PUBLISHER are jointly defined by PUBLISHER and the respective PARTNER in accordance with the illustrations in the consent and objection management of the digital offer (so-called Consent Management Platform, hereinafter "**CMP**") (hereinafter "**COMMON PURPOSES**").

#### **2. Means of Processing**

2.1 The processing of personal data of users of the Digital Offer takes place via the online advertising technologies integrated into the Digital Offer.

2.2 By means of the online advertising technologies, the PARTNERS are enabled to store cookies or similar technologies on the user's terminal device, by means of which access to or storage of information on the terminal device is enabled for the specified COMMON PURPOSES.

2.3 Cookies are small files that the browser stores on the end-device in a directory provided for this purpose. They can be used, among other things, to determine whether a website has already been visited. Many cookies contain a so-called cookie ID. A cookie ID is a unique identifier of the cookie. It consists of a string of characters by which websites and servers can be assigned to the specific internet browser in which the cookie was stored. This enables PARTNER to distinguish the individual browser from other internet browsers that contain other cookies. A specific internet browser can be recognised and identified via the unique cookie ID. Cookies cannot identify the user as a person without additional information.

2.4 When using apps, instead of a cookie, a technology with a comparable function is used, such as the operating system-specific advertising ID, vendor ID or a user ID that is generated at random.

#### **3. Function and Relationship to Data Subjects**

3.1 The PUBLISHER enables the data subjects to use the digital offer. At the beginning of the usage process, the data subject is given the opportunity to determine the scope of the processing of personal data and the access to or storage of information on his or her end device by making the appropriate settings in the digital service.

3.2 The data subject has the possibility at any time to revoke his or her consent in the settings in the digital service or to object to the processing of personal data.

3.3 In accordance with the data subject's settings in the digital offer, technical signals are sent to the PARTNERS about the existence of the legal basis for the processing of personal data of the data subject.

#### **4. Scope of Joint Responsibility**

The PARTNERS shall each be jointly responsible with the PUBLISHER for the processing of personal data to the extent that the PUBLISHER enables the respective PARTNER to process personal data of users of the Digital Offer for its own purposes by integrating the online advertising technologies into the Digital Offer in accordance with this Agreement (hereinafter "**JOINT PROCESSING**").

#### **5. Obligations of the PUBLISHER**

5.1 The PUBLISHER undertakes to inform the users of the digital service about the nature, scope and purpose of the JOINT PROCESSING of personal data as well as their rights as data subjects pursuant to Art. 13 GDPR. Furthermore, the PUBLISHER undertakes to provide the users of the digital offer with the additional further information pursuant to Art. 26 GDPR.

5.2 The PUBLISHER undertakes to provide the users of the digital offer with a CMP on the digital offer for retrieval at any time, by means of which the user of the digital offer can make the necessary settings in accordance with section 3.1 of this agreement or change them at any time in accordance with section 3.2.

5.3 The CMP must be certified with the Transparency & Consent Framework (TCF 2.0) of the IAB Europe with active status.

5.4 The PUBLISHER undertakes to map the PARTNERS and the COMMON PURPOSES including the legal basis of the COMMON PROCESSING in the CMP.

5.5 The PUBLISHER shall respond to requests from a data subject received by the PUBLISHER and relating to the JOINT PROCESSING of personal data within the legal time limits.

#### **6. Obligations of the Partners**

6.1 The PARTNERS undertake to provide the PUBLISHER in good time with the information required to fulfil the obligations to provide information under Clause 5.1 and the requests for information under Clause 5.5 in relation to their JOINT PROCESSING.

6.2 THE PARTNERS shall ensure that personal data of the data subject shall only be processed if the legal basis jointly determined in accordance with Clause 1 of this Agreement exists and a corresponding signal has been sent to PARTNER. The same applies to the retrieval or storage of information on the end device of the data subject.

6.3 The PARTNERS undertake to immediately cease the JOINT PROCESSING if the legal basis ceases to exist.

6.4 The PARTNERS undertake to implement requests for deletion from data subjects without delay after becoming aware of them and to inform the PUBLISHER thereof.

6.5 The PARTNERS shall ensure that they are listed on the Global Vendor List (the "GVL") with a valid vendor ID. Furthermore, all PARTNERS shall ensure that they have deposited their respective current data protection provisions on the GVL by means of a link.

6.6 All PARTNERS shall maintain a list of the cookie domains used by them (domains under which the cookies are stored or read) and make this available to the PUBLISHER on request.

#### **7. Reporting and Notification Obligations**

7.1 In the event of a breach of the protection of personal data, the PUBLISHER shall fulfil the necessary reporting and notification obligations for the JOINT PROCESSING in accordance with Article 34 of the GDPR vis-à-vis the respective data subject.

7.2 Insofar as the breach has not occurred in the sole area of responsibility of the PUBLISHER, the PARTNER in whose area of responsibility the breach has occurred shall provide the PUBLISHER with the information required to fulfil the statutory notification and notification obligations in good time.

7.3 The information to be provided shall also include the information listed in Article 33(3) of the GDPR. If and to the extent that the information cannot be provided at the same

time, the respective party concerned may provide this information gradually without unreasonable further delay.

## **8. Data Protection Impact Assessment**

Each Party shall carry out any data protection impact assessment required under Article 35 GDPR on its own responsibility for the JOINT PROCESSING.

## **9. Further Obligations**

9.1 Each Party shall include the JOINT PROCESSING in its processing directory pursuant to Article 30(1) of the GDPR. The Parties shall provide each other with the information necessary for the directory of processing activities pursuant to Article 30(1) of the GDPR.

9.2 In the event of a personal data breach within the meaning of Article 4 No. 12 of the GDPR in relation to the JOINT PROCESSING, the respective Party concerned shall fulfil the required notification obligations pursuant to Article 33 of the GDPR vis-à-vis the competent data protection authority.

9.3 Each Party shall implement and maintain the necessary technical and organisational measures to always ensure adequate protection of the personal data at least in accordance with the requirements of Article 32 of the GDPR and document this in an appropriate manner.

9.4 Each Party shall provide reasonable assistance to the other Party in the performance of its obligations under this Agreement. In particular, but not exclusively, each Party shall provide the other Party with information without undue delay to the extent that the requesting Party requires the information to fulfil its obligations under data protection law.

9.5 If a Party becomes aware of a breach of any provision of this Agreement or of the protection of personal data in relation to the JOINT PROCESSING, it shall promptly notify the relevant Party or Parties concerned thereof. The same shall apply in the event of a breach of the provisions of the TCF Policies.

## **10. Data Transfer to Third Countries**

The PARTNERS are responsible for ensuring that in the event of a data transfer, the technologies they use process the personal data either solely in a Member State of the European Union ("EU") or in another Contracting State to the Agreement on the European Economic Area ("EEA"). Any processing of personal data in countries without an adequate level of data protection (hereinafter "third country") requires that the legal requirements for data exports to third countries under applicable law are met. This shall apply accordingly if the PARTNER commissions processors in third countries to process the personal data.

Where personal data are transferred by the PARTNER to a third country, the PARTNER shall in particular provide appropriate safeguards in accordance with Section 46 GDPR and provide the data subject with enforceable rights and effective remedies.

To the extent that data transfer(s) to a third country take(s) place on the basis of this Agreement between PUBLISHER and the respective PARTNER, the Standard Contractual Clauses for the transfer of personal data to third countries adopted by the European Commission on 4 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("**Standard Contractual Clauses**" or "**SCC**"), as attached hereto as **Annex 2**, shall apply between the Parties.

## **11. Entry into Force of the Agreement**

PUBLISHER shall become a party to this Agreement upon entering into the contract with the Marketer to which this Agreement is annexed. PARTNERS shall become party to this Agreement upon accession (cf. **Annex 1**).

PUBLISHERS with whom the Marketer has concluded this Agreement are listed here <https://www.mediaimpact.de/de/unkategorisiert/portfoliuebersicht>.

**12. Term of this Agreement**

This Agreement shall automatically terminate for the respective PARTY upon termination of the JOINT PROCESSING:

**Annex 1**  
**to the Agreement between Joint Controllers**  
**according to Art. 26 GDPR**  
**- Declaration of Accession -**

Agreement  
between  
Media Impact GmbH & Co. KG  
Zimmerstrasse 50  
10888 Berlin

Hereinafter: "**Marketer**"

and  
the publishers listed under 1 of this membership form  
and  
the Vendors listed in section 1  
and  
the hereby acceding  
*[Company, Address, Vendor ID]*

Hereinafter: "**Vendor**" and/or "**PARTNER**"

(1) By signing this Declaration of Accession including its Appendices, the Vendor declares its accession to the Joint Controllership Agreement between the Marketer and the Publishers listed in the following Publisher List <https://www.mediaimpact.de/de/unkategorisiert/portfoliouebersicht> as well as the Vendors who have already joined and are listed in the following Vendor List <https://www.mediaimpact.de/de/unkategorisiert/tracking-whitelist-uebersicht>. The Vendor hereby enters into the following "role"/or the Vendors listed below. The Vendor joins the Agreement between the Jointly Responsible Parties in the "role(s)" ticked below:

- ☐ SSP
- ☐ DSP
- ☐ DMP
- ☐ Verification Tools
- ☐ AdServer
- ☐ Header Bidding Provider
- ☐ Advertising Identity Provider
- ☐ Advertiser
- ☐ Agency

(2) By entering into the Joint Controllership Agreement, the Vendor acknowledges as PARTNER of the Joint Control Agreement all rights and obligations of the PARTNER specified therein as binding.

(3) The Vendor designates the following contact person for queries about the Agreement between jointly responsible parties.

## **ANNEX 2**

### **STANDARD CONTRACTUAL CLAUSES**

#### **MODULE ONE: Transfer Controller to Controller (C2C)**

### **SECTION I**

#### *Clause 1*

##### ***Purpose and scope***

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)<sup>1</sup> for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter “entity/ies”) transferring the personal data, as listed in Annex I.A. (hereinafter each “data exporter”), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A. (hereinafter each “data importer”)
 have agreed to these standard contractual clauses (hereinafter: “Clauses”).
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

#### *Clause 2*

##### ***Effect and invariability of the Clauses***

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46 (2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to

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<sup>1</sup> Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295 of 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision [...].

select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

### *Clause 3*

#### ***Third-party beneficiaries***

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
  - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
  - (ii) Clause 8 - Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
  - (iii) Clause 9 - Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
  - (iv) Clause 12 - Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clause 15.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clause 18 - Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

### *Clause 4*

#### ***Interpretation***

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

*Clause 5****Hierarchy***

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

*Clause 6****Description of the transfer(s)***

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

*Clause 7 - Optional****Docking clause***

**Not used.**

**SECTION II – OBLIGATIONS OF THE PARTIES***Clause 8****Data protection safeguards***

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**8.1 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B. It may only process the personal data for another purpose:

- (i) where it has obtained the data subject's prior consent;
- (ii) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iii) where necessary in order to protect the vital interests of the data subject or of another natural person.

**8.2 Transparency**

- (a) In order to enable data subjects to effectively exercise their rights pursuant to Clause 10, the data importer shall inform them, either directly or through the data exporter:
  - (i) of its identity and contact details;
  - (ii) of the categories of personal data processed;
  - (iii) of the right to obtain a copy of these Clauses;



- (iv) where it intends to onward transfer the personal data to any third party/ies, of the recipient or categories of recipients (as appropriate with a view to providing meaningful information), the purpose of such onward transfer and the ground therefore pursuant to Clause 8.7.
- (b) Paragraph (a) shall not apply where the data subject already has the information, including when such information has already been provided by the data exporter, or providing the information proves impossible or would involve a disproportionate effort for the data importer. In the latter case, the data importer shall, to the extent possible, make the information publicly available.
- (c) On request, the Parties shall make a copy of these Clauses, including the Appendix as completed by them, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the Parties may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.
- (d) Paragraphs (a) to (c) are without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

### **8.3 Accuracy and data minimisation**

- (a) Each Party shall ensure that the personal data is accurate and, where necessary, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.
- (b) If one of the Parties becomes aware that the personal data it has transferred or received is inaccurate, or has become outdated, it shall inform the other Party without undue delay.
- (c) The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing.

### **8.4 Storage limitation**

The data importer shall retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures to ensure compliance with this obligation, including erasure or anonymisation<sup>2</sup> of the data and all back-ups at the end of the retention period.

### **8.5 Security of processing**

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter “personal data breach”). In assessing the appropriate level of security, they shall take

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<sup>2</sup> This requires rendering the data anonymous in such a way that the individual is no longer identifiable by anyone, in line with recital 26 of Regulation (EU) 2016/679, and that this process is irreversible.

due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.

- (b) The Parties have agreed on the technical and organisational measures set out in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (c) The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (d) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.
- (e) In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify both the data exporter and the competent supervisory authority pursuant to Clause 13. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.
- (f) In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature, if necessary in cooperation with the data exporter, together with the information referred to in paragraph (e), points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.
- (g) The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

## **8.6 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter "sensitive data"), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

## **8.7 Onward transfers**

The data importer shall not disclose the personal data to a third party located outside the European Union<sup>3</sup> (in the same country as the data importer or in another third country, hereinafter “onward transfer”) unless the third party is or agrees to be bound by these Clauses, under the appropriate Module. Otherwise, an onward transfer by the data importer may only take place if:

- (i) it is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679 with respect to the processing in question;
- (iii) the third party enters into a binding instrument with the data importer ensuring the same level of data protection as under these Clauses, and the data importer provides a copy of these safeguards to the data exporter;
- (iv) it is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings;
- (v) it is necessary in order to protect the vital interests of the data subject or of another natural person; or
- (vi) where none of the other conditions apply, the data importer has obtained the explicit consent of the data subject for an onward transfer in a specific situation, after having informed him/her of its purpose(s), the identity of the recipient and the possible risks of such transfer to him/her due to the lack of appropriate data protection safeguards. In this case, the data importer shall inform the data exporter and, at the request of the latter, shall transmit to it a copy of the information provided to the data subject.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

### **8.8 Processing under the authority of the data importer**

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

### **8.9 Documentation and compliance**

- (a) Each Party shall be able to demonstrate compliance with its obligations under these Clauses. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.
- (b) The data importer shall make such documentation available to the competent supervisory authority on request.

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<sup>3</sup> The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

*Clause 9****Use of sub-processors***

[Not used in MODULE ONE (C2C) Standard Contractual Clauses]

*Clause 10****Data subject rights***

- (a) The data importer, where relevant with the assistance of the data exporter, shall deal with any enquiries and requests it receives from a data subject relating to the processing of his/her personal data and the exercise of his/her rights under these Clauses without undue delay and at the latest within one month of the receipt of the enquiry or request.<sup>4</sup> The data importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of data subject rights. Any information provided to the data subject shall be in an intelligible and easily accessible form, using clear and plain language.
- (b) In particular, upon request by the data subject the data importer shall, free of charge :
  - (i) provide confirmation to the data subject as to whether personal data concerning him/her is being processed and, where this is the case, a copy of the data relating to him/her and the information in Annex I; if personal data has been or will be onward transferred, provide information on recipients or categories of recipients (as appropriate with a view to providing meaningful information) to which the personal data has been or will be onward transferred, the purpose of such onward transfers and their ground pursuant to Clause 8.7; and provide information on the right to lodge a complaint with a supervisory authority in accordance with Clause 12(c)(i);
  - (ii) rectify inaccurate or incomplete data concerning the data subject;
  - (iii) erase personal data concerning the data subject if such data is being or has been processed in violation of any of these Clauses ensuring third-party beneficiary rights, or if the data subject withdraws the consent on which the processing is based.
- (c) Where the data importer processes the personal data for direct marketing purposes, it shall cease processing for such purposes if the data subject objects to it.
- (d) The data importer shall not make a decision based solely on the automated processing of the personal data transferred (hereinafter “automated decision”), which would produce legal effects concerning the data subject or similarly significantly affect him / her, unless with the explicit consent of the data subject or if authorised to do so under the laws of the country of destination, provided that such laws lays down suitable measures to safeguard the data subject’s rights and legitimate interests. In this case, the data importer shall, where necessary in cooperation with the data exporter:

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<sup>4</sup> That period may be extended by a maximum of two more months, to the extent necessary taking into account the complexity and number of requests. The data importer shall duly and promptly inform the data subject of any such extension.

- (i) inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved; and
  - (ii) implement suitable safeguards, at least by enabling the data subject to contest the decision, express his/her point of view and obtain review by a human being.
- (e) Where requests from a data subject are excessive, in particular because of their repetitive character, the data importer may either charge a reasonable fee taking into account the administrative costs of granting the request or refuse to act on the request.
- (f) The data importer may refuse a data subject's request if such refusal is allowed under the laws of the country of destination and is necessary and proportionate in a democratic society to protect one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679.
- (g) If the data importer intends to refuse a data subject's request, it shall inform the data subject of the reasons for the refusal and the possibility of lodging a complaint with the competent supervisory authority and/or seeking judicial redress.

### *Clause 11*

#### ***Redress***

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.
- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
  - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
  - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

*Clause 12****Liability***

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- (c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its / their responsibility for the damage.
- (e) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

*Clause 13****Supervision***

- (a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with

these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

### **SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES**

#### *Clause 14*

#### ***Local laws and practices affecting compliance with the Clauses***

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
  - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
  - (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards<sup>5</sup>;
  - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied

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<sup>5</sup> As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

during transmission and to the processing of the personal data in the country of destination.

- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). [For Module Three: The data exporter shall forward the notification to the controller.]
- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation [for Module Three: , if appropriate in consultation with the controller]. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by [for Module Three: the controller or] the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

## *Clause 15*

### ***Obligations of the data importer in case of access by public authorities***

#### **15.1 Notification**

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
  - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
  - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

[For Module Three: The data exporter shall forward the notification to the controller.]



- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). [For Module Three: The data exporter shall forward the information to the controller.]
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

## **15.2 Review of legality and data minimisation**

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. [For Module Three: The data exporter shall make the assessment available to the controller.]
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

## **SECTION IV – FINAL PROVISIONS**

### *Clause 16*

#### ***Non-compliance with the Clauses and termination***

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
  - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
  - (ii) the data importer is in substantial or persistent breach of these Clauses; or
  - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority [for Module Three: and the controller] of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) [For Modules One, Two and Three: Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data.] [For Module Four: Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof.] The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

*Clause 17****Governing law***

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Germany.

*Clause 18****Choice of forum and jurisdiction***

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Berlin, Germany.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

## **APPENDIX**

### **EXPLANATORY NOTE:**

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

## **ANNEX I**

### **A. LIST OF PARTIES**

**Data exporter(s):** *[Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]*

1. Name: PUBLISHER as defined in the Agreement

Address: detailed in the Agreement

Contact person's name, position and contact details: detailed in the Agreement

Activities relevant to the data transferred under these Clauses: detailed in the Agreement

Signature and date: defined in the Agreement

Role (controller/processor): controller

**Data importer(s):** *[Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]*

1. Name: PARTNER as defined in the Agreement

Address: detailed in the Agreement

Contact person's name, position and contact details: detailed in the Agreement

Activities relevant to the data transferred under these Clauses: detailed in the Agreement

Signature and date: defined in the Agreement

Role (controller/processor): controller

### **B. DESCRIPTION OF TRANSFER**

*Categories of data subjects whose personal data is transferred*

*As per Agreement*

*Categories of personal data transferred*

*As per Agreement*

*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*

*As per Agreement*

*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

*As per Agreement*

*Nature of the processing*

*As per Agreement*

*Purpose(s) of the data transfer and further processing*

*As per Agreement*

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

*As per Agreement*

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*

*As per Agreement*

### C. COMPETENT SUPERVISORY AUTHORITY

*The Berlin data protection authority ("**Berliner Beauftragte für Datenschutz und Informationssicherheit**") shall act as the data exporter's competent supervisory authority unless another supervisory authority applies in accordance with and as determined by the GDPR.*

## **ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

The technical and organizational measures as implemented by PARTNER shall apply which comply with the applicable data protection laws and, if necessary, take the below explanatory notes into consideration. The PARTNER shall provide the PUBLISHER with these technical and organisational measures and shall inform PUBLISHER in case of any changes.

### **EXPLANATORY NOTE:**

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

*Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.*

*[Examples of possible measures:*

*Measures of pseudonymisation and encryption of personal data*

*Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services*

*Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident*

*Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing*

*Measures for user identification and authorisation*

*Measures for the protection of data during transmission*

*Measures for the protection of data during storage*

*Measures for ensuring physical security of locations at which personal data are processed*

*Measures for ensuring events logging*

*Measures for ensuring system configuration, including default configuration*

*Measures for internal IT and IT security governance and management*

*Measures for certification/assurance of processes and products*

*Measures for ensuring data minimisation*

*Measures for ensuring data quality*

*Measures for ensuring limited data retention*

*Measures for ensuring accountability*

*Measures for allowing data portability and ensuring erasure]*

*For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter*



## Annex B

### Data Protection Agreement

With this Agreement, the website operator (hereinafter "**PUBLISHER**"), represented by Media Impact GmbH & Co. KG, Media Impact GmbH & Co. KG (hereinafter "**Media Impact**") and the **CUSTOMER** (CUSTOMER and PUBLISHER together hereinafter also "**Parties**") determine who fulfils which obligations under data protection legislation in the context of matching personal user data for the Parties' advertising purposes.

#### 1. Function and Relationship to the User

1.1 The PUBLISHER operates a website that is marketed by Media Impact and upon which the CUSTOMER's advertising material is to be integrated. Websites or other digital offerings of the Parties are hereinafter respectively referred to as "**Digital Offerings**".

1.2 On the Parties' Digital Offerings the Parties' Users have the option to voluntarily provide their e-mail address and/or other user identifiers, e.g. netID (collectively hereinafter "**Identifier**") for recognition for advertising purposes. The Parties and Media Impact do not at any time gain knowledge of a User's Identifier that they have not collected directly from the User concerned.

#### 2. Purpose and Method of Processing

2.1 The purpose of processing is the payout of personalised advertising material from the CUSTOMER on the PUBLISHER's Digital Offerings. The method of processing is the joint utilisation of matching identifiers.

2.2 For this purpose, the Parties shall use the technology of InfoSum Germany GmbH, Alsterdorfer Straße 245, c/o Thiemer & Ralf Partnerschaftsgesellschaft mbB, 22297 Hamburg (hereinafter "**InfoSum**") to match the respective identifiers available to one Party in pseudonymised form with the identifiers of the other Party. InfoSum thereby assumes the role of the order processor of the respective Party on the basis of the strict instruction-bound work (see Clause 6.7 below).

2.3 InfoSum makes it possible to determine whether users from the CUSTOMER's data records are also users of the PUBLISHER's Digital Offerings (the so-called "**Matching**"). InfoSum uses a special pseudonymisation, encryption and comparison technique for this comparison that prevents the Parties from obtaining knowledge of identifiers they have not collected from the data subject themselves and that stops the Parties' data sets becoming mixed.

2.4 The Parties do not have any direct influence on the design of the Digital Offerings of the respective other Party or on the processing of personal data performed on them.

#### 3. Lawfulness of Processing

The Parties respectively guarantee each other that at the time of the contractual processing a legal basis demonstrably exists for (i) the initial collection and processing of the respective Identifiers for the respective collecting Party; and (ii) the (further) processing of the Identifiers for the joint advertising purposes as stated in Clause 2 for the benefit of the PUBLISHER and the CUSTOMER in accordance with the applicable data protection legislation.

#### 4. Obligations to Fulfil the Rights of the Data Subject

4.1 Each Party shall inform its respective Users about the processing of the Identifiers and the respective roles and responsibilities of the Parties in a transparent manner in accordance with the applicable data protection legislation.

4.2 Insofar as a request for information is received by a Party also relates to the contractual processing pursuant to Clause 2, the Party shall provide the information to the data subject and inform the other Party thereof without delay.

4.3 The respective other Party shall, upon request of a Party, promptly provide such assistance as may be necessary to comply with the request for information.

4.4 Moreover, the Parties shall each ensure that the User can influence the data processing carried out via their website. In this respect, each Party is responsible for obtaining the required consent from the User for data processing in a legally compliant manner, for enabling the revocation of consent given or an objection to data processing, and for deleting the Identifier in the case of a justified request for deletion in its area of responsibility.

## **5. Data Protection Impact Assessment**

It is each Party's own responsibility to carry out a data protection impact assessment in accordance with Article 35 GDPR for the processing covered by the Agreement.

## **6. Cooperation and the Parties' Duties to Cooperate**

6.1 If a claim is made against a Party out of or in court by data subjects, supervisory authorities, competitors or other parties entitled to make a claim due to alleged unlawful data processing, it shall inform the other Party without delay insofar as it relates to the processing covered by this Agreement. The respective other Party undertakes to make all information from its sphere of influence that is necessary to defend or react to the claim available to the Party that is the subject of the claim without undue delay.

6.2 Clause 6.1 shall apply correspondingly in the event of a possible breach of the protection of personal data in relation to reporting and notification obligations pursuant to Articles 33 and 34 GDPR.

6.3 The Parties shall provide information to each other without undue delay if the Party making the request requires the information to fulfil its obligations under data protection legislation.

6.4 Each Party shall provide reasonable assistance to the other Party to comply with the data protection requirements in relation to the processing under the Agreement.

6.5 The Parties shall inform each other without undue delay of requests, investigations, supervisory measures and similar measures by the competent data protection authorities relating to the processing covered by this Agreement and of actual or potential errors, irregularities or suspected violations of the applicable data protection law in connection with the joint processing.

6.6 The Parties shall document the data processing under this Agreement in their respective register of processing activities pursuant to Article 30 GDPR.

6.7 Each Party shall conclude a processing agreement with InfoSum for matching pursuant to Clause 2, which shall be carried out using InfoSum technology, in accordance with Article 28 GDPR.

## **7. Confidentiality**

Both Parties guarantee that all persons assigned with data processing activities shall be subjected to a duty of confidentiality prior to commencing their work, or that they are subject to an adequate statutory confidentiality obligation. In particular, the confidentiality obligation of the people tasked with performing the data processing shall also remain in force after the end of their work and departure the company.