DATA PROCESSING AGREEMENT

This Data Processing Agreement ("DPA") is entered into by the Outbrain entity ("Outbrain") and the individual or company (the "Customer") identified in the agreement between the parties from time to time (the "Terms") and/or using the Outbrain dashboard and governs the processing of personal data pursuant to the provision of services by Outbrain. From (the "Effective Date"), this DPA shall apply to any and all agreements between the parties and their Affiliates from time to time.

This DPA is incorporated into the Terms (as amended from time to time) and constitutes a legally binding agreement between the parties. Collectively, the DPA and the Terms (or information entered through the Outbrain dashboard) are referred to as the “Agreement”. In the event of any conflict or inconsistency between any of the terms of the Agreement the following order of precedence shall prevail: (i) this DPA; and (ii) the Terms.

1. Definitions and Interpretation. The following definitions apply to this DPA:

1.1 "Affiliate(s)" means in respect of either party at any time, any person or legal entity controlled by or controlling or under the common control of that party. Any reference to the parties shall include reference to their Affiliates;

1.2 "Controller" means the legal person that determines the purposes and means of the processing of Personal Data.

1.3 "Customer Personal Data" means the Personal Data (such as the Customer’s name and email address) which the Customer provides to Outbrain in order to use the Outbrain services and which Outbrain requires in order to service the Customer’s account.

1.4 "Data Subject" means the individual to whom the Personal Data relates;

1.5 "Data Protection Laws" means any applicable laws, government-issued rules, regulations, directives and requirements (as amended from time to time) related to the privacy of Personal Data and apply to Outbrain or Customer;

1.6 "EEA" means the European Economic Areas;

1.7 "End User" means individual human end users who interact with the Outbrain widget on the Outbrain’s partner network;

1.8 "End User Personal Data" means Personal Data about an End User which Outbrain collects from End Users directly via the Outbrain widget, including Outbrain’s own UUID, IP address (which Outbrain translates into geo-location and deletes the last octet) and some other user agent data (for example, information about which device and browser the End User is using to access the widget);
1.9 “Personal Data” means any information about an identified and/or identifiable natural person or household which Outbrain processes pursuant to the Agreement and which may include the End User Personal Data and/or the Customer Personal Data (as applicable);

1.10 “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Personal Data transmitted, stored or otherwise processed by Outbrain;

1.11 “Sub-processor” means sub-contractors and/or replacement sub-contractors (as the case may be) which process personal data on behalf of Outbrain from time to time; and

2. Nature and Scope of Processing. The parties agree to process Personal Data pursuant to the purposes set forth in this DPA and per applicable laws. Outbrain shall process Personal Data for the following purposes:

2.1 End User Personal Data to provide online recommendations to End Users who interact with Outbrain’s partner network. As of the Effective Date Outbrain does not send to and/or receive from the Customer any End User Personal Data (including via Outbrain’s pixel); and

2.2 Customer Personal Data to provide the services to the Customer.

3. Role of Parties. The parties acknowledge and agree that they are each independent controllers and businesses in respect of the Customer Personal Data. Outbrain does not collect, send or receive any End User Personal Data from the Customer, the Customer’s site(s) or via the Outbrain pixel implemented by the Customer. Accordingly, Outbrain is an independent controller with its publisher’s in respect of End User Personal Data. Each party shall be individually and separately responsible for complying with the obligations that apply to it as an independent controller under Data Protection Laws.

4. Lawful Basis.

4.1 End User Personal Data. Outbrain collects End User Personal Data directly from the Partner Sites and not from the Customer. Outbrain shall enter into appropriate contractual arrangements with its publishers which require both parties to comply with Data Protection Laws and provisions equivalent to those contained herein.

4.2 Customer Personal Data. Customer acknowledges, Outbrain’s lawful basis for processing Customer Personal Data is contractual as such information is necessary in order for Outbrain to perform its obligations to the Customer under the Agreement.

5. Data Subject Rights. The Customer shall promptly inform Outbrain if it receives a request from a Data Subject exercising its rights under the Data Protection Laws pursuant to the Agreement and in respect of the Customer Personal Data. To the extent applicable, the Customer shall direct the Data Subject to the Outbrain in order to enable Outbrain to respond directly to such Data Subject’s request. Taking into account the nature of the processing, Outbrain (if requested in writing and at the Customer’s sole cost and expense) provide reasonable assistance to the Customer, to fulfill the Data Subject’s request and/or in relation to any mandatory
obligations applicable to the Customer as an independent controller under Data Protection Laws.

6. **Transparency Obligations** The parties acknowledge their respective obligations to satisfy the transparency obligations where the Personal Data being processed is obtained directly from the Data Subject or where such Personal Data is obtained from a third party. To that effect, the parties shall display appropriate privacy notices to End Users in compliance with applicable Data Protection Laws. The contact email for Outbrain for matters relating to data subject rights is privacyquestions@outbrain.com.

7. **Personnel.** Outbrain agrees that any Outbrain personnel engaged in the processing of Personal Data shall be informed of the confidential nature of the Personal Data, receive appropriate training and have executed confidentiality agreements. In addition, Outbrain shall restrict personnel’s access to Personal Data to only those who require access to such data in order to provide the services pursuant to the Agreement.

8. **Sharing of Personal Data.** The Customer agrees that it shall not share any personal data with Outbrain which (i) except for Customer Personal Data, allows Data Subjects to be directly identified (for example, name and e-mail address) and/or (ii) contains any Special Categories of Personal Data.

9. **Sub-processors.** Customer acknowledges that Outbrain may engage third parties (including its Affiliates) in connection with the provision of the services pursuant to the Agreement. Outbrain shall enter into agreements with its Sub-processors which contain data protection obligations which are no less protective than those contained in this DPA.

10. **Data Security.** Outbrain shall maintain appropriate technical and organisational measures for the protection of the security, confidentiality and integrity of the Personal Data. The security measures Outbrain uses to protect Personal Data are outlined in our Security Statement. If Outbrain becomes aware of a Personal Data Breach in respect of the Customer Personal Data it shall notify the Customer in writing as soon as reasonably practicable (but no later than 48 hours after discovery), and Outbrain shall take such steps as it deems necessary and reasonable in order to remediate the cause of the Personal Data Breach.

11. **Data Retention.** Outbrain shall delete Customer Personal Data when requested by the Customer.

12. **Compliance.** At the Customer’s sole cost and expense, Outbrain shall upon prior written request, make available to the Customer such information reasonably necessary to demonstrate Outbrain’s compliance with the obligations under this DPA. In addition the parties shall (i) notify the other party in writing if, in its opinion, an instruction from the other party infringes Data Protection Laws; and (ii) if a party receives a complaint, notice or allegation from any data protection authority or similar body alleging non-compliance with Data Protection Laws in relation to this DPA or services rendered under the Agreement.

13. **International Transfers.** Outbrain may transfer or otherwise process Personal Data outside of the EEA (including via a Sub-processor) provided that such transfer is made in compliance with Data Protection Laws, including, if applicable, EU Standard Contractual Clauses, certification under the EU-US Privacy Shield or a European Commission positive adequacy decision under Article 45 of the GDPR. Outbrain is EU-US Privacy Shield certified and has in place the EU Standard Contractual Clauses for inter-company transfers.
14. CCPA. For the purposes of the California Consumer Privacy Act 2018 (the "CCPA"), as amended, Outbrain is a "business" and not as a "service provider" per the definitions ascribed in the CCPA. To the extent that Outbrain receives and interprets consent signals from consent management mechanisms (including, but not limited to, the IAB CCPA Compliance Framework) Outbrain is doing so in order to abide by an End User's choice and shall not be deemed to be a service provided on anyone's behalf.

15. Term and Termination. This DPA shall commence on the Effective Date and shall continue as long as the Customer's campaigns are live on Outbrain's partner network.


16.1 Neither Party shall be in breach of this DPA nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.

16.2 Failure or delay in exercising any right or remedy under this DPA shall not constitute a waiver of such (or any other) right or remedy.

16.3 The Customer shall not assign or otherwise transfer its rights or its obligations under this Agreement, in whole or in part, without the prior written consent of Outbrain.

16.4 Except as expressly stated otherwise, nothing in this DPA shall create or confer any rights or other benefits in favor of any person other than a party to this DPA.

16.5 The invalidity, illegality, or unenforceability of any term of this DPA shall not affect the remainder of the DPA.

16.6 This DPA shall be governed by the laws specified in the Terms.

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Outbrain

By: 

Name: Michael Kistler
Title: General Counsel
Email: Legal@outbrain.com

("Customer")

By:

Name:
Title:
Email: