

Data Processing Agreement

This Data Processing Agreement (**DPA**) is made by and between the parties to any Order Form or Terms incorporating this DPA by reference and this DPA shall be in addition to any obligations set out in any Order Form or Terms.

Definitions

All capitalised terms in this DPA shall have the meaning as prescribed by the Tron Media Limited Terms as located at <https://www.tronmedia.co.uk/terms-and-conditions/> or as otherwise agreed between the parties, unless otherwise specified below.

Applicable Law

means as applicable and binding on the Client, Tron Media and/or the Services:

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of, as may be specified in Terms;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree; or
- (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;

Appropriate Safeguards

means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time (including, but not limited to, EU Model Contract Clauses or Privacy Shield certification);

Data Controller

has the meaning given to that term (or to the term 'controller') in Data Protection Laws;

Data Processor

has the meaning given to that term (or to the term 'processor') in Data Protection Laws;

Data Protection Laws

means as applicable and binding on the Client, Tron Media and/or the Services:

- (a) in the United Kingdom:
 - (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
 - (ii) the General Data Protection Regulation (EU) 2016/679 (or "GDPR") and/or any corresponding or equivalent national laws or regulations; and/or
 - (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and/or any corresponding or equivalent national laws or regulations.

- (b) in member states of the European Union: the Data Protection Directive or the GDPR, and all relevant member state laws or regulations giving effect to or corresponding with any of them;
- (c) specifically in relation to the Client, all data protection and/or privacy laws in which recipient Data Subjects are contacted through the Services are located;
- (d) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

Data Protection Losses

means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;

Data Subject

has the meaning given to that term in Data Protection Laws;

Data Subject Request

means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

GDPR Date

means from 25 May 2018 when the GDPR applies from;

International Organisation

means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

International Recipient

has the meaning given to that term in clause 6;

Personal Data

has the meaning given to that term in Data Protection Laws;

Personal Data Breach

means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

Processing

has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);

Processing Instructions

has the meaning given to that term in clause 3.2.1;

Protected Data

means Personal Data received from or on behalf of the Client in connection with the performance of Tron Media's obligations under this Agreement;

Sub-Processor

means another Data Processor engaged by Tron Media for carrying out processing activities in respect of the Protected Data on behalf of the Client; and

Supervisory Authority

means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

1 Interaction with the Agreement

1.1 This DPA will take effect from either the date on which the Client accepts any digital marketing agreement with Tron Media and shall continue until the end of Tron Media's provision of the Services (including any period of suspension, where relevant) ("Term").

1.2 Except for the changes made by this DPA, the Agreement remains in full force and effect. To the extent that there is any conflict between this DPA and the Agreement, the clauses of this DPA shall prevail.

1.3 Any claims brought under or in connection with this DPA shall be subject to the terms and conditions agreed between the parties, including, but not limited to, the exclusions and limitations set out in the Agreement. In no event shall any party limit its liability with respect to any individual's data protection rights under this DPA or otherwise. Any penalties issued by a Supervisory Authority and incurred by Tron Media in relation to Protected Data arising from or in connection with the Client's failure to comply with its obligations under this DPA or any applicable Data Protection Laws shall reduce any liability of Tron Media under the Agreement and be considered a liability to the Client under the Agreement.

2 Data Processor and Data Controller

2.1 The parties agree that, for the Protected Data, the Client shall be the Data Controller and Tron Media shall be the Data Processor.

2.2 Tron Media shall process Protected Data in compliance with:

2.2.1 the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under this Agreement; and

2.2.2 the terms of this DPA, the Terms and the Order Form which sets out the Client's instructions in relation to such processing activities.

2.3 The Client shall comply with:

2.3.1 all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and

2.3.2 the terms of this DPA.

2.4 The Client warrants, represents and undertakes, that:

2.4.1 all data sourced by the Client for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Client providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;

2.4.2 all instructions given by it to Tron Media respect of Personal Data shall at all times be in accordance with Data Protection Laws; and

2.5 The Client shall not unreasonably withhold, delay or condition its agreement to any change or amendment requested by Tron Media in order to ensure the Services and Tron Media (and each Sub-Processor) can comply with Data Protection Laws.

3 Instructions and details of processing

3.1 By entering into this DPA, Client instructs Tron Media to process Client Protected Data only in accordance with Applicable Law:

3.1.1 To provide the Services;

3.1.2 As further specified by Client's use of the Services or the Software;

3.1.3 As documented in the form of the terms and this DPA; and

3.1.4 As further documented in any other written instructions provided by the Client and acknowledged by Tron Media as being instructions for the purposes of this DPA.

3.2 Insofar as Tron Media processes Protected Data on behalf of the Client, Tron Media:

3.2.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the

Protected Data only on and in accordance with the Client's documented instructions as set out in this clause, as updated from time to time as agreed between the parties (Processing Instructions);

3.2.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Client of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and

3.2.3 shall inform the Client if Tron Media becomes aware of a Processing Instruction that, in Tron Media's opinion, infringes Data Protection Laws, provided that:

(a) this shall be without prejudice to clauses 2.3 and 2.4; and

(b) to the maximum extent permitted by mandatory law, Tron Media shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Client's Processing Instructions following the Client's receipt of that information; and

3.3 The subject matter and details of the processing of Protected Data to be carried out by Tron Media under this DPA shall comprise the processing set out in Schedule 1 (Data processing details), as may be updated from time to time as agreed between the parties.

4 Technical and organisational measures

4.1 Tron Media shall implement and maintain, at its cost and expense and in relation to the processing of Protected Data by Tron Media, technical and organisational measures taking into account the nature of the processing, to assist the Client insofar as is possible in the fulfilment of the Client's obligations to respond to Data Subject Requests relating to Protected Data.

5 Using Sub-Processors

5.1 Subject to the below, Tron Media may engage Sub-Processors for carrying out any processing activities in respect of the Protected Data.

5.2 Client specifically authorises the engagement of Tron Media's affiliates and associated group companies as Sub-Processors.

5.3 Tron Media shall ensure:

5.3.1 via a written contract that the Sub-Processor only accesses and processes Protected Data to perform the obligations subcontracted to it and does so in accordance with the measures contained in this DPA that is enforceable by Tron Media; and

5.3.2 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.

5.5.1 Tron Media shall work with Client in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Sub-processor; if the Client so requests in writing and Tron Media will then implement this change, if applicable within 14 days.

6 International data transfers

6.1 The Client agrees that Tron Media may transfer any Protected Data to countries outside the European Economic Area (EEA) or to any International Organisation(s) (an International Recipient), provided all transfers by Tron Media of Protected Data to an International Recipient shall (to the extent required under Data Protection Laws) be affected by way of Appropriate Safeguards and in accordance with Data Protection Laws. The provisions of this Agreement shall constitute the Client's instructions with respect to transfers in accordance with clause 3.1.

7 Staff

7.1 Tron Media shall ensure that all persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law).

8 Assistance with the Client's compliance and Data Subject rights

8.1 Tron Media shall refer all Data Subject Requests it receives to the Client within three Business Days of receipt of the request, provided that if the number of Data Subject Requests exceeds three per calendar month, the Client shall pay Tron Media's Charges calculated on a time and materials basis for recording and referring the Data Subject Requests in accordance with this clause 8.1.

8.2 Further to the above and notwithstanding anything to the contrary in the Terms, Tron Media reserves the right to disclose the identity of the Client to any relevant Data Subject following any such request from a Data Subject.

8.3 Tron Media shall provide such reasonable assistance as the Client reasonably requires (taking into account the nature of processing and the information available to Tron Media) to the Client in ensuring compliance with the Client's obligations under Data Protection Laws with respect to:

8.3.1 security of processing;

8.3.2 data protection impact assessments (as such term is defined in Data Protection Laws);

8.3.3 prior consultation with a Supervisory Authority regarding high risk processing; and

8.3.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Client in response to any Personal Data Breach.

9 Records, information and audit

9.1 Tron Media shall maintain, in accordance with Data Protection Laws binding on Tron Media, written records of all categories of processing activities carried out on behalf of the Client.

9.2 Tron media shall, in accordance with Data Protection Laws, make available to the Client such information as is reasonably necessary to demonstrate Tron Media's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose, subject to the Client:

9.2.1 giving Tron Media reasonable prior notice of such information request, audit and/or inspection being required by the Client;

9.2.2 ensuring that all information obtained or generated by the Client or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

9.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Tron Media's business and the business of other Clients of Tron Media; and

9.2.4 paying Tron Media's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

10 Breach notification

10.1 In respect of any Personal Data Breach involving Protected Data, Tron Media shall, without undue delay (but in any event within 24 hours) from when Tron Media becomes aware of the same:

10.1.1 notify the Client of the Personal Data Breach; and

10.1.2 provide the Client, where possible, with details of the Personal Data Breach.

10.2 Notice of a Personal Data Breach as contemplated under 10.1.1 above shall include:

10.2.1 the nature of the Personal Data Breach (including, where possible, the categories and approximate number of data subjects and data records concerned);

10.2.2 the likely consequences of the Personal Data Breach; and

10.2.3 the measures taken or proposed to be taken to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

11 Deletion or return of Protected Data and copies

11.1 Tron Media shall, at the Client's written request, or provide facilities for the Client to either delete or return all the Protected Data to the Client in such form as the Client reasonably requests within a reasonable time after the earlier of:

11.1.1 the end of the provision of the relevant Services related to processing; or

11.1.2 once processing by Tron Media of any Protected Data is no longer required for the purpose of Tron Media's performance of its relevant obligations under this Agreement,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, Tron Media shall inform the Client of any such requirement).

12 Cooperation

12.1 If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

12.1.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

12.1.2 consult fully with the other party in relation to any such action.

SCHEDULE 1

DATA PROCESSING DETAILS

1 Subject-matter of processing:

Tron Media's provision of the Services to the Client.

2 Duration of the processing:

The term of any relevant Order Form until deletion of all Protected Data by Tron Media in accordance with the DPA.

3 Nature and purpose of the processing:

Tron Media will process Client Protected Data for the purposes of providing the Services to the Client in accordance with the DPA and the Terms.

4 Type of Personal Data:

Data relating to individuals provided to Tron Media via the provision of the Services by or at the direction of the Client or end-users of the Client.

5 Categories of Data Subjects:

Data subjects include the individuals about whom data is provided to Tron Media via the Services by or at the direction of Client or end-users of the Client.