# AGENCY AGREEMENT

This agreement is made as of [DATE] (hereafter referred to as Effective Date) between [AGENCY NAME], a company with offices at [ADDRESS] (hereafter referred to as Agency) and [YOUR COMPANY], a company with primary place of business at [YOUR ADDRESS] (hereafter referred to as Network).

Network and Agency, hereafter referred to collectively as The Parties, agree as follows:

# 1 Background

**1.1 Network’s purpose.** Network works with certain content owners (hereafter referred to as Publishers) and offers them access to digital services to make their advertising inventory available for sale.

**1.2 Agency’s purpose.** Agency wishes to partner with Network and buy that advertising inventory from Publishers.

# 2 The Parties’ Responsibilities

**2.1 Access.** Network shall after Effective Date, without undue delay, provide Agency with access to Software.

**2.2 Inventory.** Agency acknowledges that Publishers may freely add or remove content for sale, and Network shall only be responsible for providing access to purchase whatever content is made available by Publishers, and not be responsible for the content itself, as this is fully owned and managed by Publishers.

**2.3 Uptime.** Network shall use commercially reasonable efforts to ensure that Software remains available 24/7 and shall without undue delay correct critical errors that prevent Software from delivering ads.

**2.4 Data.** Agency is responsible for the appropriateness and legality of all electronic user information, data, information or creative work submitted by Agency to Software, and shall comply with all applicable laws relating to the collection and use of information from individuals using Agency’s services. The Parties agree to a data processing agreement, which is described in this Agreement’s Exhibit 1.

# 3 Fees and Payments

**3.1 Fees.** Agency shall pay to Network the amount equal to the total spending as registered by the Software. For avoidance of doubt, if Agency for example advertises at a total cost of EUR 100,000, then Agency shall pay those EUR 100,000 to Network.

**3.2 Invoicing partner.** Network uses Adnuntius Services AS, a company with offices at Dueveien 21, 1448 Drobak, Norway (hereafter referred to as Payment Partner), as its invoicing partner. The Parties agree that invoices may be sent to Agency from Payment Partner.

**3.2/3 Invoicing and payment.** Network/Payment Partner shall after end of each month invoice Agency. Invoices shall have due date 30 days from the invoice date. If any charges are not received from Agency by the due date, then Network shall have the right to, immediately after the due date send an invoice reminder due 14 days from the reminder date, containing the owed amount plus a charge of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. If the charges are not received from Agency by the due date of said reminder, then Network may transfer the responsibility of further collection to an external debt collection agency, after which separate rules may apply.

**3.3/4 Suspension of Software.** If any amount owed by Agency under this or any other agreement for the Services is 30 or more days overdue , Network may, without limiting Network’s other rights and remedies under this Agreement and/or applicable laws, accelerate Agency’s unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Agency’s access to Software until the fees are paid in full.

**3.4/5 Taxes.** Unless otherwise agreed upon in writing between the Parties, or required by law, no fees shall include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively “Taxes“). Agency is responsible for paying all Taxes. If Network has the legal obligation to pay or collect Taxes for which Agency is responsible under this clause, the appropriate amount shall be invoiced to and paid by Agency, unless Agency provides Network with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Network is solely responsible for Taxes assessable against it based on Network’s income, property, and employees.

# 4 Term and Termination

**4.1 Term.** This Agreement commences on Effective Date and continues until terminated by one of the Parties.

**4.2 Termination.** Each party shall have the right to terminate this Agreement for any or no reason, upon 30 days’ written notice to the other party. During the termination period Agency shall pay to Network any fees as agreed to in this Agreement’s section 3.

**4.3 Removal of traffic and data.** Agency shall immediately after the termination period remove any code that ensures that inventory and/or data is sent to Software.

# 5 Limitation of Liability

**5.1 Limitation of liability.** IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF (A) THE TOTAL AMOUNT PAID BY NETWORK HEREUNDER OR (B) THE ACTUAL DIRECT DAMAGES SUSTAINED BY SUCH PARTY OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF (C) EUR 3,000, OR (D) THE ACTUAL DIRECT DAMAGES SUSTAINED BY SUCH PARTY RELATED TO SUCH SINGLE INCIDENT.

**5.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ABOVE DOES NOT APPLY IF THERE IS GROSS NEGLIGENCE OR INTENTIONAL MIS-CONDUCT FROM EITHER PARTY.

# 6 Indemnification and Liability

Subject to Sections 7.1 and 7.2 above, the Parties make the following representations, warranties and indemnities:

**6.1 Representations, warranties and Indemnities by Network.** Network warrants and represents at all times that Network has the right and full power and authority to enter into this Agreement, to grant the rights herein granted and to fully perform its obligations hereunder.

**6.2 Representations, warranties and Indemnities by Agency.** Agency warrants and represents at all times that Agency has the right and full power and authority to enter into this Agreement, to grant the rights herein granted and to fully perform its obligations hereunder. In furtherance of the foregoing, Agency agrees to indemnify and hold Network harmless from and against any and all claims, actions, losses, damages, liability, reasonable costs and expenses (including reasonable outside attorneys’ fees) arising out of or in connection with the breach of the foregoing representations and warranties.

**6.3 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NETWORK MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE SERVICES HEREUNDER FOR A PARTICULAR PURPOSE OR APPLICATION.

# 7 Governing Law and Jurisdiction

This Agreement, its interpretation, performance or any breach thereof, will be construed in accordance with, and all questions with respect thereto will be determined by the laws of [COUNTRY].

# 8 General Provisions

**8.1 Notices.** All notices permitted or required to be given hereunder shall be addressed to [YOUR EMAIL ADDRESS]. Notices to Agency shall be addressed to [AGENCY EMAIL].

**8.2 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party under applicable laws.

**8.3 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**8.4 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party’s sole remedy for any purported assignment by the other party in breach of this clause shall be, at the non-assigning party’s election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination by Agency, Network shall refund to Agency any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. In no event shall any termination relieve Agency of the obligation to pay any fees payable to Network for the period prior to the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**8.5 Confidentiality.** Both parties agree to keep all information in this Agreement, including its exhibits, confidential and not to inform any third party about its content unless required to do so by law or regulation or mutually agreed upon by the parties.

**8.6 Marketing and PR.** During the Term, the Parties shall agree in writing before issuing any marketing material.

Accepted and Agreed to By:

|  |  |
| --- | --- |
| For Agency | For Network |
| Signature | Signature |
| Date: | Date: |
| Place: | Place: |
| Name: | Name: |
| Title: | Title: |

# EXHIBIT 1: DATA PROCESSING AGREEMENT

# 1 Background and Purpose

Network (in this Exhibit referred to as Processor) uses Software on Agency’s (in this Exhibit referred to as Controller) properties, which may involve the Processing of Personal Data. This Data Processing Agreement describes the terms and conditions applicable to the processing of Personal Data collected from Agency’s properties. The purpose is to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of data subjects and ensure that the Parties follow applicable data protection law.

# 2 Definitions

**2.1 “Applicable data protection law”** means applicable legislation protecting data subjects’ right to privacy with respect to the processing of personal data, including but not limited to the GDPR and any local implementation laws.

**2.2. “Consent”, “controller”, “processor”, “data subject”, “personal data”, “personal data breach”,** and **“processing”** and other terms in the GDPR mean the same as what is set out in the GDPR.

**2.3 “GDPR”** means the EU General Data Protection Regulation 2016/679.

**2.4 “Property”** means the websites, mobile applications and/or other digital media properties owned or operated by the Controller, using Processors’ Software.

# 3 Use of Sub-Processors

**3.1 Sub-contracting.** The Processor may sub-contract any of its Processing activities. If a Sub-processor is engaged then Controller empowers Processor to enter into a data processing agreement with such sub-processor, as long as such a data processing agreement is not in breach of any of the clauses in this data processing agreement. Any of the obligations on the Processor shall automatically apply to its sub-processors.

**3.2 Transparency.** The Processor shall upon request provide Controller with information about its sub-processors.

# 4 Processor’s Obligations

**4.1 Compliance.** The Processor shall, when Processing Personal Data according to this agreement, comply with Applicable Data Protection Law. The processor shall not by actions or omission of actions put the Controller in a situation where the Controller is in breach of any provision of Applicable Data Protection Law. The Processor shall process data solely according to the instructions of the Controller.

**4.2 Assistance.** The Processor shall provide the Controller with reasonable cooperation and assistance to ensure that the Controller complies with Applicable Data Protection Law. The Processor shall provide the Controller with solutions enabling data subjects to delete Personal Data.

**4.3 Control.** The Controller retains the formal control of and all ownership to the Personal Data processed and any Sub-Processors hereunder.

**4.5 Personal data breach.** In case of a personal data breach resulting in unauthorized disclosure of personal data, the Processor shall without undue delay notify the Controller. The Processor shall without undue delay restore appropriate security levels, and rectify any errors resulting in such a breach.

**4.6 Actions upon Termination.** Upon termination of this Agreement the Processor shall remove from its servers any data collected on behalf of Controller.

# 5 Controller’s Obligations

**5.1 Compliance.** Controller shall comply with Applicable Data Protection Law, and shall not by actions or omission of actions put the Processor in a situation where the Processor is in breach of any provision of Applicable Data Protection Law.

**5.2 Consent.** The Controller shall obtain all necessary permissions from relevant data subjects to lawfully collect, process and share personal data.

**5.3 Privacy policy.** The Controller shall post, maintain and abide by a publicly accessible privacy policy.

**5.4 Actions upon termination.** Upon termination of this licensing agreement the Controller shall without undue delay remove any tracking mechanisms used to collect data.

# 7 Technical and Organizational Security Measures

**7.1 Measures.** The Processor shall implement and maintain appropriate technical and organizational security measures aimed at protecting personal data against destruction, accidental loss, alteration, unauthorized disclosure or unauthorized access, and require its sub-processors to implement and maintain such measures. These measures shall ensure a level of security appropriate to the risk presented to the processing and the nature of the personal data to be protected having regard to the state of the art and the cost of their implementation.

**7.2 Limitation of access.** The Processor shall limit access to the personal data to relevant personnel. The Processor shall ensure that all personnel authorized to process the personal data have committed themselves to confidentiality.

**7.4 Responsible person.** The Processor shall have a responsible person and data protection officer taking responsibility for ongoing compliance with Applicable data protection law. The responsible shall be listed here: https://docs.google.com/spreadsheets/d/1rCZPF\_TWBkTgaYeQ9f-lhU8qL\_J9eJrv1l1jjf0G9uQ/edit#gid=328667903. In case the appointed person’s employment is terminated for any reason, the responsibility shall rest with the position, or Network’s CEO if that position ceases to exist.

# 8 Audits

**8.1 Audits.** The Controller shall be allowed to perform annual audits. If the Controller chooses to perform such an audit, it shall be signaled to the Processor no less than 90 days in advance so that the Processor can make appropriate arrangements with its Sub-Processors. The Controller shall perform such audit without causing significant interruptions to the Processor’s or Sub-Processors’ regular operations.

**8.2 Secrecy.** The audit shall not grant the Controller access to trade secrets or proprietary information unless required to comply with Applicable Data Protection Law. The Controller shall ensure its personnel conducting such audit are subject to adequate secrecy obligations.

**8.3 Auditor.** If the parties agree that an audit is to be performed by external auditors, such external auditor is to be appointed by the Controller. The Processor or Sub-Processors may only oppose the appointment if such auditor is a competitor of the Processor or Sub-Processor. Upon security audits performed by an external auditor, both parties shall be entitled to receive a copy of the audit report.

**8.4 Remediation.** If the audit reveals non-compliance with this Data Processor Agreement, the Processor shall (and, if relevant, shall procure that the relevant Sub-processor shall) without undue delay remedy such inadequacy or non-compliance.

**8.5 Cost.** Each party shall cover its own costs associated with an audit.

# 9 Data Locations and Transfer

**9.1 Locations.** Processing activities shall take place inside of the EU.

**9.2 Transfer.** The Processor may transfer data if this is required by EU law or by any EU member state law to which the Processor is subject, provided that the Processor informs the Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

# 10 Liability

Each party is liable to the other for any loss, damage, cost, claim, fine and/or expense (any such a “Loss”) incurred by the other Party, which arise from the first mentioned party’s breach of its obligations under this Data Processing Agreement or acts of omissions in breach of applicable law. The Parties’ respective liability is for direct Loss only and under no circumstance for indirect loss, such as loss of profit or opportunity or otherwise.