Last update – October 2020

DATA PROCESSING AGREEMENT

THIS DATA PROCESSING AGREEMENT (the "**Agreement**") enters into force as of the date of the first use of S4M's services (as defined below) by Customer (the "**Effective date**").

Parties

1. **SUCCESS 4 MOBILE SAS**, a company incorporated and registered in France under number 535 055 750 and whose registered office is at 2/4 rue Hélène 75017 Paris, France, ("**S4M**");

2. The advertiser or agency who entered into an insertion order which refers to this Agreement ("**Customer**").

Each a "Party" and collectively referred to as the "Parties".

Background

(A) Customer is an advertiser selling goods/services in stores and/or online, or a media agency acting on behalf of an advertiser.

(B) S4M is a global provider of mobile advertising media and data management technology. S4M owns a technology platform named "FUSIO" that enables buying and bidding in real time to display mobile advertising. Furthermore, the platform allows advertisers and their media agencies to learn more about their advertisements through a set of analytic tools.

(C) Customer has agreed to, through an intermediary, use some services proposed by S4M (the "**Services**", as defined below). To that end, Customer has previously entered into a contract with such intermediary that includes, without limitation, the provision of the Services to Customer through that intermediary (hereinafter referred to as the "**Customer's Contract**"). On its side, S4M has previously entered into a contract with such intermediary that includes, without limitation, the provision of the Services to Customer through that intermediary.

(D) In connection with its supply of the Services to Customer, S4M will be required to process personal data and other data and information on behalf of Customer as described in **Schedule 1**.

(E) The parties have therefore agreed to enter into this Agreement.

Agreed terms

1   DEFINITIONS

1.1 The following definitions and rules of interpretation apply in this Agreement.

Business Day means a day other than a Saturday, Sunday or public holiday in ~~France~~Spain;

Data Protection Laws means:

(a) ~~The French Act No. 78-17 of 6 January 1978 as amended from time to time~~; Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights

(b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of Personal Data and on the free movement of data, which entered into force on May 25, 2018 (hereinafter referred to as "**GDPR**");

(c) EC Directive 2002/58/EC on Privacy and Electronic Communications and all local laws or regulations giving effect to this Directive;

(d) and all applicable European Union laws and regulations relating to the processing of personal data and privacy, including where applicable, any guidelines, opinions,

recommendations and codes of practice issued by the European Commission, other European body such as the EDPB and competent national Regulators;

S4M Trackers means S4M proprietary solution used on Customer's sites or apps for tracking visits or measurement related to advertising performance where Customer has decided to use S4M Drive-to-Web Services.

Regulator means any regulatory body with responsibility for ensuring compliance with Data Protection Laws;

Security Breach means any security breach relating to personal data determined by the controller to be sufficiently serious or substantial to justify notification to a Regulator in accordance with Data Protection Laws or applicable law;

Services means the services provided by S4M to Customer through the intermediary according to Customer's Contract and involving the personal data processing activities, as described in **Schedule 1**.

1.2   References in this Agreement to "controller", "processor", "processing", "data protection officer", "data subject" and "personal data" shall have the same meaning as defined in Data Protection Laws.

1.3   A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4   Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.5   Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2   ROLES AND INSTRUCTIONS

2.1   The Parties acknowledge and agree that the provision of the Services involve the processing of personal data by the Parties.

2.2   In this context, the Customer and S4M acknowledge that Customer acts as a controller while S4M acts as a processor.

2.3   **Schedule 1** sets out the subject matter and duration of the processing; nature and purpose of the processing; the type of personal data being processed; and the categories of data subjects.

2.4   S4M shall also act as an independent controller with respect to the personal data received from S4M Trackers (if used by Customer). To avoid any confusion, Customer will not be considered S4M's processor and Customer may be a controller with respect to the same personal data obtained through the use of S4M Trackers.

2.5   Each Party acknowledges and agrees that it has respective rights and obligations under applicable Data Protection Laws.

3   S4M'S OBLIGATIONS AS A PROCESSOR

3.1   S4M shall, without prejudice to its other rights or obligations, in respect of its processing of such personal data:

(a)   process the data only to the extent, and in such a manner, as is necessary for the purposes of this Agreement and in accordance with Customer's written instructions from time to time and S4M shall not process or permit the processing of the data for any other purpose unless such processing is required by the European Union or a law

of a Member State to which S4M is subject in which case S4M shall notify Customer in advance of its intention to carry out such processing and allow Customer the opportunity to object. If S4M is unsure as to the parameters of the instructions issued by Customer and/or believes that Customer's instructions may conflict with the requirements of Data Protection Laws or other applicable laws, S4M shall immediately notify Customer for clarification and provide reasonable details in support of any assertion that Customer's instructions may be unlawful.

(b)   ensure the reliability of all its employees who have access to the data and, more specifically, shall ensure that any person authorised to process data in connection with this Agreement is subject to a duty of confidentiality;

(c)   take such measures as may be required in line with Article 32 of the GDPR (Security). Such measures are described on S4M website (currently located at: https://www.s4m.io/s4m-data-processing-agreement), which may be updated from time to time, and can be accessed using the following password: s4mjcddpa2020;

(d)   subject to agreement on costs, assist Customer by using appropriate technical and organisational measures in responding to, and complying with, data subject requests;

(e)   subject to agreement on costs, provide Customer with reasonable co-operation and assistance in relation to Customer's obligations and rights under Data Protection Laws, taking into account the nature of the processing and the information available to S4M, including providing Customer and relevant regulators (as applicable) with all information and assistance reasonably necessary to investigate security breaches, carry out privacy impact assessments or otherwise to demonstrate compliance by the Parties with Data Protection Laws;

(f)   subject to agreement on costs, without undue delay notify Customer, and provide such co-operation, assistance and information as Customer may reasonably require if S4M:

   a)   receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data under this Agreement or to either Party's compliance with Data Protection Laws; and/or

   b)   becomes aware of any Security Breach;

(g)   keep at its normal place of business a written record of any processing of the data carried out in the course of the Services ("**Records**");

(h)   Upon request at Customer's cost return or destroy (as directed in writing by Controller) all personal data it has in its possession and delete existing copies unless applicable law requires storage of the personal data.

4   CUSTOMER'S OBLIGATIONS

4.1   Customer obligations with respect to personal data provided to S4M

(a)   In some situations, at Customer's discretion, Customer may share personal data with S4M. In such a case, Customer agrees and undertakes to comply with its obligations under applicable Data Protection Laws in respect of the processing of personal data under or in connection with this Agreement and shall in particular ensure that, as a condition of this Agreement, (i) Customer shall not provide S4M with personal data in connection with the performance of the Agreement unless it has obtained consent from a data subject when consent is the appropriate legal basis and (ii) S4M is lawfully permitted to process personal data on its behalf.

(b) Customer warrants and represents that it will at all time provide clear and complete information to data subjects on how their personal data is collected and used, and for which purposes (including if the personal data are being used in the context of the bidding process for advertising inventory).

4.2 Customer obligations with respect to the use of the S4M Trackers

When using S4M Trackers, and since S4M does not have a direct relationship with data subjects, Customer warrants that it will duly informed the data subjects about the existence of S4M Trackers and their purposes, and that it has obtained their consent in relation to such use, in accordance with the requirements of the Data Protection Laws. In this respect, Customer undertakes to make its best effort to comply with any applicable advertising industry's guidance and best practices, and especially the IAB (International Advertising Bureau) recommendations and frameworks.

4.3 Upon request, Customer shall provide S4M with any relevant information documenting its process for handling and proving consent.

5 RECORDS AND AUDIT

5.1 S4M shall provide Customer, at Customer's request, a copy of S4M's most recent documentation to demonstrate S4M's compliance with its obligations under this clause.

6 OVERSEAS TRANSFERS

6.1 To the extent that S4M needs to transfer personal data pursuant to this Agreement to a processor located in a territory outside of the European Economic Area ("**EEA**") that has not been granted an adequacy decision by the European Commission, S4M will enter into the standard contractual clauses set out in Commission Decision of 5 February 2010 for the transfer of personal data to processors established in third countries under Directive 95/46/EC (the "**Model Clauses**") which such processor, unless another appropriate lawful data transfer mechanism exists.

7 INDEMNITY

7.1 S4M shall indemnify Customer against all claims, liabilities, costs, expenses, damages and losses (including all interest, penalties and reasonable legal costs and all other reasonable professional costs and expenses) suffered or incurred by Customer arising out of the S4M's breach of its obligations in this Agreement ("**Claims**"). Each Party acknowledges that Claims include any claim or action brought by a data subject arising from the S4M's breach of its obligations in this Agreement.

7.2 Customer shall indemnify S4M against all claims, liabilities, costs, expenses, damages and losses (including all interest, penalties and reasonable legal costs and all other reasonable professional costs and expenses) suffered or incurred by S4M arising out of Customer's breach of its obligations in this Agreement ("**Claims**"). Each Party acknowledges that Claims include any claim or action brought by a data subject arising from Customer's breach of its obligations in this Agreement.

7.3 If any third Party makes a Claim, or notifies an intention to make a Claim, the Party who receives such Claim or intention to make a Claim shall:

(a) give written notice of the Claim to the other Party as soon as reasonably practicable;

(b) not make any admission of liability in relation to the Claim without the prior written consent of the other Party;

(c) allow the other Party to conduct the defence of the Claim to the extent that such Party will likely become the indemnifying Party; and

(d) at the other Party's expense, co-operate and assist to a reasonable extent with the defence of the Claim if the other Party conduct the defence of the Claim.

8 APPOINTMENT OF SUB-PROCESSORS

8.1 This Agreement is personal to S4M (and its affiliates) and it shall not assign, transfer, mortgage, charge, sub-contract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of Customer.

8.2 S4M may engage a sub-processor to process data (or otherwise sub-contract or outsource the processing of any data to a third-party) (a "**Sub-processor**"), provided that it:

a) To the extent possible, notifies Customer in writing (including via emails) of any new or replacement Sub-processors through an information update. If Customer objects to the appointment of a new or replacement Sub-processor, it shall notify S4M within five Business days. Customer shall be deemed to have accepted the Sub-processor if S4M does not receive a formal written objection with five Business days. If the objection cannot be resolved by the Parties within five Business Days of receipt by S4M of the written objection, S4M may cease providing the Services;

b) enters into a written contract with the Sub-processor that provides protections or guarantees that Sub-processor considers necessary to implement appropriate technical and organisation measures in compliance with the Data Protection Laws.

8.3 As of the Effective Date of this Agreement, Customer instructs S4M to use the Sub-processors set out in **Schedule 1** for the activities set out in **Schedule 1** in connection with the provision of the Services.

8.4 For the avoidance of doubt, once Customer provides its approval to the use of a certain Sub-processor in connection with the Services, it may not subsequently revoke its consent in respect of, or otherwise object to, the appointment of the relevant Sub-processor.

9 TERM AND TERMINATION

9.1 This Agreement shall commence on the Effective Date and shall continue in force during the provision of the Services.

9.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

9.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

9.4 On any termination of this Agreement for any reason:

(a) upon request, S4M shall as soon as reasonably practicable return or destroy (as directed in writing by Customer) all personal data and all information and other materials provided to it by or on behalf of Customer in connection with this Agreement;

(b) if Customer elects for destruction rather than return of the materials the S4M shall as soon as reasonably practicable ensure that they are destroyed and that all personal data is deleted from the S4M system.

10   WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11   RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

12   VARIATION

Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties.

13   GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of ~~France~~Spain.

14   JURISDICTION

Each Party irrevocably agrees that the competent courts of Madrid ~~Paris~~ shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

15   ENTIRE AGREEMENT

This Agreement contains the complete and exclusive agreement and understanding between Customer and S4M as regards the processing of personal data carried-out in the context of the Services, and supersedes all prior and contemporaneous proposals, agreements, understandings, negotiations, representations, warranties, conditions, and communications, oral or written, between the Parties relating to the same subject matter including the Customer's Contract.

Customer   **S4M**

Signature_____   Signature_____

Name: Name:

Title: Title:

SCHEDULE 1 – DESCRIPTION OF THE DATA PROCESSING

Information related to the data processing carried-out by S4M on behalf of Customer:

- **Subject matter:** Processing carried out in connection with the provision of the following Services by S4M:

   Mobile amplification services and Drive to Store/Drive to Web campaigns:
   - a) Performing and tracking mobile advertising campaigns as instructed by Controller;
   - b) Measuring store conversions generated by DOOH and/or mobile advertising campaigns
   - c) Measuring web conversions generated by DOOH and/or mobile advertising campaigns

- **Duration:** May vary depending on processing performed in the context of the Services.

- **Nature and purpose**: Providing to Customer the Services and any related technical support.

- **Type of personal data**: Device ID such as Mobile advertising ID, IP addresses, geolocation and similar unique ID's such as cookie ID and tags, as well as any log information.

- **Categories of data subjects:** mobile users

- **Permitted Sub-processors and location of processing:**

   Customer acknowledges and agrees that by using the Services, personal data may be transferred to the following Sub-processors based outside the EEA:

   - Amazon Web Services Inc. (AWS) acting as a Sub-processor of S4M for the purpose of hosting the data processed by S4M's platform. Such transfer is made on the basis of the Model Clauses.

   - Sam4Mobile Inc., an affiliate of S4M located in the US, for the purpose of providing technical services including maintenance. Such transfer is made on the basis of the Model Clauses.