

Data Use and Confidentiality Agreement

PARTIES

- (1) Your organisation
("Client")

- (2) The Audience Agency incorporated and registered in England and Wales with company number 8117915 whose registered office is at The Whitehouse, Wilderspool Business Park, Greenalls Ave, Stockton Heath, Warrington WA4 6HL ("TAA")

hereinafter collectively referred to as the "Parties"

BACKGROUND

The Client wishes to make use of the Audience Answers service.

TAA wishes to receive from the Client, Client Data for use in relation to the Purpose. The Client wishes to ensure that TAA only uses the Client Data in respect of the Purpose and that TAA maintains the confidentiality of any of the other party's Confidential Information. In consideration of the mutual benefits of disclosing and receiving the Client Data, the parties have agreed to comply with the terms of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Audience Answers: means the updated service formerly known as *Audience Finder* being a programme, originally commissioned by Arts Council England, and subsequently commissioned by the Arts Council of Wales and Creative Scotland :

- (i) To develop, set up, manage, operate, maintain and further a national centralised data collection and warehousing infrastructure, including the dataset contained therein, for the benefit of the arts and culture sector;
- (ii) When requested, to provide research, analysis and advice for the benefit of the arts and culture sector;
- (iii) To establish an open data platform; and
- (iv) To develop and offer for use a suite of data, analytics and insight tools.

Client Data: any information held by the Client in respect of an event or performance which the Client provides to TAA under the terms of this Agreement, which may include, but is not limited to:

(i) **Information from organisations providing ticketing transactional data including the following data fields for customers:**

- a) Source ticketing system's customer unique reference number
- b) Title
- c) First name
- d) Last name
- e) Household address
- f) Postcode

Information linked to these customer records of ticket purchases and the related performances or events is also collected, stored and processed.

(ii) **Information from organisations providing data from collected audience surveys including the following data fields related to survey respondents:**

- a) Sex and/or Gender
- b) Age
- c) Ethnicity
- d) Limiting Disability
- e) Postcode

Information linked to these demographic characteristics detailing responses to attitudinal, behavioural, motivation and experiential survey questions in relation to attendance at arts and cultural events may also be collected stored and processed. These survey data fields are not linked to the information collected from transactional ticketing data detailed in (i), unless at the express instruction of the Data Controller, pursuant to clause 2.4.

Confidential Information: all information disclosed in whatever form by one party ("Disclosing Party") to the other ("Recipient") whether or not marked confidential, which shall include but shall not be limited to the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party and the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party.

Confidential Information does not include:

- (a) the Client Data and the Processed Data **provided always that:**
 - (i) the Client Data and/or Processed Data is being used for the Purpose (and/or in accordance with clause 2.4) and strictly in accordance with the terms and conditions of this Agreement; and
 - (ii) TAA has taken all necessary steps to ensure that any Personal Data contained within the Client Data that it receives from the Client is treated in accordance with clause 5 and is suitably anonymised or aggregated prior to it being shared with third

parties.

- (b) any information that:
 - (i) is, or becomes, generally available to the public other than as a result of disclosure by the Recipient in breach of this Agreement; or
 - (ii) was available to the Recipient on a non-confidential basis before disclosure by the Disclosing Party;
 - (iii) was, is or becomes available to the Recipient on a non-confidential basis from a person who, to best of the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party, or otherwise prohibited from disclosing the information to the Recipient;
 - (iv) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party;
 - (v) the parties agree in writing is not confidential or may be disclosed;
 - (vi) is developed by or for the Recipient, independently of the information disclosed by the Disclosing Party; or
 - (vii) is trivial, obvious or useless.

If Client Data or Processed Data is not being used for the Purpose, then it shall be treated as Confidential Information.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (**DPA 2018**); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications)..

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Personal Data: any information relating to an identified or identifiable natural person ('data subject') as defined by the Data Protection Legislation.

Pre-existing Materials: all documents, information and materials provided by either party to the other relating to the Purpose which existed prior to the commencement of this Agreement.

Processed Data: any data, information or analysis derived from the Client Data, whether or not in combination with any other data, by TAA or its representatives.

Purpose: The Client Data and Processed Data is to be used by TAA for any and all matters arising out of or in connection with TAA's work on the Audience Answers service which shall be limited to providing audience insights on a fully anonymised and aggregated basis, as well as general benchmarking insights, and where required for the purpose of meeting Client reporting obligations.

Representative: employees of TAA; and employees of the agents, sub-contractors and other representatives of the Recipient (if any) as notified in writing to the Client from time to time..

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

2. CLIENT DATA

- 2.1 The Client will make the Client Data available to TAA for use by TAA in relation to the Purpose. Subject to clause 6.2 of this Agreement, the Client grants TAA a revocable, royalty free, non-exclusive licence to use and have access to the Client Data (excluding any Personal Data) in relation to the Purpose (and any additional services engaged by the Client pursuant to clause 2.4).
- 2.2 Subject to clause 5, the Client agrees to allow TAA to disclose the Client Data to TAA's Representatives to enable TAA specifically to perform the Purpose provided always that TAA will ensure that prior to any such disclosure TAA will obtain written undertakings from such parties that they will deal with the Client Data on no less protective terms than applicable to TAA under this Agreement.
- 2.3 TAA warrants that it shall be liable to the Client for any sub-processor's compliance or non-compliance with all its data processing obligations which will be on terms equivalent to those imposed on TAA under this agreement.
- 2.4 TAA warrants that it shall ensure that the Client Data and Processed Data is only used in connection with the Purpose unless the Parties expressly agree in writing that TAA is to provide services and/or outputs relating to the Client Data which are within the scope of the Client's lawful reason for processing the Data but is not otherwise within the scope of the Purpose.
- 2.5 If the Client has supplied TAA with any Client Data or Confidential Information prior to the date of this Agreement, this Agreement shall apply to that previously held Client Data or Confidential Information.

3. OBLIGATIONS OF THE RECIPIENT IN RESPECT OF CONFIDENTIAL INFORMATION

3.1 The Recipient shall keep the Confidential Information disclosed to it confidential and, except with the prior written consent of the Disclosing Party, shall not:

- (i) use or exploit the Confidential Information;
- (ii) disclose or make available such Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
- (iii) copy, reduce to writing or otherwise record the Confidential Information unless authorised by the Disclosing Party or necessary to use the Confidential Information in a way authorised by the Disclosing Party.

3.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know the Confidential Information, provided that the Recipient shall ensure that a written agreement is in place with those Representatives to ensure a duty of confidence, and that the Confidential Information disclosed to them is confidential and shall use best endeavours to ensure that such Representatives shall not do anything which would be a breach of this Agreement.

3.3 The Recipient may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority.

4. WARRANTY

4.1 The Client warrants that it has the right to disclose the Client Data and, where relevant, the Confidential Information to TAA and to authorise TAA to use the Client Data for the Purpose.

4.2 The Client does not make any warranties or representations about the accuracy or completeness of the Client Data or its Confidential Information.

4.3 The Client will not have any liability to TAA arising out of the use of the Client Data or Confidential Information disclosed under this Agreement (except for any liability that cannot be excluded by law).

4.4 Subject to clause 2.4, TAA shall ensure that all outputs shall be limited to statistical reporting and analysis of audiences and visitors to arts and cultural events provided through the service is anonymised and on an aggregated basis (whereby when being aggregated such Client Data and the analysis shall always be combined with sufficient information, from sources other than the Client Data, to ensure access to Client Data cannot be reverse engineered), including those outputs published over TAA's open data platform, which provides an anonymised sub-set of the Audience Answers dataset detailing public engagement with arts and cultural activities, and is freely available under an open data licence.

4.5 TAA warrants that it has, and will maintain for the duration of this Agreement, appropriate insurance cover, with a reputable insurance company against all its liabilities and indemnities that may arise under this Agreement including without limitation £5million professional indemnity insurance. On request by the Client, TAA will provide proof of such insurance to the Client.

5. DATA PROTECTION

5.1 Notwithstanding clauses 3 and 4 herein, the parties acknowledge that, for the purposes of the Data Protection Legislation, the parties believe the Client will be the data controller and TAA will be the data processor of any Personal Data supplied by the Client to TAA under or in relation to this Agreement.

5.2 TAA warrants and represents that it will:

- (a) implement and maintain all appropriate technical and organisational measures against the unauthorised or unlawful processing of Client Data and/or Personal Data and against the accidental loss or destruction of, or alteration, or damage, or unauthorised disclosure, or access to Client Data or Personal Data to ensure a level of security appropriate to:
 - i. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - ii. the nature of the data to be protected;
- (b) take reasonable steps to ensure compliance with those measures; and
- (c) ensure a level of security appropriate to the risks represented by the processing and the nature of Personal Data to be protected and where applicable, to the minimum level of measures as disclosed to and agreed by the Client;
- (d) discharge its obligations under this Agreement with all due skill, care and diligence; and
- (e) comply at all times with all applicable laws and regulations, including without limitation, the Data Protection Legislation.

5.3 TAA shall:

- (a) process Personal Data in accordance with the Purpose and/or clause 2.4 and in accordance with the Data Protection Legislation and only on documented instructions from the Client including with regard to transfers of Personal Data to a third country or an international organisation, unless:
 - i. required to do so by Union or Member State law to which TAA is subject; in such a case, TAA shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest; or
 - ii. in its opinion, an instruction given by or on behalf of the Client infringes the Data Protection Legislation, in which instance TAA shall immediately inform the Client of such opinion;

- (b) process Personal Data only to the extent, and in such a manner, as is necessary for the Purpose and shall not process Personal Data for any other purpose unless clause 2.4 applies;
- (c) pseudonymise Personal Data fields (name and address) before storage and analysis and to not further store or process Personal Data fields after pseudonymisation unless specifically requested to do so by the Client in accordance with clause 2.4;
- (d) take technological and procedural steps to protect fields which may become personal information from unauthorised access or processing in such a way as which might render identifiable any individual or individuals;
- (e) not process or transfer Personal Data outside the European Economic Area or sub-contract the processing of Personal Data without the express prior written notification to the Client and only where:
 - i. the recipient of such Personal Data is in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals; or
 - ii. the recipient of such Personal Data participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that TAA (and, where appropriate the Client) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR; or
 - iii. such recipient has complied with another approved data transfer mechanism under Data Protection Legislation;
- (f) ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (g) at no additional cost to the Client, promptly (and, in this case promptly shall mean within 3 (three) business days, or within the statutory requirements for applicable legislation) provide such information, co-operation and assistance to the Client as the Client may reasonably require to allow it to comply with the rights of data subjects, including subject access rights, or with information notices served by any data protection authority;
- (h) assist the controller in meeting its obligations under the Data Protection Legislation in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- (i) promptly (and within 36 hours) inform the Client if:
 - i. it becomes aware of any actual or suspected security breach, unauthorised access, misappropriation, loss, damage or other compromise of the security, confidentiality or integrity of any Personal Data and/or Client Data and restore such Personal Data at its own cost; or
 - ii. it becomes aware of any actual or suspected unauthorised or unlawful processing of the Personal Data; or
 - iii. it receives any communication from data subjects, any data protection authority or other law enforcement authority which relates directly or indirectly to the processing of Personal Data

or to either party's compliance with the Act;

and upon discovery of any security breach, TAA shall immediately take action to prevent any further security breach and provide the Client with comprehensive information, full and prompt cooperation and assistance in relation to any notifications that the Client is required to make as a result of the security breach;

- (j) at no additional cost to the Client, keep or cause to be kept full and accurate records relating to all processing of Personal Data on the Client's behalf;
- (k) upon reasonable notice, grant the Client and its auditors and agents, a right of access to and to take copies of such records in order to assess whether TAA has complied with the provisions of this Agreement;
- (l) keep confidential and not disclose or make available any Personal Data in the Client Data, in whole or in part, to any third party, excepting the Recipient's Representatives, and excepting as expressly permitted by this agreement, or else with prior written consent of the Client;
- (m) upon reasonable notice, provide all reasonable assistance in order to assist the Client in exercising its audit rights under clause 5.3(k) of this Agreement;
- (n) upon termination or expiry of this Agreement (under clause 6.2), delete all copies of the Personal Data processed by TAA under or in relation to this Agreement in whatever form stored; and
- (o) promptly comply with any request from the Client requiring TAA to amend, transfer or delete the Personal Data.

5.4 The notice requirement under clause 5.3(k) and 5.3(m) shall not apply if the Client reasonably believes that TAA are in breach of any of its obligations under this Agreement.

5.5 TAA shall ensure access to the Personal Data is limited to:

- (a) those Representatives who need access to the Personal Data to meet TAA's obligations under this Agreement; and
- (b) in the case of any access by any Representative, such part of parts of the Personal Data as is strictly necessary for performance of that Representative's duties.

5.6 TAA shall take all reasonable steps to ensure the reliability of any of its Representatives who have access to the Personal Data and TAA shall remain fully liable to the Client in respect of any and all acts, errors or omissions of such Representative(s) in relation to the use by those Representatives of the Personal Data.

5.7 TAA shall not disclose the Personal Data to any data subject or to a third party other than at the request of the Client or as provided for in this Agreement.

5.8 TAA agree to indemnify and keep indemnified and defend at its own expense the Client against all reasonable and proportionate direct costs, losses, claims, damages and/or expenses (including any regulatory fines

levied against the Client) incurred by the Client due to any failure by TAA or TAA's Representatives to comply with any of TAA's obligations under this Agreement or under Data Protection Legislation. For the avoidance of doubt, any obligation under this Agreement which is required for compliance with relevant Data Protection Legislation shall be considered a material obligation.

- 5.9 If any third party makes a claim, or notifies an intention to make a claim, against the Client which may reasonably be considered likely to give rise to a liability under the indemnity in clause 5.8 (a "Claim"), the Client shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to TAA, specifying the nature of the Claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of TAA (such consent not to be unreasonably conditioned, withheld or delayed); and
 - (c) subject to TAA providing security to the Client to the Client's reasonable satisfaction against any direct costs, claims, damages and/or expenses which may be incurred, take such action as TAA may reasonably request to avoid, dispute, compromise or defend the Claim.

Notwithstanding the foregoing, the Client shall be entitled to take any immediate act or omission required to be taken to protect the Client's goodwill or reputation without the prior consent or approval of TAA.

- 5.10 TAA represents and warrants that any and all information provided to the Client in relation to Audience Answers, the Purpose and in response to any third party supplier questionnaire or otherwise regarding or in relation to the aforesaid is to the best of TAA's knowledge true, accurate and not misleading.

6. TERM AND TERMINATION

- 6.1 Subject to clause 6.2, if the Client decides not to continue to be involved in the Audience Answers programme with TAA:
- 6.1.1 it shall notify TAA in writing promptly;
 - 6.1.2 upon provision of the aforesaid notice, the Client shall not be obliged to provide any further Client Data to TAA and TAA shall not have any further access to any new Client Data from the Client;
 - 6.1.3 TAA shall continue to have the right to use the Client Data which has been supplied to it up to and including the date of termination;
 - 6.1.4 the data processing elements of this Agreement shall continue in full force and effect for so long as TAA holds Client Data.

- 6.2 In the event that TAA commits a material breach of this Agreement, the Client shall have the right to terminate this Agreement with immediate effect by notifying TAA in writing. Upon such termination taking effect:
- 6.2.1 the Client shall not be obliged to provide any further Client Data to TAA and TAA shall not have any further access to any new Client Data from the Client;
 - 6.2.2 TAA shall as soon as reasonably practicable delete all the Client Data and Client Confidential Information it holds and provide written confirmation to the Client that the same has been completed.
- 6.3 In the event that TAA terminates this Agreement by notice to the Client, the parties shall agree between them whether it is appropriate for the data processing elements of this Agreement to continue, or whether a new data processing agreement should be entered into.
- 6.4 Termination of this Agreement shall not affect any accrued rights or remedies to which either party is entitled.

7. LIABILITY

- 7.1 Neither party excludes or limits liability to the other party for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence;
 - (c) any matter for which it would be unlawful for the parties to exclude liability.
- 7.2 The Client shall, without prejudice to any and all other rights and remedies which may be available, be entitled to apply for the remedies of injunction, specific performance and other equitable relief for any breach of this Agreement by TAA, actual or threatened.

8. INTELLECTUAL PROPERTY

- 8.1 TAA acknowledges that:
- (a) all Intellectual Property Rights in the Client Data and Client Confidential Information are and will remain the property of the Client; and
 - (b) it shall have no rights in or to the Client Data other than the right to use it for the Purpose and/or pursuant to clause 2.4 in accordance with this Agreement.
- 8.2 The Parties acknowledge between them that all Intellectual Property Rights and all other rights in Pre-existing Materials shall be owned by the respective party.
- 8.3 TAA owns all Intellectual Property Rights in the Processed Data.

9. GENERAL

- 9.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this

Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.

- 9.2 This Agreement constitutes the whole agreement between TAA and the Client in respect of the matters dealt with herein and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 9.3 The Client acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.
- 9.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties.
- 9.5 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
- 9.6 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.7 The parties to this Agreement do not intend that any term of this Agreement shall be enforceable by virtue of this Agreement (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 9.8 The formation, existence, construction, performance, validity and all aspects of this Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.