

# General Terms and Conditions | digitalAudience

Version of December 2020

These are the General Terms and Conditions of the private limited company **Social Audience B.V.**, having its registered office at Valschermkade 18 in Amsterdam and registered with the Chamber of Commerce under registration number 62917161, trading under the name **digitalAudience** (hereinafter referred to as '**digitalAudience**').

## Article 1 Definitions

All terms in these General Terms and Conditions, both in the singular and in the plural, with an initial capital letter have the meaning assigned to them in this article.

- 1.1. **Account:** the Client's personal administrator panel, provided by digitalAudience, with which the Client can use and deploy the Service.
- 1.2. **General Terms and Conditions:** these General Terms and Conditions regardless of the form in which they are made known.
- 1.3. **Data:** the data or datasets supplied by digitalAudience that the Client can use in its own marketing campaigns.
- 1.4. **Service:** any activity or service to be provided or already provided by digitalAudience under the Agreement, including the provision of Data for the purpose of improving marketing campaigns, whether or not made available through the Software of digitalAudience.
- 1.5. **Intellectual Property Rights:** all intellectual property rights and related rights, such as, but not limited to, copyright, trademark rights, patent rights, design rights, trade name rights, database rights and neighbouring rights, as well as rights to know-how.
- 1.6. **Quotation:** a written offer from digitalAudience.
- 1.7. **Client:** natural person or legal entity acting in the exercise of a profession or business, with whom or which digitalAudience concludes the Agreement.
- 1.8. **Agreement:** the agreement (the approved Quotation or insertion order) between digitalAudience and the Client on the basis of which digitalAudience will provide the Service to the Client and of which the General Terms and Conditions form an integral part.
- 1.9. **Party:** digitalAudience or the Client, whether or not jointly.
- 1.10. **Software:** computer software (whether or not in object code, or in the form of an API and an Account) and the paper or electronic manual supplied to the Client for the use thereof, of digitalAudience, its licensors or third parties engaged by digitalAudience.
- 1.11. **Confidential Information:** non-public information relating to one or both Parties and information in relation to which a Party states that this information is confidential or that, by virtue of the nature of the information or in the circumstances in which it is disclosed, must be treated as confidential.
- 1.12. **Website:** <https://digitalaudience.io/> or any other website of digitalAudience.

## Article 2 Formation and interpretation of the agreement

- 2.1. The General Terms and Conditions apply to all offers, including Quotations, of digitalAudience, the performance of work by or in the name of digitalAudience and the performance of current and future Agreements.
- 2.2. The Client may also request digitalAudience to issue a Quotation or other written offer. In such a case, the Agreement shall be formed as soon as the Client accepts the offer of digitalAudience in writing.

- 2.3. A Quotation or other offer provided by digitalAudience shall be non-binding and shall be valid for a period of 30 (thirty) days. digitalAudience is not obliged to accept an indication of acceptance after the expiry of this period, but if digitalAudience does so, the Quotation or offer will be deemed to have been accepted.
- 2.4. digitalAudience shall only be bound by an acceptance by a potential Client that differs (on subordinate or other points) from an offer made by digitalAudience if digitalAudience accepts the differing acceptance in writing.
- 2.5. If the Client applies for the Services of digitalAudience by creating an Account on the Website, the Agreement is formed by completing the online ordering process in full and the confirmation of the order by email by digitalAudience.
- 2.6. If the Client does not explicitly state that it agrees to the Quotation or the offer but nevertheless agrees to digitalAudience performing work or delivering products that fall within the scope of the Quotation or offer as described, or gives that impression, the Quotation or offer is deemed to have been accepted. This also applies if the Client requests digitalAudience to perform certain activities or to supply products without waiting for a Quotation.
- 2.7. The applicability of any purchase conditions or other terms and conditions of the Client is expressly excluded.
- 2.8. The application of Sections 227b(1) and 227c of Book 6 of the Dutch Civil Code is excluded.

### **Article 3 Performance of the agreement**

- 3.1. To the extent it has not been agreed otherwise, digitalAudience guarantees that the Agreement will be performed to the best of its ability with due care and expertise. digitalAudience only has a best-efforts obligation with regard to the Service or Services to be provided and no obligation to achieve a result. digitalAudience cannot, therefore, provide any guarantee in respect of the results to be achieved by using the Service and the use of the Data. Immediately after the Agreement has been formed, digitalAudience shall endeavour to deliver the Service and/or to make the Data available to the Client as soon as possible, with due observance of sufficient expertise.
- 3.2. If at least one of the following situations occurs, the terms 'delivered' or 'available' may be deemed to apply:
  - a. if the Service is used by the Client;
  - b. if the Client obtains access to the use of the Software;
  - c. if digitalAudience notifies the Client that the Service is available; or
  - d. if digitalAudience provides written or electronic confirmation of the delivery of the Service or Data by digitalAudience.
- 3.3. Delivery terms indicated by digitalAudience are always indicative in nature, unless they are explicitly stated in writing to be a strict deadline. digitalAudience is only in default, even in the case of an agreed strict deadline, after the Client has issued a written notice of default to it.
- 3.4. Any overrun of agreed delivery times, whatever the cause, shall not result in digitalAudience being in default nor give rise to any entitlement to compensation, including for losses due to delays.
- 3.5. The Client shall always provide digitalAudience, on a timely basis, with all useful data or information necessary for the proper performance of the Agreement and shall render every assistance. The Client warrants that these data or information are correct, complete and up to date.
- 3.6. The Client shall be responsible for the use and application in its organisation of its equipment, the Software, the Data and the Services that are eligible for this, as well as for checking the security procedures and adequate system management.

- 3.7. If the data required for the performance of the Agreement are not available to digitalAudience, not available to it on time or not available to it in accordance with the agreements, or if the Client fails to meet its obligations in another manner, digitalAudience shall, without prejudice to other rights, be entitled to suspend the performance of the Agreement. digitalAudience is entitled to charge the resulting costs at its usual rates or to dissolve the Agreement in part or in full.
- 3.8. If the Client requests additional work or services outside the Agreement, i.e. requests contract extras, the Parties shall consult on this and digitalAudience can present an offer. digitalAudience will not carry out the contract extras until the Client has accepted the offer.
- 3.9. digitalAudience does not require consent for contract extras that digitalAudience can demonstrate to be reasonably necessary for the provision of the Services or that reasonably follow from the Client's instructions. Such work is carried out on the basis of subsequent costing at the hourly rate of digitalAudience that applies at the time when the work is carried out. Other costs incurred can also be billed.
- 3.10. digitalAudience may, at its own discretion, engage third parties in the performance of the Agreement.

#### **Article 4 Account**

- 4.1. digitalAudience provides the Client with an Account that enables the Client to use the Service and to use the Data to conduct its own business operations.
- 4.2. The Client must keep the username and password, which provide access to the Service and the Account, strictly confidential. digitalAudience is not responsible for any misuse of the passwords and may assume that all activities carried out using the Client's usernames and passwords are done under the Client's responsibility and risk.
- 4.3. If an Account's login details have been lost or leaked, the Client shall immediately take all measures that are reasonably necessary and desirable to prevent abuse of the Account. These measures may for instance consist of changing the password. The Client shall also immediately report this to digitalAudience, so that additional measures may be taken to prevent abuse of the Account.
- 4.4. Contrary to the above, it is also possible that the Data will not be made available by means of an Account and Software, as the Data will be supplied directly to the Client. The Client can then process and use the supplied Data through its own systems. Unless otherwise agreed, the General Terms and Conditions shall continue to apply in full in that situation.

#### **Article 5 Client Data**

- 5.1. All Client Data will remain the property of the Client. digitalAudience will not assert any ownership claim to the Client Data. Upon termination of the Agreement, digitalAudience will delete all Client Data.
- 5.2. The Client shall grant digitalAudience a non-transferable licence, which is only sublicensable insofar as necessary for the performance of the Agreement, to use the Client Data for the duration of the Agreement, to the extent necessary for the provision of the Services.
- 5.3. If the Client sends information to digitalAudience, such as feedback on an error or a suggestion for improvement, the Client gives digitalAudience an unlimited and perpetual right to use this information for the Service.
- 5.4. The Client is itself responsible for uploading all Client Data into the Service or Software, unless expressly otherwise agreed. digitalAudience is not liable for any inaccuracies after uploading or in synchronising the Client Data, unless they are the result of intent or wilful recklessness.

## **Article 6 Use of the Service and Data**

- 6.1. The Client is fully responsible and liable for the use of the Service itself (and its deployment in its marketing campaigns) and for any information it disseminates, publishes or otherwise distributes through the Software or through the use of the Service.
- 6.2. The Client guarantees that, in using the Service, no information is offered or disseminated through the Service that:
  - a. is contrary to applicable laws and regulations, including but not limited to the General Data Protection Regulation (GDPR), the Dutch Telecommunications Act and guidelines of the Dutch Data Protection Authority (Dutch DPA) and the Netherlands Authority for Consumers & Markets (ACM);
  - b. is contrary to the Agreement;
  - c. is contrary to the guidelines and instructions provided by digitalAudience;
  - d. is contrary to the Dutch Advertising Code or guidelines of the Advertising Code Committee;
  - e. causes damage to or hinders the systems of digitalAudience, clients of digitalAudience or other internet users;
  - f. is unlawful;
  - g. will damage the interests or good reputation of digitalAudience (in the opinion of digitalAudience).
- 6.3. digitalAudience declares that it is entitled to provide the Data to the Client and that use of the Service and Data does not violate applicable laws and regulations, including but not limited to the General Data Protection Regulation (GDPR), the Dutch Telecommunications Act and guidelines of the Dutch Data Protection Authority (Dutch DPA) and the Netherlands Authority for Consumers & Markets (ACM).
- 6.4. The Client declares that it will only use the Service for the purpose for which it is suitable and will only use it in accordance with the Agreement and the General Terms and Conditions.
- 6.5. If the Client uses the Service in any other way than referred to in the previous paragraph, digitalAudience is entitled to terminate the Agreement immediately without the Client having any right to a refund or compensation.
- 6.6. If digitalAudience establishes or reasonably suspects that the Client has violated the abovementioned provisions or statutory provisions, or receives a complaint, it will give the Client a warning. If this does not lead to a satisfactory solution, digitalAudience itself may intervene to end the violation. In urgent or serious cases, digitalAudience may intervene without warning.
- 6.7. digitalAudience may recover any loss resulting from violations of these rules of use from the Client. The Client indemnifies digitalAudience against any third-party claims pertaining to loss arising from a violation of the rules of use referred to in this Article.

## **Article 7 Notice and takedown**

- 7.1. If digitalAudience is notified that the Service is being used to store or disseminate information that infringes third-party rights or that is otherwise unlawful or in violation of the Agreement, digitalAudience will notify the Client of the complaint or violation as soon as possible. In urgent cases, digitalAudience can intervene directly (for example, by removing the information or blocking the Service in full or in part), but digitalAudience will endeavour to inform the Client afterwards. In exceptional cases, to be determined at digitalAudience's discretion, digitalAudience is not required to notify the Client.
- 7.2. digitalAudience is authorised to provide the Client's name, address and other identifying information to a third party complaining that the Client has violated its rights, or to the competent authorities, if:

- a. digitalAudience is obliged to do so under applicable laws or regulations (as in the case of an order issued by a competent court); or
  - b. in digitalAudience's judgement, it is sufficiently plausible that the Client has acted unlawfully and has caused the third party loss, the third party has a genuine interest in obtaining the data, digitalAudience considers it plausible that there is no less far-reaching measure to obtain the data and weighing the interests involved leads to the conclusion that the third party's interests should prevail.
- 7.3. In the event of potentially punishable Client Data, digitalAudience is entitled to report this. In doing so, digitalAudience can hand over the material and all relevant information about the Client to the competent authorities and carry out any other acts requested by the authorities in connection with the investigation.
- 7.4. digitalAudience provides no guarantee whatsoever regarding the results to be achieved by using the Service and deploying the Data. The Client indemnifies and will hold digitalAudience harmless against any type of claim, charges or proceedings instituted by a third party in connection with the content of the information placed on or distributed via the Service by the Client.

## **Article 8 Rates**

- 8.1. All prices are stated in euros and exclude turnover tax (VAT) and other duties levied by the government.
- 8.2. All prices on the Website and in brochures, price lists and/or other means of communication of digitalAudience are subject to programming and typing errors. digitalAudience accepts no liability for the consequences of any such errors.
- 8.3. digitalAudience is entitled to change the rates applied at any time. digitalAudience will notify the Client of any changes in rates at least 2 (two) months in advance. In the event of a price increase, the Client is entitled to terminate the Agreement, with due observance of a notice period of one (1) month.
- 8.4. Without prejudice to the provisions of the previous paragraph, digitalAudience shall be entitled to annually increase the prices applied, in the case of a continuing performance contract, by a maximum of 3.5%, without the Client being able to terminate the Agreement. In addition, prices may be increased by digitalAudience at any time if the suppliers' rates rise, without this resulting in an option for the Client to terminate the Agreement.
- 8.5. In the case of a one-time purchase and non-recurring one-off purchase (no continuing performance contract), a new Agreement is concluded in each instance at the rates prevailing at the time concerned. The rates applicable to a previous Agreement do not provide any guarantee to the Client that a new Agreement can be concluded at the same rate.

## **Article 9 Payment**

- 9.1. The agreed fee shall be payable by the Client for the use of the Service.
- 9.2. digitalAudience will send the Client invoices for the fees due. The Client shall pay the invoiced amounts no later than within 14 (fourteen) days after the invoice date, unless a different term is expressly stated by digitalAudience. If prepayment has been stipulated, the Client shall pay the fees payable prior to the procurement of the Service. There may also be one-off costs and variable costs. One-off costs will be invoiced in advance; invoices will be sent for variable costs depending on the extent of use of the Service.
- 9.3. Any recourse by the Client on set-off or suspension shall not be permitted.
- 9.4. If the Client fails to pay the amounts due within the agreed term, the Client will be deemed to be in default without any notice of default being required. The Client will owe the

statutory interest on the outstanding amount from the date of the default until the day the payment is made in full. If the Client persists in its failure to pay after being given notice of default, the claim may be referred for collection. If the claim is referred for collection, in addition to the amount already due, the Client will also be liable to pay all judicial and extrajudicial costs, including but not limited to all fees charged by external experts, the costs of legal assistance and all or part of the legal costs, in addition to the costs determined at law.

- 9.5. All payments by the Client to digitalAudience will be deducted from the Client's oldest outstanding invoices, irrespective of any indication to the contrary by the Client on the invoices.

#### **Article 10 Duration and termination**

- 10.1. The Agreement shall be concluded for a period as specified in the Agreement. The Agreement will be tacitly extended by 1 (one) year in each instance, unless expressly agreed otherwise. This means that the Client may use the Service for this period at the agreed rates and conditions.
- 10.2. The Parties may terminate the Agreement with effect from the end of the term, subject to a notice period of 3 (three) months.
- 10.3. Either Party may terminate the Agreement with the other Party without formal notice of default and without being required to pay compensation as a result, by registered letter, with immediate effect and without judicial intervention, if:
- a. the relevant other Party fails imputably in the compliance with an essential obligation from the Agreement and remedying this failure is permanently impossible; or
  - b. the relevant other Party applies for a moratorium or her bankruptcy, is declared bankrupt or offers its creditors a composition; or
  - c. the relevant other Party discontinues its activities, stops pursuing its objective under its articles of association or loses its legal personality.
- 10.4. Without prejudice to Articles 10.1 and 10.2, digitalAudience is entitled to terminate the Agreement, without notice of default being required and without being liable to pay compensation, by registered letter, with immediate effect and without judicial intervention, if the Client acts contrary to the obligations arising from Articles 6, 9, 15, 16 and 17 of these General Terms and Conditions.
- 10.5. Amounts invoiced by digitalAudience prior to termination in connection with what digitalAudience has already performed or delivered in the performance of the Agreement shall remain payable in full and will be immediately due and payable at the time of termination.
- 10.6. Immediately after the termination of the Agreement, the Client will no longer have access to the Service. If the Data has been delivered in accordance with Article 4.4, the Client shall be obliged to destroy the Data and the Client shall therefore declare that it will no longer use the Data, with immediate effect.
- 10.7. Provisions that are by nature intended to endure after the Agreement is terminated will continue to apply in full after the termination, including but not limited to Articles 11, 15 and 16 of these General Terms and Conditions.
- 10.8. digitalAudience reserves the right to have the Client's accounts and systems inspected and audited by a registered accountant or other authorised and/or qualified party after termination of the Agreement. This audit will be performed during normal working hours and without conflicting with the Client's normal activities. The costs of such an audit shall be borne by digitalAudience, unless the audit demonstrates that the Client has not complied with the requirements set out in this Article, without prejudice to

the other rights of digitalAudience. The purpose of the audit may be to assess whether the Client has actually removed the Data from its systems and no longer uses the Data.

- 10.9. If the audit reveals that the Client continues to use the Data after termination of the Agreement, the Client will be liable to pay an immediately due and payable penalty of €5,000 (five thousand euros) and in addition a penalty of €500 (five hundred euros) for each day on which the infringement continues after having been discovered, without prejudice to digitalAudience's right to claim full compensation.

## **Article 11 Liability**

- 11.1. The total liability of digitalAudience, on any grounds whatsoever, and in particular on the grounds of culpable failure to perform the Agreement, unlawful acts or warranty obligations, shall be limited to compensation for direct losses up to a maximum of the amount of the price agreed for the Service (excluding VAT) for 12 (twelve) months, for which purposes a series of events counts as one event, with a maximum of €20,000 (twenty thousand euros) per calendar year. If it has been agreed that the fees payable by the Client will be calculated on the basis of subsequent costing, the aforementioned liability will be limited to the amount that digitalAudience would have billed had invoicing taken place at the time when the failure occurred.
- 11.2. Direct loss refers exclusively to the costs reasonably incurred by the Client to remedy or remove the failure by digitalAudience in such a way that digitalAudience's performance complies with the terms of the Agreement, as well as reasonable costs to prevent or limit such losses and reasonable costs to establish the cause and extent thereof.
- 11.3. digitalAudience cannot be held liable for losses other than direct losses, including but not limited to indirect losses arising from the Service and use of the Service, such as consequential loss, loss of profit, loss of turnover, loss of savings, losses due to business interruptions and the costs of restoring data that have been fully or partially lost.
- 11.4. In the event that a loss situation arises, the Client must notify digitalAudience in writing within 6 (six) weeks. If the Client fails to do so, any right to compensation lapses.
- 11.5. Except for the cases referred to in these General Terms and Conditions, digitalAudience shall not be liable to pay any compensation whatsoever, regardless of the grounds on which a claim for compensation may be based. The limitations of liability referred to in this Article 11 shall not apply if the loss is a consequence of intent or wilful recklessness on the part of digitalAudience or its management.
- 11.6. Section 271 of Book 6 of the Dutch Civil Code shall not apply to the Client.
- 11.7. The Client indemnifies digitalAudience in full against any and all third-party claims or entitlements, on whatever basis, for or to compensation of any loss whatsoever arising from and/or in connection with the use by the Client of the Service and/or a failure to comply with its obligations under the Agreement, comply with these properly or comply with these on time, and in particular against claims from supervisory authorities, such as the Dutch Data Protection Authority (Dutch DPA) and the Netherlands Authority for Consumers & Markets (ACM).

## **Article 12 Force majeure**

- 12.1. If the Client or digitalAudience is unable to fulfil an obligation under the Agreement as a result of force majeure, the Party concerned shall not be required to fulfil such an obligation while the force majeure situation persists, except in the case of a payment obligation. Force majeure for digitalAudience shall be understood to include but expressly not be limited to a non-attributable failure of third parties or suppliers of digitalAudience,

DoS and DDoS attacks and failures in the Internet connections, hardware and electricity and telecommunications networks.

- 12.2. If the force majeure situation has lasted longer than 90 (ninety) days, both the Client and digitalAudience shall be entitled to terminate the Agreement by means of a written notice to the other Party. Work that has already been carried out will then be charged pro rata, without the Client and digitalAudience being liable to pay the other Party any other amount.

### **Article 13 Availability**

- 13.1. digitalAudience will make every effort to ensure uninterrupted access to its systems and networks and to the Data it has stored but is unable to offer any guarantees in this regard, unless otherwise agreed in the Agreement by means of a Service Level Agreement designated as such. To the extent not otherwise provided for in an applicable Service Level Agreement, the provisions of this Article apply to availability.
- 13.2. digitalAudience will endeavour to keep its web server and other software up to date, but digitalAudience is dependent on its supplier(s) in this connection. digitalAudience is entitled to not install certain updates or patches if, in its opinion, this does not benefit the correct provision of the Service.
- 13.3. If, at digitalAudience's discretion, the operation of the computer systems or network of digitalAudience or of third parties and/or the service provision via a network is at risk, in particular as a result of excessive amounts of emails or other data being sent, poorly secured systems or virus activity, Trojan horses and similar software, digitalAudience is authorised to take any reasonable measures it deems necessary to avert or prevent such risk.

### **Article 14 Failures and maintenance**

- 14.1. In the event that the Software is not available due to failures, maintenance or other causes, digitalAudience will make every effort to inform the Client of the nature and the expected duration of the interruption.
- 14.2. digitalAudience is entitled to temporarily close down its systems and networks, either fully or partially, for the purpose of maintenance, adjustments or improvements. digitalAudience will endeavour to ensure that, as far as possible, any such period of inactivity will only take place outside office hours and will undertake to inform the Client in good time of scheduled periods of inactivity. However, digitalAudience will under no circumstances be liable to pay compensation for loss suffered in connection with access to the Platform being disabled in this way.
- 14.3. digitalAudience has the right to modify the Software from time to time to improve its functionality and to correct errors. If a modification will result in a substantial change to the functionality, digitalAudience will inform the Client of that via the Website or by email before the change is made. Since the Software is provided to multiple Clients, a certain modification cannot be omitted for the benefit of the Client only. digitalAudience is not liable to pay any compensation in the event of modifications.

### **Article 15 Intellectual Property Rights**

- 15.1. All Intellectual Property Rights to the Software, the Data and the Service will continue to be exclusively vested in digitalAudience, its licensors or third parties engaged by it. No provision of the Agreement, including but not limited to provisions that grant a right of use in respect of the Software, the Data and/or the Service, shall be interpreted as conferring Intellectual Property Rights in any way.



- 15.2. The Client will receive a non-exclusive, non-transferable and non-sublicensable right to use the Service of digitalAudience for the duration of the Agreement and in accordance with the terms and conditions laid down in these General Terms and Conditions.
- 15.3. The Client may not remove or change copyright indications, trade marks or other indicators of entitlement to the Intellectual Property Rights in the Software or the Data provided. The same applies to statements regarding certain information being of a confidential nature.
- 15.4. Except to the extent agreed or legally permitted by mandatory law, the Client may not reproduce, publish or apply reverse engineering to Software or Data made available to the Client. In addition, the Client is forbidden from removing or circumventing protections or technical (user) restrictions of the Software or Data.
- 15.5. The Client shall not be authorised at any time to register any right concerning an object that is identical or confusingly similar to any object that is subject to any Intellectual Property Right belonging to digitalAudience or its licensors, or to submit an application for that purpose.
- 15.6. The Client warrants that no third-party rights stand in the way of data being made available to digitalAudience in order to be used or processed for the benefit of the Service. The Client will indemnify digitalAudience against any action that is based on the allegation that such data being made available, used or processed violates any third-party rights.

#### **Article 16 Privacy**

- 16.1. If the Parties process personal data under their own responsibility and not on each other's instructions, the Parties are independently responsible for compliance with the General Data Protection Regulation (GDPR). If digitalAudience processes personal data on the instructions of the Client in connection with the Agreement, the following article applies. In that situation, digitalAudience is to be deemed a processor as referred to in Article 4(8) of the GDPR. The Client is to be deemed a controller within the meaning of Article 4(7) of the GDPR. If the Client processes the personal data on behalf of a third party as a processor, digitalAudience fulfils the role of subprocessor.
- 16.2. digitalAudience processes the personal data it collects or receives on behalf of the Client only for the performance of the Agreement and those purposes that have been specifically agreed upon. This applies to all personal data processed by digitalAudience on behalf of the Client, as well as to all categories of data subjects.
- 16.3. With regard to the processing as referred to in Article 16.2, each of the Parties shall, based on its own role, ensure compliance with the conditions to which the processing of personal data is subject pursuant to the GDPR. The obligations of digitalAudience arising from this Article also apply to any party processing personal data under the authority of digitalAudience.
- 16.4. digitalAudience will take appropriate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised disclosure, impairment, alteration or provision of personal data) in connection with the processing of personal data to be performed. digitalAudience has in any case taken the following measures:
  - a. logical access control, making use of passwords;
  - b. automatic logging of all actions concerning the personal data;
  - c. physical measures for access protection;
  - d. encryption (encoding) of digital files containing personal data;
  - e. organisational measures for access protection;
  - f. random checks of compliance with policy;
  - g. security of network connections by means of Secure Socket Layer (SSL) technology;
  - h. a secure internal network.

- 16.5. In the event of a data leak (meaning a personal data breach as referred to in Article 4(12) of the GDPR) that is detected by digitalAudience, digitalAudience will inform the Client of this without delay, but no later than 24 (twenty-four) hours after its discovery, and shall comply with the Client's instructions in this regard, insofar as reasonable. digitalAudience's notification obligation in respect of the Client shall in any case include reporting to it that a leak has occurred, as well as:
- a. the cause or suspected cause of the leak;
  - b. the numbers of data subjects and personal data registers concerned or an estimate of those numbers;
  - c. the consequences (insofar as known and/or to be expected);
  - d. the solution or proposed solution;
  - e. contact details for following up the notification.
- Notification, where applicable, of the Dutch Data Protection Authority and/or data subjects will be undertaken by the Client itself. Where necessary, digitalAudience will support the Client in this regard.
- 16.6. The Client grants digitalAudience general permission to engage a third party in the processing of personal data pursuant to the Agreement, with due observance of the applicable privacy legislation. At the Client's explicit request, digitalAudience will inform the Client about the third parties it has engaged. The Client shall be entitled to object to any third party engaged by digitalAudience. If the Client objects to third parties engaged by digitalAudience, the parties will consult with each other in order to reach a solution. digitalAudience will agree the same obligations and agreements concerning personal data as described in the Agreement with the third parties engaged by digitalAudience for this engagement.
- 16.7. digitalAudience is allowed to process the personal data in countries within the European Union and in countries outside the European Union, provided the legal requirements for doing so are complied with. On the Client's request, digitalAudience will inform the Client of the country or countries concerned.
- 16.8. In the event that a data subject submits a request with regard to his or her personal data to digitalAudience, digitalAudience will forward the request to the Client, and the Client will handle the request or forward it to the respective controller(s). digitalAudience may inform the data subject of this. If the Client requires digitalAudience's assistance in processing a request from a data subject, digitalAudience may charge a fee for this.
- 16.9. The Client shall have the right to have an audit performed once a year by an independent registered EDP auditor to check compliance with all points in Article 16, or more often in the event of a well-founded suspicion of abuse. This audit must be announced at least 2 (two) weeks in advance and will be performed during normal working hours and without conflicting with the normal activities of digitalAudience. The findings resulting from the audit performed will be implemented by digitalAudience. The costs will be borne by the Client.

## **Article 17 Confidential Information**

- 17.1. The Parties will treat the information they provide each other before, during or after the performance of this Agreement as confidential if such information has been marked as confidential or if the receiving Party is aware or should reasonably be able to assume that the information was intended to be confidential. The contents of the Agreement are hereby designated as confidential.
- 17.2. The Parties will also impose this obligation on their employees and on third parties engaged by them for the performance of the Agreement. These provisions shall remain in force

after termination of the Agreement, for whatever reason, and for as long as the disclosing Party has the right to invoke the confidential nature of the information.

- 17.3. Both Parties shall exercise the same degree of care in the protection of Confidential Information as the receiving Party uses to protect its own Confidential Information, applying at least a reasonable level of care.
- 17.4. This Article shall not apply to information that:
- a. is or becomes generally accessible to the public for reasons other than disclosure by the receiving Party in violation of this Agreement;
  - b. was already in the possession of the receiving Party before it was disclosed to it by or on behalf of the disclosing Party;
  - c. is provided to the receiving Party on a non-confidential basis by a source other than the disclosing Party, which is not obliged to treat that information as confidential information; or
  - d. has been created independently by the receiving Party.
- 17.5. If a receiving Party is required by law to disclose Confidential Information that was disclosed under the Agreement, this receiving Party shall immediately notify the disclosing Party in writing to enable the disclosing Party to request a pre-judgement attachment or other appropriate remedy at law and/or waive compliance with the confidentiality provisions of the Agreement. All Confidential Information disclosed in connection with this Agreement shall continue to be owned exclusively by the disclosing Party.
- 17.6. Immediately after the end or termination of the Agreement, for whatever reason, the receiving Party shall at the request of the disclosing Party return or destroy all originals and copies of the materials in its possession (regardless of their form) that contain or constitute Confidential Information.

#### **Article 18 Final provisions**

- 18.1. digitalAudience may transfer rights and obligations under the Agreement to third parties and shall notify the Client accordingly. The Client shall not be entitled to transfer rights and obligations under the Agreement to third parties without the express written consent of digitalAudience.
- 18.2. The Agreement and any disputes arising from or associated with it shall be governed by Dutch law. Disputes arising from or associated with the Agreement will be referred exclusively to the competent court in Amsterdam.
- 18.3. The Client is obliged to always keep digitalAudience informed, either in writing or by email, of any changes in the data that are relevant to the performance of the Agreement.
- 18.4. digitalAudience is entitled to amend these General Terms and Conditions at all times. digitalAudience shall notify the Client of any changes to the General Terms and Conditions in writing, electronically (by email) or via the Website. The changes will take effect one (1) month after the notification. If the Client does not wish to accept the changes, the Client is authorised to cancel the Agreement in writing as of the date on which the amended General Terms and Conditions will take effect. The procedure laid down in this Article shall not apply to changes of minor significance and changes pursuant to amended laws and regulations. Such changes may be made by digitalAudience without notice.
- 18.5. If any provision of these General Terms and Conditions is void or voidable, the other provisions of these General Terms and Conditions will continue to apply in full, and digitalAudience and the Client shall agree on a new provision to replace the provision that is void or voidable, taking into account, to the greatest extent possible, the purport and intent of the provision that is void or voidable.

- 18.6. Where these General Terms and Conditions refer to 'written' or 'in writing', electronic means of communications such as email may also be used, provided that the sender's identity and the authenticity of the communication are sufficiently established.
- 18.7. The version of any communication received or stored by digitalAudience shall be regarded as authentic, subject to proof to the contrary to be produced by the Client.
- 18.8. The Client hereby gives digitalAudience permission to use its name, trade name and logo for the benefit of promotion and as a reference. digitalAudience will notify the Client in advance and inform it of the form in which it intends to use the Client's name and logo.