

1. INTERPRETATION

1.1

AWS: Amazon Web Services Inc. and its Group Companies;
Business Tool Data: has the meaning set out in the FB Terms;
CAPI Tool: Multi-Tenant (Agency) Gateway;
Configuration Services: the configuration and related work to be performed by Brainlabs to configure the CAPI Tool for the Client;
Facebook/Meta: Facebook Ireland Limited and its Group Companies ;
Facebook Business Tools Terms/FB Terms means the terms set out at <https://www.facebook.com/legal/terms/businessstools> and the further terms referred to or incorporated therein, as updated from time to time;
Hosting Services: the services that Brainlabs provides to allow the Client to access the Facebook Conversion API through the CAPI Tool, including hosting set-up through AWS;
Maintenance and Support: any error corrections, updates and upgrades that Brainlabs may provide or perform (in the case of the Hosting Services either itself to the extent reasonably possible or by escalating to AWS) with respect to the Configuration and Hosting Services, as well as any other support or training services provided to the Client under this agreement.
Services: means the Configuration Services, the Hosting Services and Maintenance and Support;
Tech Deliverable: a defined level of functionality or other preset milestone within a particular phase of the Configuration Services.

1.2 These terms are Supplemental to and form part of the Agreement.

1.3 Any conflict between these Supplemental Terms and the terms of the Agreement, these Supplemental Terms shall prevail.

1.4 Any capitalised terms which are not defined in Supplemental Terms shall have the meaning set out in the Master Services Agreement or the Facebook Business Tools Terms, as applicable

2. SERVICES

2.1 Brainlabs has agreed to provide the Services on the terms of this Agreement.

2.2 Within five days of Brainlabs' delivery to the Client of any Tech Deliverables, the Client shall review and confirm that it functions in material conformance with the applicable portion of the Tool Description. If the Tech Deliverable fails in any material respect to conform with the agreed level of functionality, the Client shall give Brainlabs a detailed description of any such non-conformance (**Error**), in writing, within the five-day review period.

2.3 With respect to any Errors contained in any Tech Deliverables delivered to the Client during the Configuration Services, Brainlabs shall use reasonable endeavours to correct any such Error within a reasonable time and, on completion, submit the corrected Tech Deliverable to the Client. The provisions of this clause shall then apply again, up to three additional times. If Brainlabs is unable to correct such Error after three attempts, either party may terminate this agreement without further liability to the other party.

2.4 If the Client does not provide any written comments in the five-day period described above, or if the Tech Deliverable is found to conform with the Tool Description, the Tech Deliverable shall be deemed accepted.

2.5 The Client shall not except to the extent expressly permitted under this agreement:

(a) access all or any part of the Services and in order to build a product or service similar to the Services; or

(b) use the Services to provide services to third parties; or

2.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Brainlabs.

2.7 The rights provided under this Scope of work are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

3. BRAINLABS REPRESENTATIONS AND WARRANTIES:

3.1 Brainlabs warrants that the Services will be performed with reasonable skill and care.

3.2 Notwithstanding the foregoing:

(a) Brainlabs does not warrant that the Client's use of the Services will be uninterrupted or error-free; nor that the Services, and/or the information obtained by the Client through the Services will meet the Client's requirements; and

(b) Brainlabs is not responsible for any delays, delivery failures, beyond its reasonable control, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

(c) This agreement shall not prevent Brainlabs from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

(d) the Client assumes sole responsibility for results obtained from the use of the CAPI Tool, and the Services by the Client and for conclusions drawn from such use. Brainlabs shall have no liability for any damage

caused by errors or omissions in any information, instructions or scripts provided to Brainlabs by the Client in connection with the Services, or any actions taken by Brainlabs at the Client's direction;

(e) the Client acknowledges and agrees that the provision of the Services may be dependant on third party platforms, licences or services (including but not limited to Facebook and AWS) which may be terminated at any time and in the event that Brainlabs ceases to possess the necessary consents and licences or third party facilities required to provide the Services Brainlabs shall have no liability and will be entitled to terminate this SOW with immediate effect without liability.

ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY LAW ARE, UNLESS OTHERWISE SET OUT HEREIN TO THE FULLEST EXTENT PERMITTED BY LAW, ARE EXPRESSLY EXCLUDED FOR THE AVOIDANCE OF DOUBT BRAINLABS IS NOT RESPONSIBLE FOR AND SHALL HAVE NO LIABILITY IN RELATION TO THE FACEBOOK CONVERSION API.

4. CLIENT OBLIGATIONS

4.1 The Client shall:

(a) (i) ensure that its network and systems comply with the relevant specifications provided by Brainlabs from time to time (ii) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Brainlabs data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet (iii) make its own arrangements for internet access in order to access the Services;

(b) not place pixels associated with its Facebook Business Manager or ad account on websites that it does not own;

(c) comply with the FB Terms.

5. AUTHORITY

5.1 Client hereby authorises Brainlabs as its agent:

(a) To bind the Client to the FB Terms and the Client hereby acknowledges and agrees that it is so bound;

(b) to use, share and process Business Tool Data on the Client's behalf as required by the FB Terms;

6. DATA PROTECTION

6.1 The parties confirm and agree that Brainlabs is acting as a Processor and the Client is acting as Data Controller. AWS is acting as a Processor and is Facebook is acting as a Processor and/or Controller as set out in the FB Terms.

6.2 The Client agrees that personal data may be processed by Facebook outside of the EEA pursuant to the provisions of the FB Terms and by AWS pursuant to its data processing addendum which can be found here https://d1.awsstatic.com/legal/aws-gdpr/AWS_GDPR_DPA.pdf.

6.3 For personal data processed using the Conversions API, Facebook transfers advertisers' data using the European Commission approved Standard Contractual Clauses (SCCs) referred to in the [European Data Transfer Addendum](#) to its ads and measurement product terms. Meta Platforms Ireland Limited acts as a processor for certain advertiser-controlled personal data, as described in its [Data Processing Terms](#) incorporated into its [FB Terms](#).

6.4 For advertiser-controlled personal data that Meta Ireland processes as a processor, Meta Ireland Limited uses the Processor to Processor SCCs, which is specifically designed for transfers by a processor to a subprocessor. These SCCs have been put in place between Meta Platforms Ireland Limited (as exporting processor) and Meta Platforms, Inc. (as importing subprocessor) to cover the transfer of advertiser-controlled personal data.

6.5 Where Meta Ireland acts as a controller, Meta also uses SCCs, which are in place between Meta Platforms Ireland Limited (as exporting controller) and Meta Platforms, Inc. (as importing processor) to cover the transfer of personal data.

6.6 To the extent that GDPR does not apply, the parties acknowledge and agree that the relevant terms set out in the Facebook Business Tools Terms shall apply, for example State Specific Terms [here](#) for US jurisdictions.

7. CLIENT REPRESENTATIONS AND WARRANTIES

7.1 The Client hereby undertakes, represents, warrants that:

(a) without prejudice to the provisions of Clause 5.1(a), it will comply with the FB Terms;

(b) it has all the necessary rights and permissions (including active opt-in consent where required by applicable law) and a lawful basis for the disclosure and use of Business Tool Data, including, but not limited to, its use by Facebook as an Independent Controller as set out in the FB Terms;

(c) that it will provide a clear prominent notice on its website (or links in its apps as applicable) of its disclosure and use.

(d) it will not share Business Tool Data that it knows or reasonably should know is from or about children under the age of 13 or that includes health or financial information, or other categories of sensitive information (including any information defined as sensitive under

applicable laws, regulations and applicable industry guidelines (“Sensitive Personal Data”).

(e) that any Personal Data that it provides directly or indirectly (i) will be collected in accordance with applicable Data Protection Legislation; (ii) it has obtained and necessary rights and permissions, has a lawful basis for the disclosure and provided the Data Subjects with all relevant information as to the transfer of its data to Brainlabs and Facebook and AWS and outside of the EEA and (iii) that all Sensitive Data will be encrypted in transit.

8. PROPRIETARY RIGHTS

8.1 Subject to the terms and conditions of this Agreement, Brainlabs hereby grants to the Client a non-exclusive, limited, non-transferable, non-sublicensable, revocable, license to use the Services solely for the purpose of its business operations in connection with digital marketing campaigns for the duration of this Scope of Work. The Services may only be used for the accounts agreed in writing with the Client, which are owned by the Client. Brainlabs reserves all rights not expressly granted herein.

9. THIRD PARTY PROVIDERS

9.1 The Client acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Brainlabs makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not Brainlabs. Brainlabs recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Brainlabs does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

10. INDEMNITY

10.1 The Client shall defend, indemnify and hold harmless Brainlabs and its Group against third party claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the (i) Client's use of the Services or the CAPI Tool, and (ii) any breach of the FB Terms, clause 6 of these Supplemental Terms and/or clause 9 of the Agreement (Data Protection) or Applicable Law provided that: (a) the Client is given prompt notice of any such claim; (b) Brainlabs provides reasonable co-operation to the Client in the defence and (c) settlement of such claim, at the Client's expense; and (d) the Client is given sole authority to defend or settle the claim. Any limitation of liability set out in the Master Services Agreement shall not apply in respect of the Client's indemnification obligations pursuant to this Clause 10.

11. LIMITATION OF LIABILITY

11.1 Neither Party under any circumstances whatsoever shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise (in all cases irrespective of whether a Party has advised of the possibility of such loss or damage) for any loss of actual or anticipated income, revenue or profits, business, business opportunities, contracts or anticipated savings; loss of goodwill or reputation; loss of use; loss or damage arising from loss, damage or corruption of any data; fines, penalties or regulatory charges; and/or any indirect or consequential loss or damage of any kind howsoever arising (including pure economic loss, costs, damages or charges), and whether caused by tort (including negligence), breach of contract or otherwise, in each case whether arising directly or indirectly under or in connection with the Agreement.

11.2 Subject to clause 11.1, Brainlabs' total liability to the Client in respect of all losses arising under or in connection with this SOW, whether in contract (including under any indemnity), tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the Monthly Fees paid or payable to Brainlabs in the 12 months immediately preceding the breach giving rise to the claim.