

# DATA PROCESSING AGREEMENT

**Revision: September 2020**

This data processing agreement is between 1Point Interactive (1Point) at 1789 Indian Wood Circle - Suite 140, Maumee, Ohio 43537 (the “**Data Processor**”) and the 1Point customer or trailer agreeing to the Terms of Services / Master Services Agreement (the “**Master Services Agreement**”) (such customer or trailer, the “**Data Controller**”) and incorporates the terms and conditions set out in the Schedule hereto (the “**Agreement**”).

Under the Master Services Agreement, Data Controller has appointed Data Processor to provide certain services (“**Services**”) to Data Controller. As a result of its providing the Services to Data Controller, Data Processor will store and process certain personal information of Data Controller as described below:

- a. The Customer Personal Data Processed by Data Processor will be subject to the following basic Processing activities: Operations necessary for the provision of the Products under the Master Services Agreement by Data Processor, including the storage, retrieval, use, disclosure, erasure, destruction and access of the Customer Personal Data
- b. The Customer Personal Data Processed by Data Processor shall concern only the following categories of Data Subjects: Customers of Data Controller based in the European Union whose information is provided to Data Processor for the purposes of the provision of the Products under the Master Services Agreement.
- c. The Customer Personal Data Processed by Data Processor includes and shall be limited to the following categories of data: (i) identification and contact information (such as name, email address, address, title and contact details) of Data Controller’s customers and other contacts; (ii) information gathered in connection with provision of services to Data Controller relating to Data Controller’s contacts, including (a) analytics and information about marketing emails sent by Data Processor on behalf of Data Controller (including open rates and similar usage data) and (b) device, browser and information related to Data Controller’s contacts identified through use of the Services
- d. The Customer Personal Data Processed by Data Processor does not contain special categories of Personal Data.

The Agreement is being put in place to ensure that Data Processor processes Data Controller’s personal data on Data Controller’s instructions and in compliance with applicable data privacy laws.

The Parties to this Agreement hereby agree to be bound by the terms and conditions in the attached Schedule as applicable with effect from 25 May 2018 or the effective date of the Master Services Agreement (whichever is later) (the “**Effective Date**”).

## **SCHEDULE STANDARD TERMS FOR PROCESSING AGREEMENT**

### **1. Definitions**

1.1 For the purposes of this Agreement, the following expressions bear the following meanings unless the context otherwise requires:

**“Applicable Data Protection Laws”** means the General Data Protection Regulation 2016/679 (“GDPR”) once it takes effect and any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding instrument of the Data Controller’s Member State which implements the GDPR, the Data Protection Directive 95/46/EC and the e-Privacy Directive 2002/58/EC (in each case as amended, consolidated, re-enacted or replaced from time to time);

**“Customer Personal Data”** means Personal Data provided by Data Controller to Data Processor for Processing on behalf of Data Controller pursuant to the Master Services Agreement;

**“Data Subject”** means the living individuals who are the subject of the Customer Personal Data;

**“Model Clauses”** means the standard contractual clauses for the transfer of Personal Data to data processors established in Third Countries set out in the Commission Decision of 5 February 2010 (C(2010) 593), as amended by EU Commission Implementing Decision 2016/2297 of 16 December 2016;

**“Personal Data”, “Process”, “Processed” or “Processing”** have the meaning given in the GDPR;

**“Regulator”** means the data protection supervisory authority which has jurisdiction over Data Controller’s Processing of Personal Data; and

**“Third Countries”** means all countries outside of the scope of the data protection laws of the European Economic Area (“EEA”), excluding countries approved as providing adequate protection for Personal Data by the European Commission from time to time.

## 2. Conditions of Processing

2.1 This Agreement governs the terms under which Data Processor is required to Process Customer Personal Data on behalf of Data Controller. In the event of any conflict or discrepancy between the terms of the Master Services Agreement and this Agreement, the terms of this Agreement shall prevail, to the extent of the conflict.

## 3. Data Processor’s Obligations

3.1 Data Processor shall only Process Customer Personal Data on behalf of Data Controller and in accordance with, and for the purposes set out in the documented instructions received from Data Controller from time to time. If Data Processor cannot provide such compliance for whatever reason (including if the instruction violates Applicable Data Protection Laws), it agrees to inform Data Controller of its inability to comply as soon as reasonably practicable.

3.2 Data Processor shall ensure that its personnel who are authorized to Process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

3.3 Data Processor shall implement and hold in force for the term of this Agreement specific technical and organizational security measures as required by the GDPR.

3.4 Data Processor shall notify Data Controller promptly upon receipt by Data Processor of a request from an individual seeking to exercise any of their rights under Applicable Data Protection Laws. Taking into account the nature of the processing, Data Processor shall, at Data Controller's expense, assist Data Controller by appropriate technical and organizational measures, for the fulfilment of Data Controller's obligation to respond to requests by Data Subjects to exercise their rights under Chapter III of the GDPR (including the right to transparency and information, the data subject access right, the right to rectification and erasure, the right to the restriction of processing, the right to data portability and the right to object to processing). Data Processor shall carry out a request from Data Controller to amend, correct, block, transfer or delete any of the Customer Personal Data to the extent necessary to allow Data Controller to comply with its responsibilities as a data controller.

3.5 Taking into account the nature of the Processing under the Master Services Agreement and the information available to Data Processor, Data Processor shall, insofar as possible and at Data Controller's expense, assist Data Controller in carrying out its obligations under Articles 32 to 36 of the GDPR and any other Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. Data Processor shall promptly notify Data Controller about any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Personal Data or any accidental or unauthorized access or any other event affecting the integrity, availability or confidentiality of Customer Personal Data.

3.6 Upon termination of the Processing of Personal Data by Data Processor and at the choice of Data Controller, Data Processor shall either (i) delete all Customer Personal Data; or (ii) return all Customer Personal Data to the Data Controller and delete existing copies unless applicable law requires storage of the Customer Personal Data.

3.7 Data Processor shall upon written request from Data Controller from time to time provide Data Controller with all information necessary to demonstrate compliance with the obligations laid down in this Agreement. Data Processor shall permit Data Controller or a third party authorized by it and which is not a competitor of Data Processor, to carry out audits and inspections of the processing of Customer Personal Data by the Data Processor, on reasonable notice in normal business hours. Data Processor may require a third party auditor to enter into a confidentiality agreement before permitting it to carry out an audit or inspection. Unless such audit or inspection has been necessitated by a material breach by Data Processor of the terms of this Agreement, such audits and inspections shall be carried out at Data Controller's expense.

3.8 Data Controller acknowledges and agrees that Data Processor may, or may appoint an affiliate or third party subcontractor to, Process the Data Controller's Personal Data in a Third Country, provided that it ensures that such Processing takes place in accordance with the requirements of Applicable Data Protection Laws. Data Controller hereby consents to Data Processor's access to Customer Personal Data from the United States to the extent necessary for Data Processor to provide the Services.

3.9 Where the Data Processor processes, accesses, and/or stores Customer Personal Data in any Third Country, Data Processor shall comply with the data importer's obligations set out in the Model Clauses, which are hereby incorporated into and form part of this Agreement. The processing details set out at paragraphs a) to d) of the first page of this Agreement shall apply for the purposes of Appendix 1 of the Model Clauses and the terms of the Security Policy apply for the purposes of Appendix 2 of the Model Clauses. Data Controller hereby grants Data Processor a mandate to

execute the Model Clauses, for and on behalf of Data Controller, with any relevant subcontractor (including affiliates) it appoints.

3.10 Data Controller acknowledges and agrees that Data Processor relies solely on Data Controller for direction as to the extent to which Data Processor is entitled to access, use and process Customer Personal Data. Consequently, Data Processor is not liable for any claim brought by Data Controller or a data subject arising from any action or omission by Data Processor to the extent that such action or omission resulted from Data Controller's instructions.

#### **4. Data Controller's Obligations**

4.1 Data Controller warrants that it has complied and continues to comply with the Applicable Data Protection Laws, in particular that it has obtained any necessary consents or given any necessary notices, and otherwise has a legitimate ground to disclose the data to Data Processor and enable the Processing of the Customer Personal Data by the Data Processor as set out in this Agreement and as envisaged by the Master Services Agreement.

4.2 Data Controller agrees that it will indemnify and hold harmless Data Processor on demand from and against all claims, liabilities, costs, expenses, loss or damage (including consequential losses, loss of profit and loss of reputation and all interest, penalties and legal and other professional costs and expenses) incurred by Data Processor arising directly or indirectly from a breach of this Clause 4 or any Applicable Data Protection Laws.

#### **5. Sub-Contracting**

5.1 Data Controller consents to the use by Data Processor of the Subcontractors of third party subprocessors. Data Processor ensures that it has a written agreement in place with all Subcontractors which contains obligations on the Subcontractor which are no less onerous on the relevant Subcontractor than the obligations on Data Processor under this Agreement.

#### **6. Termination**

6.1 Termination of this Agreement shall be governed by the Master Services Agreement, mutatis mutandis.

#### **7. Law and Jurisdiction**

7.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in all respects in accordance with the laws of the state of Indiana and each party hereby submits to the jurisdiction of the federal or state courts located in Lucas County, Ohio.