Customer GDPR Data Processing Agreement

This Customer Data Processing Agreement reflects the requirements of the European Data Protection Regulation ("GDPR") as it comes into effect on May 25, 2018. Rails Machine´s services offered to customers in the European Union are GDPR ready and this DPA provides you with the necessary documentation of this readiness.

This Data Processing Agreement ("DPA") is an addendum to the Terms of Service and Master Service Agreements between Rails Machine, LLC ("Rails Machine") and the Customer. Customer enters into this DPA on behalf of itself and, to the extent required under Data Protection Laws, in the name and on behalf of its Authorized Affiliates.

Scope and Applicability of this DPA - This DPA applies where and only to the extent that Rails Machine processes Personal Data on behalf of the Customer in the course of providing the Services and such Personal Data is subject to Data Protection Laws of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom. The parties agree to comply with the terms and conditions in this DPA in connection with such Personal Data.

Role of the Parties - As between Rails Machine and Customer, Customer is the Controller of Personal Data and Rails Machine shall process Personal Data only as a Processor on behalf of Customer. Nothing in the Agreement or this DPA shall prevent Rails Machine from using or sharing any data that Rails Machine would otherwise collect and process independently of Customer's use of the Services.

Customer Obligations - Customer agrees that (i) it shall comply with its obligations as a Controller under Data Protection Laws in respect of its processing of Personal Data and any processing instructions it issues to Rails Machine; and (ii) it has provided notice and obtained (or shall obtain) all consents and rights necessary under Data Protection Laws for Rails Machine to process Personal Data and provide the Services pursuant to the Agreement and this DPA.

Rails Machine Processing of Personal Data - As a Processor, Rails Machine shall process Personal Data only for the following purposes: (i) processing to perform the Services in accordance with the The Terms of Service and Master Service Agreement; (ii) processing to perform any steps necessary for the performance of the The Terms of Service and Master Service Agreement; and (iii) to comply with other reasonable instructions provided by Customer to the extent they are consistent with the terms of this Agreement and only in accordance with Customer's documented lawful instructions. The parties agree that this DPA and the The Terms of Service and Master Service Agreement set out the Customer's complete and final instructions to Rails Machine in relation to the processing of Personal Data and processing outside the scope of these instructions (if any) shall require prior written agreement between Customer and Rails Machine.

Nature of the Data - Rails Machine handles Data provided by Customer. Such Customer Data may contain special categories of data depending on how the Services are used by Customer. The Customer Data may be subject to the following process activities: (i) storage and other processing necessary to provide, maintain and improve the Services provided to Customer; (ii) to provide security, customer support, and technical support to the Customer.

Rails Machine Data - Notwithstanding anything to the contrary in the The Terms of Service and Master Service Agreement (including this DPA), Customer acknowledges that Rails Machine shall have a right to use and disclose data relating to and/or obtained in connection with the operation, support and/or use of the Services for its legitimate business purposes, such as billing, account management, technical support, product development and sales and marketing. To the extent any such data is considered personal data under Data Protection Laws, Rails Machine is the Controller of such data and accordingly shall process such data in compliance with Data Protection Laws.

Subprocessing

Authorized Sub-processors - Customer agrees that Rails Machine may engage a limited number of sub-processors to process Personal Data on Customer's behalf. These sub processors are limited in scope to only the data necessary to provide technical and billing services to the customer.

Sub-processor Obligations - Rails Machine shall: (i) enter into a written agreement with the Sub-processor imposing data protection terms that require the Sub-processor to protect the Personal Data to the standard required by Data Protection Laws; and (ii) remain responsible for its compliance with the obligations of this DPA and for any acts or omissions of the Sub-processor that cause Rails Machine to breach any of its obligations under this DPA.

Objection to Sub-processors - Customer may object in writing to Rails Machine's use of any data Sub-processor on reasonable grounds relating to data protection by notifying Rails Machine's support staff. Such notice shall explain the reasonable grounds for the objection. In such event, the parties shall discuss such concerns in good faith with a view to achieving commercially reasonable resolution.

Security

Security Measures - Rails Machine shall implement and maintain appropriate technical and organizational security measures to protect Personal Data from Security Incidents and to preserve the security and confidentiality of the Personal Data, in accordance with Rails Machine's security standards.

Confidentiality of Processing - Rails Machine shall ensure that any person who is authorized by Rails Machine to process Personal Data (including its staff, agents and subcontractors) shall be under an appropriate obligation of confidentiality (whether a contractual or statutory duty).

Security Incident Response - Upon becoming aware of a Security Incident, Rails Machine shall notify Customer without undue delay and shall provide timely information relating to the Security Incident as it becomes known or as is reasonably requested by Customer.

Updates to Security Measures - Customer acknowledges that the Security Measures are subject to technical progress and development and that Rails Machine may update or modify the Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services purchased by the Customer.

Security Reports and Audits - Rails Machine shall provide written responses (on a confidential basis) to all reasonable requests for information made by the Customer, including responses to information security and audit questionnaires, that Customer (acting reasonably) considers necessary to confirm Rails Machine's compliance with this DPA.

International Transfers
Processing Locations - Rails Machine stores EU Data in data centers located inside the United States, but may process data at the Customer's request outside both in and outside of the EU. All Customer Data may be transferred and processed in the United States and anywhere in the world where Customer, its Affiliates and/or its Sub-processors maintain data processing operations. Rails Machine shall implement appropriate safeguards to protect the Personal Data, wherever it is processed, in accordance with the requirements of Data Protection Laws.

Transfer Mechanism - To the extent Rails Machine processes or transfers (directly or via onward transfer) Personal Data under this DPA from the European Union, the European Economic Area and/ or their member states and Switzerland ("EU Data") in or to countries which do not ensure an adequate level of data protection within the meaning of applicable Data Protection Laws of the foregoing territories, the parties agree that Rails Machine shall be deemed to provide appropriate safeguards. Customer hereby authorises any transfer of EU Data to, or access to EU Data from, such destinations outside the EU subject to any of these measures having been taken.

Return or Deletion of Data
Upon deactivation of the Services, all Personal Data shall be deleted, save that this requirement shall not apply to the extent Rails Machine is required by applicable law to retain some or all of the Personal Data, or to Personal Data it has archived on back-up systems, which such Personal Data Rails Machine shall securely isolate and protect from any further processing, except to the extent required by applicable law.

Cooperation
To the extent that Customer is unable to independently access the relevant Personal Data within the Services, Rails Machine shall (at Customer's expense) taking into account the nature of the processing, provide reasonable cooperation to assist Customer by appropriate technical and organizational measures, in so far as is possible, to respond to any requests from individuals or applicable data protection authorities relating to the processing of Personal Data under the The Terms of Service and Master Service Agreement. In the event that any such request is made directly to Rails Machine, Rails Machine shall not respond to such communication directly without Customer's prior authorization, unless legally compelled to do so. If Rails Machine is required to respond to such a request, Rails Machine shall promptly notify Customer and provide it with a copy of the request unless legally prohibited from doing so.

To the extent Rails Machine is required under Data Protection Law, Rails Machine shall (at Customer's expense) provide reasonably requested information regarding Rails Machine's processing of Personal Data under the Agreement to enable the Customer to carry out data protection impact assessments or prior consultations with data protection authorities as required by law.

Miscellaneous
Except for the changes made by this DPA, the Customer's Master Service Agreement, Terms of Service, and Privacy Policy remains unchanged and in full force and effect. If there is any conflict between this DPA and the The Terms of Service and Master Service Agreement, this DPA shall prevail to the extent of that conflict.

This DPA is a part of and incorporated into the Terms of Service so references to Rails Machine's Terms of Service or Master Service Agreements shall include this DPA. In no event shall any party limit its liability with respect to any individual's data protection rights under this DPA or otherwise.

This DPA shall be governed by and construed in accordance with governing law and jurisdiction provisions in the Agreement, unless required otherwise by Data Protection Laws.