

Data Processing Agreement

This DATA PROCESSING AGREEMENT (the “DPA”) is entered into by and between:

1) DOTPERFORMANCE LIMITED a company incorporated in the Isle of Man with company number 118809C having its registered office at The Chapel, Main Road, Onchan, Isle of Man IM3 4HG (“DotPerformance”)

2) The the entity executing the Agreement (the “Customer”).

Each of DotPerformance and the Customer is referred to as a “Party” and together as the “Parties”.

Background

(a) DotPerformance is a technology company specialised in assisting its Customers with branding, digital experience, workflow automation and customer acquisition.

(b) Customer has entered into the agreement with DotPerformance in order to use the Service in its business operations, which forms the subject matter of the processing of Personal Data under this DPA.

(c) Customer instructs DotPerformance on what data it collects, how it processes it and how long its kept for, rendering the Customer the Controller, whilst DotPerformance may qualify as Data Processor under the applicable data protection laws.

In light of the above, DotPerformance and Customer have agreed on the following terms and conditions set out in this written DPA concerning the processing of Personal Data under this DPA.

IT IS AGREED

1. Definitions

Whenever used in this Agreement, any schedules, exhibits, or addenda to this Agreement, the following terms shall have the meanings assigned below. Other capitalized terms used in this Agreement are defined in the context in which they are used.

'Effective Date' means the date this agreement was entered into and becomes fully executed by both parties.

'Termination' means the pausing of servers and consequent destruction of Personal Data on those servers or devices on which the Processor has the ability to conduct 'Processing'.

'Termination Date' means the date this agreement reached Termination. The agreement will be automatically terminated when 'Termination' occurs.

'Controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

'Processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller;

'Processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location

data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

'Pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

'Consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;

'Personal Data Breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed; This does not include unsuccessful security incidents.

'Web Application' means an application installed by DotPerformance and hosted on servers managed by DotPerformance that are accessed via web browser.

2. General Terms

2.1 DotPerformance may under this DPA process Personal Data on behalf of the Customer according to the instructions of the Customer;

2.2 The Personal Data is and shall remain the property of the Customer, and the Customer takes full responsibility for the Personal Data, including that such data does not infringe any third-party rights or in any other way violate Applicable Laws;

- 2.3 This DPA is intended to constitute and shall be interpreted as a written data processing agreement between the Customer and DotPerformance pursuant to applicable Data Protection Laws;
- 2.4 The parties agree that this agreement is the Customers complete and final instructions to DotPerformance in relation to processing Personal Data;
- 2.5 Processing outside of these terms will require prior agreement between the Customer and DotPerformance, executed by a Director of either party;
- 2.6 This agreement is effective from the Effective Date until the Termination Date;
- 2.7 DotPerformance reserves the right to update the terms of this DPA at any time;
- 2.8 This agreement applies when Personal Data is Processed by DotPerformance on the instructions of the Customer;
- 2.9 This agreement does not apply to data that has been subject to Pseudonymisation.

3. General Undertakings from DotPerformance

DotPerformance undertakes to:

- 3.1. only act on the written instructions of the Customer;
- 3.2. ensure that DotPerformance Personnel processing the data are subject to a duty of confidence;
- 3.3. only engage SubProcessors with the prior consent of the controller and under a written contract;
- 3.4. tell the Customer immediately if it is knowingly asked to do something infringing the GDPR or other data protection law of the EU or a member state.

- 3.5. notify any successful Personal Data Breaches to the Customer;
- 3.6. assist the Customer in providing subject access and allowing data subjects to exercise their rights under the GDPR;
- 3.7. assist the Customer in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- 3.8. delete or return all personal data to the Customer as requested at Termination; and
- 3.9. submit to audits and inspections, provide the Customer with whatever information it needs to ensure that they are both meeting their obligations
- 3.10. co-operate with supervisory authorities;
- 3.11. to employ a Data Protection Officer

4. General Undertakings of the Customer

The Customer, having chosen DotPerformance to process Personal Data on its behalf, undertakes that:

- a. the Personal Data has been collected and processed in accordance with the Data Protection Act 2018; and
- b. the processing of Personal Data has been notified to the Information Commissioner as required under the Data Protection Act 2018; and
- c. it is solely responsible for reviewing information and communications made available by DotPerformance relating to data security and for determining whether DotPerformance services meet the Customer requirements.

5. Manual Database Operations

From time to time and subject to remuneration the Customer may instruct DotPerformance to undertake Manual Database Operations, this may include:

- a. Accessing Personal Data

- b. Viewing Personal Data
- c. Editing Personal Data
- d. Erasing Personal Data
- e. Backing Up Personal Data
- f. Querying Personal Data
- g. Importing Personal Data
- h. Exporting Personal Data
- i. Transferring Personal Data
- j. Transmitting Personal Data

In this scenario and in addition to General Undertakings from DotPerformance, DotPerformance, having agreed to process Personal Data on behalf of the Customer undertakes that it will:

- take appropriate measures to ensure the security of processing appropriate to the type and nature of Manual Database Operations

6. Automated Database Operations

At a point in time the Customer may instruct DotPerformance to automate database operations, for example:

- a. Scripting web forms to collect Personal Data in a database
- b. Scripting a cron job to run a script against a data set that contains Personal Data
- c. Automatically purge Personal data on a set schedule
- d. Integrating with a third party API where Personal Data is transmitted
- e. Scheduling back-ups that contain Personal Data
- f. Transmit Personal Data via email or SMS

In this scenario and in addition to General Undertakings from DotPerformance, DotPerformance, having agreed to process Personal data on behalf of the Customer undertakes that it will:

- take appropriate measures to ensure the security of processing appropriate to the type and nature of Automated Database Operations according to DotPerformance Security Standards at that point in time

In this scenario the Customer undertakes that it will:

- Be responsible for the vetting of any third party API's vendors it instructs DotPerformance to integrate with
- Test and accept the works at that point in time
- Validate or request DotPerformance to validate the automated database operations on an ongoing basis
- Invest in Data Security Services to ensure the ongoing security of Automated Database Operations

7. Managed Web Hosting Operations

If Customer engages the Managed Hosting Services of DotPerformance and on those Services a web application is hosted on behalf of the Customer, DotPerformance will use its SubProcessor Amazon Web Services (AWS) and relies on their reputable network security, security policies and certifications.

In this scenario and in addition to General Undertakings from DotPerformance, DotPerformance, having agreed to process Personal Data on behalf of the Customer undertakes that it will:

- control access details to AWS;
- ensure that DotPerformance Personnel accessing AWS are subject to a duty of confidence;
- take appropriate measures to ensure the security of processing whilst accessing AWS;
- Forward any communications from AWS about successful Personal Data Breaches to the Customer.

In this scenario the Customer undertakes that it will:

- Invest in Data Security Services to ensure the hosting receives necessary security patches and updates

8. Broadcasting Email and SMS Operations

At a point in time the Customer may instruct DotPerformance design, develop and send mass communications via email or SMS whether for operational or marketing purposes.

This may involve the transfer of Personal Data to a SubProcessor such as an Email Service Provider or SMS Platform Provider.

In this scenario and in addition to General Undertakings from DotPerformance, DotPerformance undertakes to:

- take appropriate measures to ensure the security of processing whilst accessing the SubProcessor;
- ensure that DotPerformance Personnel accessing AWS are subject to a duty of confidence;

In this scenario the Customer undertakes:

- that they have the appropriate legal consent to send the Data Subject that broadcast

9. Application Security

At a point in time, DotPerformance develops Web Applications according to Customer instructions which may or may not collect and store Personal Data.

These Web Applications are highly customised and privately hosted and specific to the Customers business operation.

DotPerformance undertakes that:

- Reasonable skill and care was taken at the point in time in regard to defending against a Personal Data Breach that the web application was released to the Customer or the public

DotPerformance does not undertake that the web application provided will not be vulnerable to a Personal Data Breach indefinitely, such is the moving landscape of Data Security as new threats are exposed.

DotPerformance cannot force the Customer to continually invest in appropriate Data Security measures and the Customer recognises that the responsibility for ensuring ongoing security of the Web Application is the Customers responsibility.

Offer of Data Security Services

To help minimise the threat of a Personal Data Breach, DotPerformance offers the following Data Security Services (for a fee) to the Customer:

- a. Web Applications can be hosted on Amazon Web Services (AWS) and relies on their reputable network security, security policies and certifications;
- b. Web Applications can be scanned for vulnerabilities using a reputable software scanning supplier;
- c. Web Applications can be subjected to penetration testing by third parties subject to prior notification from the Customer of an imminent penetration test;
- d. Databases can be encrypted at rest;
- e. Personal data can be automatically purged at individual table level and at a frequency instructed by the Customer;
- f. SSL Certificates can be installed and renewed;
- g. User access can be limited by IP addresses that are provided by the Customer;
- h. PHP versions can be upgraded to ensure the web application receives security patches;
- i. CMS versions can be upgraded to ensure the web application receives security patches;
- j. User access can be limited using email address and password and section access to the web application can be controlled by the Customer;
- k. Sensitive fields in the database can be encrypted;
- l. The Customer can restrict CSV downloads and uploads containing Personal Data;

- m. Administrative access to servers can be heavily restricted;
- n. Any number of other security measures that can be reasonably delivered by DotPerformance are available at the Customer's Request;
- o. At anytime the Customer may request to purchase ongoing Data Security Services to ensure the risk of a Personal Data Breach is diminished;
- p. Back-ups can be taken hourly, weekly and monthly;
- q. Double authentication can be installed against user accounts;
- r. The Customer can instruct what data should be transmitted and how.

The Customer can engage DotPerformance on each Data Security Service independently or collectively.

If engaged on any of these Data Security Services (in writing), DotPerformance warrants to the Customer that each service will be delivered with reasonable skill and care according to DotPerformance Security Standards at that point in time..

DotPerformance and no other supplier can warrant that a web application will never be vulnerable to or suffer from a Data Security Breach but by using these Data Security Services the risk of a Personal Data Breach is significantly reduced.

If the Customer fails to engage DotPerformance on these Data Security Services DotPerformance automatically puts the Customer on notice that the web application may be more vulnerable to a Data Security Breach than it would have been if the Customer had taken adequate and reasonable measures to protect Personal Data.

In addition if the Customer fails to renew these Data Security Services on an ongoing basis then DotPerformance automatically puts the Customer on notice that the web application may be more vulnerable to a Data Security Breach than it would have been if the Customer had taken adequate and reasonable measures to protect Personal Data.

In using the Web Application the Customer warrants to DotPerformance;

1. Its users do not share password information with others;
2. Its users use secure passwords;
3. its users update their passwords regularly;
4. its users do not use common or guessable passwords;

5. Its users can only access parts of the web application that are necessary for their role in operations;
6. its users are disabled after leaving the organisation of the Customer;
7. its users are trained on how to identify phishing attacks;
8. the devices and networks its users use to access the web application are secure;
9. upload and downloads containing Personal Data are executed by its users in a secure way
10. its users processing the data are subject to a duty of confidence;
11. Personal Data is securely transmitted;
12. appropriate measures are taken to ensure the security of processing.

DotPerformance accepts no liability from a Personal Data Breach where the Customer has failed to take the appropriate security measures as outlined above.

10. Authorised Subcontractors

Customer agrees that DotPerformance may use Subcontractors (other companies personnel) to fulfil its contractual obligations under these terms or to provide certain services on its behalf.

Where DotPerformance authorises a Subcontractor to access Personal Data it will do so:

- i) only to the extent necessary to fulfil its service offerings
- ii) will impose contractual obligations in writing upon the Subcontractor regarding confidentiality, data protection, data security and audit rights.

The Customer can make a request to DotPerformance to provide information on who those Subcontractors are and may chose not to allow those Subcontractors access to Personal Data.

11. Authorised Sub Processors

DotPerformance is given general authorisation to engage third-parties to process the Personal Data ("SubProcessors") without obtaining any further written, specific authorisation from the Customer, provided that DotPerformance notifies the Customer in writing about the identity of a potential SubProcessor (and its processors, if any) before any agreements are made with the relevant SubProcessors and before the relevant SubProcessor processes any of the Personal Data.

If the Customer wishes to object to the relevant SubProcessor, DotPerformance shall give notice hereof in writing within seven (7) calendar days from receiving the notification from the Customer.

Absence of any objections from the Customer shall be deemed a consent to the relevant SubProcessor.

DotPerformance is at the time of entering into this Data Processor Agreement using the SubProcessors listed in Appendix 1.

If DotPerformance initiates sub-processing with a new SubProcessor, such new SubProcessor shall be added to the list in Appendix 1 under paragraph 2.

If the Customer instructs DotPerformance to integrate with other third parties, whom may be SubProcessor or Processor, DotPerformance is not required to list them here as these are not classified as DotPerformance Sub Processors and DotPerformance accepts no liability for those SubProcessors.

12. Indemnities

a. The Customer and DotPerformance will indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss resulting from its breach of any of the provisions of this agreement.

b. The parties acknowledge that any Data Subject who has suffered damage as a result of any breach of the obligations of any party pursuant to the Data Protection Act 2018 may be entitled to receive compensation for the damage suffered according to law.

13. Termination

This agreement will terminate on the Termination Date when Termination occurs.

In the event of termination of this agreement, DotPerformance must return all personal data and all copies of the personal data, the subject of this agreement to the Customer forthwith or, at the Customer's choice, will destroy all copies of the same and confirm to the Customer that it has done so, unless DotPerformance is prevented by law from destroying all or part of such data.

14. Governing Law

This agreement shall be governed by the laws of the Isle of Man including for the purposes of this Agreement the Data Protection Act 2018 and the Freedom of Information Act 2015 and any successor legislation.

Appendix 1

1. Approved SubProcessors

1.1 The following SubProcessors shall be considered approved by the Customer at the time of entering into this Data Processor Agreement:

(i) Hosting supplier in case of Managed Web Hosting service: Amazon Web Services Inc (Dublin)

(ii) Supplier of Email Service in case of web application email transmissions: Mandrill

(iii) Supplier of SMS Services in case of web application SMS transmissions: TextLocal

2. New SubProcessors

2.1 The following SubProcessors have been added and communicated to the Data Controller prior to the relevant sub-processing:

(i) [insert when relevant]

Signatures of Agreement

Signed

Andrew Orton

On behalf of DotPerformance

On the

Signed

Print Name

On behalf of the Customer:

Company Name

Address

On the