

DATA PROCESSING AGREEMENT

The following data processing agreement (hereinafter the “Data Processing Agreement” or this “Agreement”) is entered into between you (“the Controller”) and DynamicWeb North America (“the Processor”). The Controller and the Processor are individually referred to as “Party” and collectively as the “Parties”.

1. Definitions

- 1.1. As used and defined herein, the following terms have the following meanings:
 - 1.1.1. **”Contract”** means any end user license agreement and/or agreement concerning the provision of, maintenance services, support services, hosting services and/or other services provided to you by or on behalf of the Processor in relation to Dynamicweb North America.
 - 1.1.2. **”Data Protection Legislation”** means the data protection legislation applicable at any given time in the European Union, generally including without limitation any statutes, rules and binding guidelines from public authorities applicable to the processing of Personal Data and particularly the General Data Protection Regulation (“GDPR”) (EU) 2016/679, which took effect on May 25, 2018.
 - 1.1.3. **”Data Subject”** has the meaning set forth in the GDPR.
 - 1.1.4. **”Personal Data”** means any kind of information relating to an identified or identifiable natural person. If confidential data other than Personal Data is processed under the Agreement, any reference to Personal Data includes also such other confidential data.
 - 1.1.5. **”Services”** means the products and/or services to be supplied/provided by the Processor under the Contract (as defined below).
- 1.2. Any reference to a legislative provision will be deemed to include any subsequent re-enactment or amending provision.

2. Background

- 2.1. This Agreement forms an integral part of the Contract. As part of the provision of the Services, the Processor may process Personal Data on behalf of the Controller.
- 2.2. This Agreement has been entered into by the Parties in order to regulate any such processing of Personal Data by the Processor and to ensure that such processing is carried out in compliance with the Data Protection Legislation.

3. General requirements

- 3.1. the Processor may process the Personal Data only in compliance with the Controller’s documented written instructions.
- 3.2. The data processing operations performed by the Processor on behalf of the Controller under this Agreement is the processing of Personal Data that may occur in connection with the provision of the Services rendered under the Contract, including but not limited to maintenance services, support services, consultancy services and/or cloud services (including cloud services provided by third parties). The Personal Data processed under this Agreement is the data processed by the Controller, including but not limited to customer data and transactional data. the Processor will not process special categories of Personal Data and/or Personal Data relating to criminal convictions or offences on behalf of the Controller under this Agreement.
- 3.3. the Processor is entitled to process the Personal Data only for the purpose of providing the Services and only to such an extent and in such a manner as is necessary in order to provide the Services.
- 3.4. The provisions of this Agreement apply to every employee of the Processor. the Processor warrants that its employees shall comply with this Agreement.

4. Disclosure of Personal Data.

4.1. the Processor may not in any way modify, amend or alter the contents of the Personal Data or disclose the Personal Data to any third party, unless

4.1.1. explicitly provided for in this Agreement;

4.1.2. the Controller has otherwise authorized and/or instructed the Processor in writing to do so; and/or

4.1.3. such disclosure is required by applicable legislation, subpoena, judicial, administrative or arbitral order of a court or arbitration tribunal or an executive or administrative agency, regulatory agency, or other governmental or regulatory authority which relates to the Processing of Personal Data to which the Processor is subject.

4.2. If the disclosure falls within Section 4.1.3, the Processor will promptly pass on such Disclosure Request to the Controller without responding to it, unless a response is required by applicable law or regulation (including without limitation a requirement provide an acknowledgement of receipt to the authority that made the Disclosure Request).

4.3. At the Controller's request, the Processor will provide the Controller with reasonable information in its possession that may be responsive to the Disclosure Request and any assistance reasonably required for the Controller to respond to the Disclosure Request in a timely manner.

5. Security

5.1. the Processor shall implement appropriate technical and organizational security measures to protect the Personal Data against unauthorized or unlawful processing and against accidental or unlawful loss, destruction, damage, alteration or disclosure.

5.2. When determining the appropriate technical and organizational security measures, the Processor shall take account of the current available technology and technological developments; the costs of implementation; the nature, scope, context and purposes of the processing; and the risks of varying likelihood and severity for rights and freedoms of natural persons.

5.3. the Processor shall comply with and ensure compliance by its employees with the special data security requirements applying to the Processor, including without limitation (i) all security measure requirements notified to the Processor in writing, (ii) the Processor's own internal security standards, and (iii) the national security measure requirements of the country in which the Processor is established, or in the country where the data processing takes place.

5.4. the Processor shall keep the Personal Data confidential. the Processor shall take reasonable steps to ensure that every employee, agent or contractor who has access to the Personal Data is reliable and trustworthy, and that they are all subject to confidentiality undertakings, professional secrecy or statutory non-disclosure obligations. the Processor shall also ensure in each case that access is strictly limited to those persons who need to access the relevant Personal Data to carry out the duties assigned to them by the Processor, and that this is strictly necessary for the provision of the Services, and that all such persons: (i) are informed of the confidential nature of the Personal Data; (ii) have received appropriate training in relation to the Data Protection Legislation; and (iii) are aware of the Processor's obligations under this Agreement.

5.5. A description of the technical and organizational security measures implemented by the Processor, including a specification of the location(s) where the Personal Data is processed and/or stored is available at www.dynamicweb.com/gdpr.

6. Transfer of Personal Data to third countries

6.1. the Processor may process or access the Personal Data from or transfer the Personal Data to any third country in accordance with the requirements set out in Section 8.

6.2. If Personal Data is transferred to a third country, the Processor shall ensure that the transfer is effected on a legal basis, including without limitation in accordance with the terms of the European

Commission model contracts for the transfer of personal data to third countries, before such transfer is made by the Processor.

7. Assistance

7.1. the Processor shall assist the Controller in dealing with requests from Data Subjects in connection with the Data Subject's exercise of his/her rights under the Data Protection Legislation, including without limitation requests for access, rectification, restriction of processing, deletion or data portability.

7.2. the Processor shall, without undue delay after becoming aware thereof, notify the Controller in writing of any request from a Data Subject for the exercise of his/her rights received directly from the Data Subject or from a third party.

7.3. the Processor shall implement adequate technical and organizational measures to assist the Controller in the performance of its obligation to respond to such Data Subject requests. the Processor shall provide all information requested by the Controller within the reasonable time stipulated by the Controller.

7.4. the Processor shall, immediately upon becoming aware thereof, notify the Controller in writing of any suspected or confirmed (i) personal data breach; (ii) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data processed by the Processor under this Agreement; or (iii) any other non-compliance with the Processor's obligations under this Agreement. the Processor shall cooperate with and provide assistance to the Controller in connection with the management of the personal data breach.

7.5. the Processor shall assist the Controller in complying with any other obligations imposed on the Controller under the Data Protection Legislation, including without limitation upon request providing the Controller with all necessary information required to make an impact assessment.

7.6. the Processor shall be entitled to remuneration for the services rendered in relation to this Section 6.2 in accordance with the Processor's standard hourly rates from time to time.

8. Sub-processing

8.1. the Processor may appoint any third party to process Personal Data on behalf of the Processor ("Sub-Processor") without the prior written consent of the Controller.

8.2. the Processor's appointments of Sub-Processors under Section 8.1 is conditional upon the Processor

8.2.1. carrying out adequate due diligence on each Sub-Processor to ensure that it is capable of providing the level of protection for the processing of Personal Data as is required by this Agreement and the Data Protection Legislation; and

8.2.2. including terms in the contract between the Processor and each Sub-Processor which, at a minimum, impose the same obligations on the Sub-Processor as those imposed on the Processor under this Agreement.

9. Compliance with legislation

9.1. The Controller shall ensure that there is a legal basis for the processing of the Personal Data contained in the Controller's instructions to the Processor.

9.2. The Controller acknowledges that the Processor is reliant on the Controller for direction as to the extent to which the Processor is entitled to use and process the Personal Data on behalf of the Controller. Consequently, the Processor will not be liable for any claim brought by a Data Subject arising from any action or omission by the Processor, to the extent that such act or omission resulted directly from performing the Services in accordance with the Controller's instructions, and the Controller shall indemnify the Processor, its and its directors, officers, employees, agents, stockholders, affiliates, subcontractors and customers from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to or result from any act or omission of the Controller in connection with

the Controller's handling of Personal Data of Data Subjects and, without limitation, the Controller's failure to comply with Section 9.1.

9.3. The limitations on the Processor's liability applicable under the Contract are also applicable under this Agreement.

10. Compliance audits and statements

10.1. At the request of the Controller, the Processor shall, within a reasonable time, provide all information necessary for the Controller, a third party auditor mandated by the Controller, or a public authority to verify compliance with this Agreement and/or the Data Protection Legislation.

10.2. the Processor shall, once per year and with reasonable prior written notice, cooperate in such compliance audit, inspection and/or review carried out by the Controller, a third party auditor mandated by the Controller, or by a public authority concerning the processing of Personal Data under this Agreement undertaken by the Processor and any Sub-Processors.

10.3. If the Processor considers an instruction under this Section 10 to constitute a breach of the Data Protection Legislation, the Processor shall promptly notify the Controller thereof in writing.

10.4. If the statement indicates any failure in connection with the Processor's processing of Personal Data to comply with the Data Protection Legislation, the Processor shall without undue delay remedy such failure.

10.5. the Processor will receive remuneration for the services rendered in relation to this Section 9.3 in accordance with the Processor's standard hourly rates from time to time, save for the services rendered under Sections 10.3 and 10.4 for which no separate remuneration applies.

11. Term and termination

11.1. This Agreement is effective on the effective date of the Contract and shall remain in effect until said Contract is terminated for any reason.

11.2. Both Parties are entitled to terminate this Agreement for convenience on the same terms as those which apply to the Contract.

11.3. This Agreement is to apply as between the Parties for as long as the Processor processes Personal Data on behalf of the Controller.

11.4. Upon termination of this Agreement, for whatever reason, the Processor shall,

11.4.1. except as provided in Section 11.4.3 below, cease processing the Personal Data;

11.4.2. as requested by the Controller, (i) return to the Controller all Personal Data which is in its possession or control and all copies thereof, or (ii) destroy all copies of the same and certify to the Controller that it has done so, unless the Processor is prevented by applicable law or any public authority from destroying or returning all or part of the Personal Data, in which case the Processor shall keep such data confidential, continue to process them in accordance with the terms of this Agreement and must not perform any processing other than what is necessary in order to comply with the requirements of such applicable law or the relevant public authority; and

11.4.3. at the Controller's request and upon payment of a special charge to the Processor, provide the necessary transitional services to the Controller, including cooperating in good faith and as quickly as possible to facilitate the transfer of the performance of the data processing to a new data processor or back to the Controller.

11.5. If the Processor has not received any instructions regarding the return or the deletion of the Personal Data from the Controller one month after the termination of this Agreement, the Processor is entitled to delete the Personal Data.

12. Miscellaneous

12.1. Assignments. Except as provided for in Section 7.6, the Processor may not assign or otherwise transfer any or all of the Processor's rights or obligations under this Agreement to any third party (or attempt to do so) without the prior written consent of the Controller.

12.2. Entire Agreement. The Parties agree that this Agreement constitutes the entire agreement and understanding between the Parties in respect of the subject matter hereof and supersedes any previous agreement between the Parties relating to the subject matter hereof. In the event of any discrepancy between the provisions of this Agreement and the provisions of the Contract, the provisions of the Contract will prevail. Notwithstanding the above, the provisions of this Agreement will not apply where the Processor is subject to stricter obligations, e.g. when using the European Commission model contracts for the transfer of personal data to third countries.

12.3. Amendments. The terms, provisions, obligations or conditions of this Agreement may not be waived or amended except by a written instrument signed by both Parties.

12.4. Severability If any provision of this Agreement is or becomes illegal, void, invalid or unenforceable, such provision must be severed from the other terms and conditions, which will continue to be valid and enforceable to the fullest extent permitted by law.

12.5. Notices. All notices required to be given under this Agreement must be in writing or published at www.dynamicweb.com/gdpr.

12.6. Governing Law. This Agreement is governed by and will be construed in accordance with the law of the State of California, without regard to its conflict of laws rules.

12.7. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

12.8. Survival. Sections 9.1, 10.2 and 12 shall survive the termination or cancellation of this Agreement for any reason.