

MailPoet Data Processing Agreement

This Data Processing Agreement ("Agreement") forms part of the Contract for Services under the MailPoet [Terms and Conditions](#) and [Privacy Notice](#) (the "Principal Agreement"). This Agreement is an amendment to the Principal Agreement and is effective upon its incorporation to the Principal Agreement, which incorporation may be specified in the Principal Agreement or an executed amendment to the Principal Agreement. Upon its incorporation into the Principal Agreement, this Agreement will form a part of the Principal Agreement.

The term of this Agreement shall follow the term of the Principal Agreement. Terms not defined herein shall have the meaning as set forth in the Principal Agreement.

WHEREAS

- (A) Your company act as a Data Controller (the "Controller").
- (B) Your company wishes to subcontract certain Services (as defined below), which imply the processing of personal data, to Wysija SARL, acting as a Data Processor (the "Processor").
- (C) The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (D) The Parties wish to lay down their rights and obligations.

IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

1.1 Unless otherwise defined herein, capitalized terms and expressions used in this DPA shall have the following meaning:

- 1.1.2 "Company Personal Data" means any Personal Data Processed by a Contracted Processor on Controller's behalf pursuant to or in connection with the Principal Agreement;
- 1.1.3 "Contracted Processor" means a Subprocessor;
- 1.1.4 "Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 1.1.5 "EEA" means the European Economic Area;
- 1.1.6 "EU Data Protection Laws" means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.7 "GDPR" means EU General Data Protection Regulation 2016/679;

1.1.8 "Data Transfer" means:

1.1.8.1 a transfer of Company Personal Data from Controller to a Contracted Processor; or

1.1.8.2 an onward transfer of Company Personal Data from a Contracted Processor to a Subcontracted Processor, or between two establishments of a Contracted Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

1.1.9 "Services" means end-to-end encrypted email services. The Service is described more in detail in Schedule 1.

1.1.10 "Subprocessor" means any person appointed by or on behalf of Processor to process Personal Data on behalf of Controller in connection with the Agreement.

1.2 The terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

2. Processing of Company Personal Data

2.1 Processor shall

2.1.1 comply with all applicable Data Protection Laws in the Processing of Company Personal Data; and

2.1.2 not process Company Personal Data other than on Controller's documented instructions.

2.2 Controller instructs Processor to process Company Personal Data to provide the Services and related technical support.

3. Processor Personnel

Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor shall in relation to the Company Personal Data implement appropriate technical and organizational measures to ensure a level of security

appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4.2 In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

5. Subprocessing

5.1 Processor shall not appoint (or disclose any Company Personal Data to) any Subprocessor unless required or authorized by Controller.

6. Data Subject Rights

6.1 Taking into account the nature of the Processing, Processor shall assist Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Controller obligations, as reasonably understood by Controller, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2 Processor shall:

6.2.1 promptly notify Controller if it receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and

6.2.2 ensure that it does not respond to that request except on the documented instructions of Controller or as required by Applicable Laws to which the Processor is subject, in which case Processor shall to the extent permitted by Applicable Laws inform Controller of that legal requirement before the Contracted Processor responds to the request.

7. Personal Data Breach

7.1 Processor shall notify Controller without undue delay upon Processor becoming aware of a Personal Data Breach affecting Company Personal Data, providing Controller with sufficient information to allow Controller to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2 Processor shall co-operate with Controller and take reasonable commercial steps as are directed by Controller to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation

8.1 Processor shall provide reasonable assistance to Controller with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Controller reasonably considers to be required by article 35 or 36 of

the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Company Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9. Deletion or return of Company Personal Data

9.1 Subject to this section 9 Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of Company Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Company Personal Data.

9.2 Processor shall provide written certification to Controller that it has fully complied with this section 9 within 10 business days of the Cessation Date.

10. Audit rights

10.1 Subject to this section 10, Processor shall make available to Controller on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by Controller or an auditor mandated by Controller in relation to the Processing of the Company Personal Data by the Contracted Processors.

10.2 Information and audit rights of Controller only arise under section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

11. Data Transfer

11.1 The Processor may not transfer or authorize the transfer of Data to countries outside the EU and/or the European Economic Area (EEA) without the prior written consent of Controller. If personal data processed under this Agreement is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on EU approved standard contractual clauses for the transfer of personal data.

12. General Terms

12.1 Confidentiality. Each Party must keep any information it receives about the other Party and its business in connection with this Agreement ("Confidential Information") confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

- (a) disclosure is required by law;
- (b) the relevant information is already in the public domain.

12.2 Notices. All notices and communications given under this Agreement must be in writing and will be sent by email. Controller shall be notified by email sent to the address related to its use of the Service under the Principal Agreement. Processor shall be notified by email sent to the address: gdpr@mailpoet.com.

13. Governing Law and Jurisdiction

13.1 This Agreement is governed by Swiss law.

13.2 Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of France

Schedule 1: Service Description and Pricing

The Service offered by Wysija SARL is MailPoet ("MailPoet").

MailPoet offers a fully featured newsletter and email solution with an easy to use interface that is used by tens of thousands of users around the world. MailPoet also provides an optional sending service that is both free and paid. MailPoet is solely used on WordPress websites, and the plugin is distributed as an open source software under the GPL license.

Plans:

- MailPoet free plugin provides the plugin that has the entire suite of tools and is [distributed for free](#) on the WordPress plugin repository. Users are not tracked by MailPoet, unless they [opt-in to share data](#).
- MailPoet Sending Plans and Premium offers additional statistics and optional sending with the MailPoet Sending Service for high quality deliverability. This requires users to create an account with MailPoet and abide to [our terms](#) and our [anti-spam policy](#).

Schedule 2: Data Processing and Security

1. Description of the data processing carried out on behalf of the Controller

In addition to the information provided elsewhere in the Agreement, the Parties wish to document the following information in relation to the data processing activities.

The data processing performed by the Data Processor on behalf of the Controller relates to the service of end-to-end email communication. The data processing details and procedure can be found in the Company's [Privacy Notice](#).

Kim Gjerstad
MailPoet co-founder