

# 12d Synergy Data Processing Addendum

## 12d Synergy Data Processing Addendum

This Data Processing Addendum and Standard Contractual Clauses supplement the agreement/s between 12d Synergy Pty Ltd and the Customer, governing Customer's use of the 12d Synergy Services (the "**Agreement**").

### 1. Definitions

"**12d Synergy Services**" means the Service and/or Application provided by 12d Synergy in accordance with the Agreement entered into between 12d Synergy Pty Ltd and the recipient of 12d Synergy Services (the "**Customer**");

"**EU GDPR**" means the General Data Protection Regulation (EU) 2016/679;

"**Privacy Laws**" means all applicable data protection and privacy legislation in force from time to time in the European Union, the United Kingdom, the United States, New Zealand, and Australia, including the EU GDPR, the UK GDPR, the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the California Consumer Privacy Act of 2018 and the Privacy Act 1988 (Cth) (including the Australian Privacy Principles in Schedule 1 of that Act) as amended, consolidated or replaced from time to time;

"**Restricted Transfer**" means a transfer of personal information to a country, a territory or specified sector within a country that is (but for the operation of this Agreement): (i) not recognised as providing an adequate level of protection for personal Information under the Privacy Laws (as applicable to the personal information transfer); and (ii) is not subject to any safeguards or derogations that would permit the transfer of the personal information to the country, territory or sector in accordance with the Privacy Laws (as applicable to the personal information transfer).

"**Third Party Hosting Provider**" means Microsoft Azure or any other provider of hosting services used by Us in the delivery of 12d Synergy Services, with such hosting being provided in Australia;

"**UK GDPR**" means the EU GDPR as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and 2020;

"**We**," "**Us**" or "**Our**" means 12d Synergy Pty Ltd

"**You**" or "**Your**" means the Customer; and

"**Your Data**" means all electronic data or information provided by Customer to 12d Synergy in the course of using the 12d Synergy Services.

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1. Each party will comply with all applicable requirements of the Privacy Laws. This Data Processing Addendum is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Privacy Laws.
2. Each party will have in place appropriate policies and procedures to comply, and ensure that its personnel comply, with their respective obligations under all applicable Privacy Laws.
3. The parties acknowledge that:
  - (i) if We process any personal data on Your behalf when performing Our obligations under the Agreement, You are the controller of the personal data and We are the processor of the personal data for the purposes of the Privacy Laws;
  - (ii) **Schedule A** sets out the scope, nature and purpose of processing by Us, the duration of the processing and the types of personal data and categories of data subject; and
  - (iii) the personal data may be used, processed, transferred or stored outside the European Economic Area and the United Kingdom, or the country where You are located, in order to carry out the 12d Synergy Services and Our other obligations under the Agreement.
4. You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of the personal information to Us for the duration and purposes of the Agreement so that We may lawfully use, process, transfer and store the personal information in accordance with the Agreement on Your behalf.
5. We shall, in relation to any personal information processed in connection with the performance by Us of our obligations under the Agreement:
  - (i) process that personal information only on Your documented written instructions unless We are required by the laws of Australia, by the laws of any member of the European Union or by the laws of the European Union applicable to Us and/or Domestic UK Law (where Domestic UK Law means the Privacy Laws and any other law that applies in the UK) to process personal information (Applicable Laws). Where We are relying on Applicable Laws as the basis for processing personal information We shall promptly notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Us from so notifying You;
  - (ii) not transfer any personal information outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - (A) You or We have provided appropriate safeguards in relation to the transfer;
    - (B) the data subject has enforceable rights and effective legal remedies;
    - (C) We comply with our obligations under the Privacy Laws by providing an adequate level of protection to any personal information that is transferred; and

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- (D) We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the personal information;
    - (iii) to the extent that the required information is reasonably available to Us, and You do not otherwise have access to the required information, We will provide reasonable assistance to You:
      - (A) in Your fulfilment of Your obligations to respond to requests for exercising data subject's rights set out in Chapter III of the EU GDPR and the UK GDPR;
      - (B) Your compliance with Your obligations pursuant to Articles 32 to 36 of the EU GDPR and the UK GDPR; and
      - (C) in Your compliance with Your obligations laid down in Article 28 of the EU GDPR and the UK GDPR, including reasonably allowing for and reasonably contributing to audits and inspections conducted by You or another auditor authorised by You. You shall be responsible for any costs incurred by Us in connection with or as the result of providing such information or assistance;
      - (D) at Your written direction, delete or return personal information and copies thereof to You on termination of this Agreement unless required by applicable law to store the personal information (and for these purposes the term "delete" shall mean to put such personal data beyond use or recognition);
      - (E) maintain complete and accurate records and information to demonstrate Our compliance with this clause 5 and immediately inform You if, in Our opinion, any instruction provided by You to Us under the Agreement infringes the Privacy Laws; and
      - (F) take reasonable steps to ensure that persons authorised by Us (if any) to process the personal information have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 6. In the event of a Data Breach, We shall:
  - (i) notify You without undue delay upon becoming aware of the Data Breach;
  - (ii) take reasonable steps to mitigate the effects of and to minimise any damage resulting from the Data Breach; and
  - (iii) provide reasonable assistance to You in relation to any Data Breach notifications You are required to make under the Privacy Laws.
- 7. Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal information and against accidental loss or destruction of, or damage to, personal information, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal information to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal information, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal information can be restored in a timely manner after an incident, and regularly

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assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

8. You authorise Us to appoint our Third Part Hosting Provider and other third party service providers as sub-processors of personal information under the Agreement. We confirm that we have entered or (as the case may be) will enter with the sub-processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this DPA and in either case which We confirm reflect and will continue to reflect the requirements of the Privacy Laws. This authorisation shall constitute a general written authorisation within the meaning of Article 28 (2) of the EU GDPR and the UK GDPR. As between You and Us, We shall remain fully liable for all acts or omissions of any sub-processor appointed by Us pursuant to this clause 8.4.
  
9. We shall maintain a list of sub-processors and shall notify You of any intended changes concerning the addition or replacement of sub-processors, thereby giving You the opportunity to object to such changes. Any objection to an intended change concerning sub- processors must be accompanied by reasonable and specific grounds and provided to Us in writing within 14 days of receipt of notification of the intended change.
  
10. In accordance with clause 5(ii), the parties acknowledge and agree that:
  - (i) Where Restricted Transfers of personal information from You, as controller, to Us, as processor are subject to the EU GDPR, the parties will use Module 2 of the [Standard Contractual Clauses](#) (“**SCCs**”) for Controller to Processor transfers, which are incorporated herein by reference. Schedule A to this DPA shall apply as Annex I of SCCs.
  - (ii) Where Restricted Transfers of personal information from You, as controller, to Us, as processor are subject to the UK GDPR, the parties will use the 2010 Controller-to-Processor SCCs, which are incorporated herein by reference, for so long as such SCCs are lawfully permitted for such transfers of personal information from the UK. Schedule A to this DPA shall apply as Annex I of SCCs.
  - (iii) You may request a copy of the SCCs at any time, by contacting us via email at [info@12dsynergy.com](mailto:info@12dsynergy.com).

## **SCHEDULE A**

### **Processing by 12d Synergy**

#### **Scope and nature and purpose**

We shall process the personal information for the purposes of providing the 12d Synergy Services as set out in the Agreement.

#### **Duration of the processing**

For the duration of the Agreement.

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## **Types of personal data**

In each case applicable to the 12d Synergy Services:

Name, title, work email address for user access and notifications and any other personal information uploaded to the 12d Synergy Services by the Customer .

## **Categories of data subject**

In each case as applicable to the 12d Synergy Services:

Your employees, contractors and workers.

Your Customers, clients, business partners and suppliers.