

## TERMS AND CONDITIONS

These TERMS AND CONDITIONS together with the Order Form to which they are attached (collectively, this "Agreement") set forth the terms under which Clubspeed will provide the Customer with any Services (including Software and related Documentation) that are identified in the attached Order Form. Capitalized terms not defined herein shall have the meanings set forth in the Order Form.

### 1. GRANT OF LICENSE.

- 1.1. License Grant. During the Term and subject to Customer's compliance with this Agreement, Clubspeed hereby grants to Customer a non-exclusive, non-sublicensable, non-transferrable, and revocable license to use the Software and Documentation during the Term.
- 1.2. Scope of Licensed Access and Use. Customer may install only the number of copies of the Software that is identified in the Order Form. Customer may allow an unlimited number of individuals who are employed by Customer ("Authorized Users") to access or otherwise utilize the Services at the location identified in the Order Form. Customer may not copy the Software or the Documentation.
- 1.3. Software Upgrades. During the Term, Clubspeed may, in its sole discretion, and at no cost to Customer, provide updates, upgrades, plug-ins and any other additions to the Software (the "Updates"). Such Updates shall be provided under the terms and conditions of this Agreement, unless Clubspeed provides Customer, in writing, different terms of use.

### 2. CUSTOMER RESTRICTIONS.

- 2.1. License Restrictions. Except as this Agreement expressly permits, Customer shall not, and shall not permit any other person to:
  - 2.1.1. use the Software outside the location(s) designated in the Order Form;
  - 2.1.2. copy the Services, in whole or in part;
  - 2.1.3. modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Services;
  - 2.1.4. rent, lease, lend, sell, sublicense, assign, distribute, publish, or otherwise make available the Services to any third party;
  - 2.1.5. reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
  - 2.1.6. disable any control features of the Software or allow the Software to be used with such features disabled;
  - 2.1.7. bypass or breach any security device or protection used for or contained in the Software;
  - 2.1.8. remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademark symbols or notices used on the Software or Documentation;
  - 2.1.9. use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; or
  - 2.1.10. use the Services for purposes of: (i) developing, using or providing a competing software product or service; or (ii) any other purpose that is to Clubspeed's detriment or commercial disadvantage.

### 3. FEES.

- 3.1. Fees. Customer shall pay for Services (the "Fees") in accordance with the Order Form. All Fees shall be auto-debited from Customer's duly designated credit card on file or via a Customer-established ACH previous to each month's billing cycle. A one-time, non-refundable initiation fee equal to the price per location per month listed in Schedule A is due upon execution of this agreement.

- 3.2. Payment of Charges. In the event any auto-debiting does not effectively process, Customer agrees to make payment in addition to a USD\$35 fee for each item returned within 24 hours. Customer agrees to pay interest on all past due amounts at the rate of 1.5% per month, calculated daily and compounded monthly, or if lower, the highest rate permitted by applicable law, plus all costs incurred by Clubspeak in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees.
  - 3.3. Installation Date Change Fee. CUSTOMERS who have confirmed an installation date will be charged a fee of \$750 if a change to the installation date is made within 2 weeks of the original and confirmed installation date. Furthermore, if travel arrangements have already been booked based on the original installation date at the time CUSTOMER changes said installation date, additional fees will apply.
  - 3.4. Shipping Costs. Shipping costs and other 3rd party fees will be billed to Customer separately.
4. Clubspeak'S AUDIT RIGHTS.  
During the Term and for two (2) years following termination of this Agreement, Clubspeak or its nominee (including its accountants and auditors) shall have the right, upon reasonable notice to Customer, to inspect and audit Customer's systems and records that are used in connection with the Services to verify Customer's compliance with this Agreement. All audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, and information and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Clubspeak with respect to such audit.
5. INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES.
  - 5.1. Ownership of Intellectual Property. Customer agrees that the Services are licensed, not sold, to Customer by Clubspeak. Customer acknowledges that Clubspeak owns all right, title, and interest, including all intellectual property rights, in and to the Software and Documentation. In the event that Customer acquires any rights in or to the Services, including without limitation to rights in derivatives of or improvements to the Services, Customer hereby unconditionally and irrevocably assigns to Clubspeak all such rights.
  - 5.2. Feedback. If Customer or any of its Authorized Users sends or transmits any communications or materials to Clubspeak suggesting or recommending changes to the Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Customer hereby assigns to Clubspeak on Clubspeak's behalf, and on behalf of its Authorized Users, all right, title, and interest in, and Clubspeak is free to use, without any attribution or compensation to any party, the Feedback, including any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever.
  - 5.3. Exclusivity. It is understood and agreed that during the Term, Customer will not license, obtain or use any software or services that provide the same or similar functions to those of the Software from any third party. Further, Customer shall not create nor design, directly or indirectly, any software or services for use with its business which are substantially similar to the Services which are the subject of this Agreement.
  - 5.4. Exclusivity for Point of Sale Cards. It is understood and agreed that Customer shall only use encrypted cards obtained from Clubspeak for all point of sale gift cards and membership cards.
  - 5.5. Exclusivity for Merchant Processing. It is understood and agreed that Customer shall only use Clubspeak's internal secured credit card network for processing of credit card transactions.
6. THIS SECTION LEFT INTENTIONALLY BLANK.

## 7. TERMINATION OF THE AGREEMENT.

- 7.1. Termination. Clubspeed shall have the right to terminate this Agreement with or without cause, upon ninety (90) business days' written notice to Customer.
- 7.2. Termination by Clubspeed. Clubspeed shall have the right to terminate this Agreement:
  - 7.2.1. on written notice to Customer in the event of a breach of any material provision of this Agreement by Customer that is not cured within thirty (30) business days after receipt by Customer of notice of breach from Clubspeed;
  - 7.2.2. on five (5) business days' written notice to Customer, if Customer fails to pay any Fees under this Agreement and fails to cure such deficiency within five (5) business days of receipt of such notice; or
  - 7.2.3. immediately if Customer breaches the confidentiality obligations in Section 8 (Confidentiality) or uses the Service outside the scope of the license granted in Section 1 (Grant of License).
- 7.3. Termination by Customer. Customer shall have the right to terminate this Agreement on written notice to Clubspeed in the event of a breach of any material provision of this Agreement by Clubspeed that is not cured within thirty (30) business days after receipt by Clubspeed of notice of breach by Customer.
- 7.4. Effect of Termination. Upon expiration or termination of this Agreement, the license granted hereunder will also terminate, Customer shall cease using and delete, destroy, or return all copies of the Software and Documentation and certify in writing to Clubspeed that the Software and Documentation has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund. In the event that this Agreement is terminated for any reason other than breach of the Agreement by Clubspeed or by Clubspeed for convenience, Customer will pay to Clubspeed the remaining balance of all amounts that would be owed to Clubspeed under the Agreement through to the end of the then-current Initial Term or Renewal Term.
- 7.5. Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Sections 2, 4, 5.1, 5.2, 7.4, 7.5, 8, 9, 10, 11, and 12.

## 8. INDEMNIFICATION / WARRANTIES.

- 8.1. Clubspeed Indemnification. Clubspeed shall indemnify, defend, and hold harmless Customer from all expenses (including judgments, settlements, attorneys' fees, and costs) finally awarded or agreed to in settlement resulting from a claim by a third party that the use of the Software by Customer in accordance with this Agreement, infringes such third party's U.S. intellectual property rights. The obligations of this Section 8.1 do not apply to the extent that the alleged infringement arises from (i) third party materials; (ii) combination, operation, or use of the Services in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Clubspeed; (iii) modification of the Services other than by Clubspeed in connection with this Agreement; (iv) use of the Services after Clubspeed's notice to Customer of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights; (v) negligence, abuse, misapplication, or misuse of the Services by or on behalf of Customer and Customer's Authorized Users; or (vi) use of the Services by Customer that are outside the purpose, scope, or manner of use authorized by this Agreement.

If a claim is made or appears possible or Clubspeed believes that the Software infringes a third party's intellectual property rights, Clubspeed may, at its option and expense (a) replace or modify the Software to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using

the Software, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer with a refund of any prepaid, unused fees for the Services. The rights set forth in this Section 8.1 shall be Customer's sole remedy for infringement related to the Software.

- 8.2. Customer Indemnification. Customer shall indemnify, defend, and hold harmless Clubspeed from and against any claims, actions, judgments, settlements, awards, penalties, fines, costs, or expenses, including reasonable attorneys' fees by third party's resulting from (i) any use of the Services by Customer not in accordance with this Agreement; (ii) Customer's breach of the confidentiality obligations of Section 9; (iii) any injuries or deaths resulting from Customer's operations including without limitation from use of the Software; and (iv) Customer's failure to maintain a remote control system for slowing down or stopping karts used in the kart racing industry.
- 8.3. Authorization. The parties warrant that they are authorized to enter into this Agreement and that their performance will not conflict with any other agreement.
- 8.4. DISCLAIMER OF WARRANTY. Our software subscription service will be provided in a professional manner in accordance with customary industry standards utilizing reasonable care and skill. OTHER THAN THE FOREGOING WARRANTY, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8, Clubspeed MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
- 8.5. Third-Party Sites and Products. Third-Party Sites and Products are not under our control. Third-Party Sites and Products are provided to you only as a convenience, and the availability and installation of any Third-Party Site or Product does not mean we endorse, support or warrant the Third-Party Site or Product.

## 9. CONFIDENTIALITY.

- 9.1. Confidential Information. "Confidential Information" means any information in any form or medium that the other party considers confidential or proprietary, including without limitation technical data, trade secret, know-how, business operations, customers, software, code, disclosed in writing, orally, or electronically and whether or not marked, designated, or otherwise identified as "confidential." Without limiting the foregoing, Customer's Fees are Confidential Information and may not be disclosed.
- 9.2. Exclusions. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is rightfully received from a third party on a non-confidential basis from a third party that was not under any obligation to maintain its confidentiality; (iii) is independently developed by the receiving party; (iv) is required to be disclosed pursuant to judicial order, requirement of a governmental agency or by operation of law, and provided that prior to such disclosure, the receiving party notifies the disclosing party in writing of such requirement so that the disclosing party can seek a protective order or other remedy or waive its rights.
- 9.3. Non-Disclosure of Confidential Information. The parties agree that neither will disclose any Confidential Information of the other party to any third party and neither will use the other's Confidential Information for any purpose other than for the performance of the rights and obligations hereunder. The parties further agree that Confidential Information of each shall remain the sole property of the disclosing party and that each receiving party will take all reasonable precautions to prevent any unauthorized disclosure of the other's Confidential Information.

9.4. Use of Customer Data. During the Term, Clubspeed will have access to data of Customer and of Customer's customers and vendors (collectively, "Customer Data"). Customer hereby grants Clubspeed a perpetual, non-exclusive, non-sublicensable license to use and copy the Customer Data for (i) in an aggregated manner for any lawful purpose; and (ii) in a non-aggregated manner for the purpose of providing the Services to Customer and improving its Services for all customers. For the avoidance of doubt, use of the Customer Data in accordance with this Section 9.4 shall not be construed as violating the confidentiality provisions of this Agreement.

10. **EQUITABLE RELIEF.**

If one of the parties breaches any of its obligations with respect to any of its obligations of this Agreement that would cause the other party irreparable harm for which monetary damages would not be an adequate remedy, then the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy.

11. **NOTICES.**

Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party or mailed by certified, registered or Express mail, return receipt requested or by a reputable overnight delivery service to the address provided in the Order Form.

12. **MISCELLANEOUS.**

- 12.1. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement or the Order From will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 12.2. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of California without giving effect to any conflict of law provisions of such state.
- 12.3. Agreement Binding on Successors. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors, and assigns.
- 12.4. Assignment. Customer may not assign this Agreement or the rights and obligations hereunder, in each case whether voluntary, involuntary, by operation of law, or otherwise, to any third party without the prior express written approval of Clubspeed. Any purported assignment, delegation, or transfer in violation of this Section is void.
- 12.5. Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.
- 12.6. Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.
- 12.7. Modification. This Agreement shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement.

13. **ARBITRATION.**

- 13.1. Arbitration. Both parties will attempt to settle any claims or controversy through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then in the event of a dispute between the parties which arises out of this Agreement, or any breach thereof, such dispute will, on the written request of one party delivered to the other party, be submitted to and

settled by binding arbitration in the County of Orange, California in accordance with the commercial rules of the American Arbitration Association then in effect.

# DATA PROCESSING AGREEMENT

## 1. SUBJECT MATTER OF THIS DATA PROCESSING AGREEMENT

1.1 This Data Processing Agreement applies exclusively to the Processing of Personal Data that is subject to EU Data Protection Law that is provided to Data Processor by Data Controller pursuant to the software license agreement entered into between the parties effective from the date of this agreement under which the Data Processor licenses certain software to Data Controller [and provides ancillary professional services] (the "Services").

1.2 The term EU Data Protection Law shall mean 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).

1.3 "Terms such as "Processing," "Personal Data," "Data Controller" and "Processor" shall have the meaning ascribed to them in the EU Data Protection Law.

1.4 Insofar as the Data Processor will be Processing Personal Data subject to EU Data Protection Law on behalf of the Data Controller in the course of the performance of the Service Agreement, the terms of this Data Protection Agreement shall apply. An overview of the categories of Personal Data, the types of Data Subjects, and purposes for which the Personal Data are being Processed is provided in Appendix 2.

## 2. THE DATA CONTROLLER AND THE DATA PROCESSOR

2.1 The Data Controller will determine the scope, purposes, and manner by which the Personal Data may be accessed or processed by the Data Processor. The Data Processor will process the Personal Data in accordance with the Data Controller's written instructions, except to the extent required to comply with a legal obligation to which the Data Processor is subject. In such a case, to the extent not prohibited by applicable law, the Data Processor shall inform the Data Controller of that legal obligation before Processing such Personal Data. Except as set forth herein, the Data Processor shall not process the Personal Data in a manner inconsistent with the Data Controller's documented instructions. The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes the EU Data Protection Law.

2.2 The Parties have entered into the Service Agreement in order to benefit from the expertise of the Processor in securing and Processing the Personal Data for the purposes set out in Appendix 2. The Data Processor shall be allowed to exercise its own discretion in the selection and use of such means as it considers necessary to pursue those purposes, subject to the requirements of this Data Processing Agreement.

2.3 Data Controller represents and warrants that it has all necessary rights to provide the Personal Data to Data Processor for the Processing to be performed in relation to the Services. To the extent required by the EU Data Protection Law, Data Controller is responsible for ensuring that any necessary data subject consents to this Processing are obtained, and for ensuring that a record of such consents is maintained. Should such a consent be revoked by the data subject, Data Controller is responsible for communicating the fact of such revocation to the Data Processor, and

Data Processor remains responsible for implementing any Data Controller instruction with respect to the further Processing of that Personal Data.

### 3. CONFIDENTIALITY

3.1 Without prejudice to any existing contractual arrangements between the Parties, the Data Processor shall treat all Personal Data as strictly confidential and it shall inform all its employees, agents and/or approved sub-processors engaged in Processing the Personal Data of the confidential nature of the Personal Data. The Data Processor shall ensure that all such persons or parties have signed an appropriate confidentiality agreement, are otherwise bound to a duty of confidentiality, or are under an appropriate statutory obligation 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, without prejudice to any other security standards agreed upon by the Parties, the Data Controller and Data Processor shall implement appropriate technical and organizational measures to ensure a level of security of the Processing of Personal Data appropriate to the risk. These measures shall include as appropriate:

- a. measures to ensure that the Personal Data can be accessed only by authorized personnel for the purposes set forth in Appendix 2 of this Data Processing Agreement;
- b. in assessing the appropriate level of security, the Data Controller and the Data Processor shall take into account all reasonable risks that are presented by Processing, for example from accidental or unlawful destruction, loss, or alteration, unauthorized or unlawful storage, Processing, access or disclosure of Personal Data;
- c. the pseudonymization and encryption of Personal Data;
- d. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
- e. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident
- f. a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing of Personal Data;
- g. measures to identify vulnerabilities with regard to the Processing of Personal Data in systems used to provide services to the Data Controller;

4.2 The Data Processor shall at all times have in place an appropriate written security policy with respect to the Processing of Personal Data, outlining the measures set forth in Article 4.1.

4.3 At the written request of the Data Controller (no more than once per calendar year), the Data Processor shall demonstrate the measures it has taken pursuant to this Article 4, and, if requested by the Data Controller (no more than once per calendar year), shall cooperate with the Data Controller (or its third-party designee) to audit such measures. Any such request shall be given by



the Data Controller to the Data Processor with at least 60 days' prior written notice to the Data Processor. If Data Controller elects to use a third-party designee to carry out the audit, such third-party must first enter into a confidentiality agreement with the Data Processor. Any such audit shall be limited solely to the scope of the Data Processor's operations as they relate to the Processing of Personal Data provided to the Data Processor pursuant to the Service Agreement. The Data Processor shall reasonably cooperate with such audits carried out by or on behalf of the Data Controller and shall provide written responses (on a confidential basis) to all reasonable requests for information made by the Data Controller related to its Processing of Customer Personal Data, including responses to information security and audit questionnaires. The Data Processor shall provide the Data Controller and/or the Data Controller's auditors with reasonable access to any information relating to the Processing of the Personal Data as may be reasonably required by the Data Controller to ascertain the Data Processor's compliance with this Data Processing Agreement.

## 5. IMPROVEMENTS TO SECURITY

5.1 The Parties acknowledge that security requirements are constantly changing and that effective security requires frequent evaluation and regular improvements of outdated security measures. The Data Processor will therefore evaluate the measures as implemented in accordance with Article 4 on an on-going basis and will tighten, supplement and improve these measures in order to maintain compliance with the requirements set out in Article 4. The Parties will negotiate in good faith the cost, if any, to implement material changes required by specific updated security requirements set forth in applicable data protection law or by data protection authorities of competent jurisdiction.

5.2 Where an amendment to the Service Agreement is necessary in order to execute a Data Controller instruction to the Data Processor to improve security measures as may be required by changes in applicable data protection law from time to time, the Parties shall negotiate an amendment to the Service Agreement in good faith.

## 6. DATA TRANSFERS

6.1 Appendix 3 provides a list of transfers for which the Data Controller grants its consent upon the conclusion of this Data Processing Agreement.

6.2 To the extent that the Data Controller or the Data Processor are relying on a specific statutory mechanism to normalize international data transfers that is subsequently modified, revoked, or held in a court of competent jurisdiction to be invalid, the Data Controller and the Data Processor agree to cooperate in good faith to promptly terminate the transfer or to pursue a suitable alternate mechanism that can lawfully support the transfer.

## 7. INFORMATION OBLIGATIONS AND INCIDENT MANAGEMENT

7.1 When the Data Processor becomes aware of an Incident that impacts the Processing of the Personal Data that was provided under the Services Agreement, it shall promptly notify the Data Controller about the Incident within 49 hours of its becoming aware of the Incident. The Data Processor shall reasonably cooperate with the Data Controller and shall follow the Data Controller's reasonable instructions with regard to such Incidents that solely affect Personal Data that was provided to Data Processor under the Services Agreement, in order to enable the Data Controller to perform a thorough investigation into the Incident, to formulate a correct response, and to take

suitable further steps in respect of the Incident.

7.2 The term "Incident" used in Article 7.1 shall mean:

- a. any unauthorized or accidental access, Processing, deletion, loss or any form of unlawful Processing of the Personal Data;
- b. any breach of the security and/or confidentiality as set out in Articles 3 and 4 of this Data Processing Agreement leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, the Personal Data, or any indication of such breach having taken place or being about to take place;

7.3 Any notifications made to the Data Controller pursuant to this Article 7 shall be addressed to the employee of the Data Controller whose contact details are provided in Appendix 1 of this Data Processing Agreement, and shall contain:

- a. a description of the nature of the incident, including where possible the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
- b. the name and contact details of the Data Processor's data protection officer or another contact point where more information can be obtained;
- c. a description of the likely consequences of the incident; and
- d. a description of the measures taken or proposed to be taken by the Data Processor to address the incident including, where appropriate, measures to mitigate its possible adverse effects.

## 8. CONTRACTING WITH SUB-PROCESSORS

8.1 The Data Controller hereby authorizes the Data Processor to engage sub-processors for the Service-related activities specified as described in Appendix 2. Data Processor shall inform the Data Controller of any addition or replacement of such sub-processors giving the Data Controller an opportunity to object to such changes.

8.2 Notwithstanding any authorization by the Data Controller within the meaning of the preceding paragraph, the Data Processor shall remain fully liable for any subprocessor that breaches its obligations under this Agreement.

8.3 The Data Processor shall ensure that the sub-processor is bound by the same data protection obligations of the Data Processor under this Data Processing Agreement, including but not limited to the obligation to implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of EU Data Protection Law.

8.4 The Data Controller may request that the Data Processor audit a Third Party Subprocessor or provide confirmation that such an audit has occurred (or, where available, obtain or assist customer in obtaining a third-party audit report concerning the Third Party Subprocessor's operations) to ensure compliance with its obligations imposed by the Data Processor in conformity with this

Agreement.

## 9. RETURNING OR DESTRUCTION OF PERSONAL DATA

9.1 Upon termination of this Data Processing Agreement, upon the Data Controller's written request, or upon fulfillment of all purposes agreed in the context of the Services whereby no further Processing is required, the Data Processor shall, at the discretion of the Data Controller, either delete, destroy or return all Personal Data to the Data Controller and destroy or return any existing copies.

9.2 The Data Processor shall notify all third parties supporting its own Processing of the Personal Data of the termination of the Data Processing Agreement and shall ensure that all such third parties shall either destroy the Personal Data or return the Personal Data to the Data Controller, at the discretion of the Data Controller.

## 10. ASSISTANCE TO DATA CONTROLLER

10.1 The Data Processor shall reasonably assist the Data Controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Data Controller's obligation to respond to requests for exercising the data subject's rights under the GDPR.

10.2 The Data Processor shall reasonably assist the Data Controller in ensuring compliance with the obligations pursuant to Section 4 (Security) and prior consultations with supervisory authorities required under Article 36 of the GDPR taking into account the nature of Processing and the information available to the Data Processor.

10.3 The Data Processor shall make available to the Data Controller all information reasonably necessary to demonstrate compliance with the Data Processor's obligations and allow for and contribute to audits conducted by the Data Controller or another auditor mandated by the Data Controller.

## 11. LIABILITY AND INDEMNITY

11.1 The Data Processor shall indemnify the Data Controller against all third-party claims, actions, third-party claims, losses, damages brought against the Data Controller that arise directly from Data Processor's material breach of this Data Processing Agreement. The Data Controller shall indemnify the Data Processor and holds the Data Processor harmless against all third-party claims, actions, third-party claims, losses, damages brought against the Data Processor that and arise in connection with a breach of this Data Processing Agreement and/or the Applicable Data Law by the Data Controller.

11.2 IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, IN THE AGGREGATE, EXCEED THE TOTAL AMOUNT PAYABLE BY DATA CONTROLLER UNDER THE SERVICE AGREEMENT. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED

BY APPLICABLE LAW.

## 12. DURATION AND TERMINATION

12.1 This Data Processing Agreement shall come into effect on the date of the installation of "Data Processor's" software.

12.2 Termination or expiration of this Data Processing Agreement shall not discharge the Data Processor from its confidentiality obligations pursuant to Article 3.

12.3 The Data Processor shall process Personal Data until the date of termination of the agreement, unless instructed otherwise by the Data Controller, or until such data is returned or destroyed on instruction of the Data Controller.

## 13. MISCELLANEOUS

13.1 In the event of any inconsistency between the provisions of this Data Processing Agreement and the provisions of the Service Agreement, the provisions of this Data Processing Agreement shall prevail.

13.2 Any disputes arising from or in connection with this Data Processing Agreement shall be governed in accordance with the laws of the State of California and the parties consent to jurisdiction and venue in Orange County, California.