

## Data Processing Amendment Agreement

**THIS DATA PROCESSING AMENDMENT AGREEMENT** (“**Amendment Agreement**”) is made between: **WEEBLY, INC.**, a company incorporated and registered in the state of Delaware (Delaware company no. 4277212) whose registered office is at 460 Bryant Street, #100, San Francisco, California, 94107 USA (herein called “**Weebly**”); and the entity who entered into the Original Agreement defined below (herein called the “**Supplier**” or “**COMPANY**”).

### **BACKGROUND:**

- (A) The Supplier and/or relevant Supplier group companies and Weebly entered into one or more agreements for the provision of Data Processing Services prior to 25 May 2018 (“**Original Agreement**”).
- (B) Supplier receives and/or is granted access to certain personal data (as defined below), in respect of which Weebly are data controllers (as defined below), in order to supply Weebly with Data Processing Services pursuant to the Original Agreement.
- (C) In light of changes to data protection legislation (pursuant to the General Data Protection Regulation) which requires certain new contractual arrangements to be put in place in respect of the processing of personal data, the parties need to amend the Original Agreement.
- (D) This Amendment Agreement sets out the new data processing provisions that shall replace the existing data protection provisions in the Original Agreement that apply to the processing of Weebly Data.
- (E) Supplier shall be provided with access to Weebly Data and shall process the Weebly Data on behalf of Weebly in accordance with and subject to the terms and conditions of this Amendment Agreement.

### **1. Amendments to the Original Agreement**

- 1.1 The provisions of the Original Agreement that set out the requirements of each party in respect of the processing of personal data shall be deleted and replaced with a new “**Data Processing Appendix**” as set out in the Annex to this Amendment Agreement.
- 1.2 Capitalised terms set out in this Amendment Agreement have the meaning set out in the Annex to this Amendment Agreement unless otherwise indicated.

### **2. Agreement in full force and effect**

This Amendment Agreement is supplemental to the Original Agreement and, save as expressly modified by the amendments described in this Amendment Agreement, the Original Agreement shall remain in full force and effect. References in the Original Agreement to “this Agreement” shall be deemed to refer to the Original Agreement as amended by this Amendment Agreement, unless the context otherwise requires.

### **3. Consideration**

In consideration of the mutual benefit to the parties in ensuring that their obligations under Applicable DP Law are agreed in writing, including in particular that the processing instructions, and each party’s status as controller(s) and processor

respectively, are clearly and properly documented, and Weebly paying to Supplier the sum of £1.00 in total, and Supplier paying to Weebly the sum of £1.00 in total, with such sums to be paid by mutual set-off, the parties agree to amend the existing data protection terms as set out below and each party shall perform their respective obligations under this Amendment Agreement.

4. **Term**

4.1 This Amendment Agreement shall commence on the date of this Amendment Agreement and shall continue in force until the termination or expiry of the Original Agreement.

5. **GENERAL**

5.1 This Amendment Agreement reflects the entire agreement between the parties in respect of its subject matter and supersedes and extinguishes any previous agreement between any of the parties, whether written or oral, in respect of data protection where Weebly is a controller and the Supplier is a processor or sub-processor in relation to that agreement (including in particular, any existing data protection provisions contained or referred to in the Original Agreement between the parties, where Weebly is a controller and Supplier is a processor or sub-processor in the agreement). Other than as expressly set out above, nothing in this Amendment Agreement shall reduce any party's obligations under any other commercial arrangement between each other, and in all other respects the terms of those other commercial arrangements shall remain in full force and effect, including all other provisions in the Original Agreement.

5.2 Each party acknowledges that it has entered into this Amendment Agreement in reliance only on the representations, warranties promises and terms contained or expressly referred to in this Amendment Agreement and, save as expressly set out in this Amendment Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the Effective Date unless it was made fraudulently.

5.3 To the extent that any provision of this Amendment Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Amendment Agreement, it shall not affect the enforceability of the remainder of this Amendment Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

5.4 Any right, power or remedy of a party under or pursuant to this Amendment Agreement or by law shall not be capable of being waived otherwise than by an express waiver in writing signed by an authorised representative of the relevant party.

5.5 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Amendment Agreement or otherwise.

5.6 This Amendment Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of the state of California.

5.7 The parties irrevocably agree that the courts of San Francisco County in California shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Amendment Agreement, its subject matter or formation.

**ANNEX  
DATA PROTECTION APPENDIX**

**1. DEFINITIONS**

**“Data Controller”** (or Controller), **“Data Processor”** (or Processor) **“Data Subject”**, **“Personal Data”** and **“Sensitive Personal Data”** (or special categories of Personal Data) all have the meanings given to those terms in Data Protection Laws (and related terms such as **“Process”** and **“Processed”** shall have corresponding meanings), and for the purposes of this Amendment Agreement **“Personal Data”** means the Personal Data that Weebly provides to COMPANY under the Original Agreement;

**“Data Protection Laws”** means any applicable laws and regulations relating to the processing, privacy, and use of Personal Data, as applicable to the COMPANY, Weebly, and/or the Services under the Original Agreement: the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws or regulations implementing Council Directives 95/46/EC or 2002/58/EC; the GDPR and/or any corresponding\_or equivalent national laws or regulations; and any judicial or administrative interpretation of any of the above, and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

**“Data Subject”** shall have the meaning given to "data subject" in Data Protection Laws;

**“Data Subject Request”** means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

**“DP Losses”** means all liabilities and amounts, including all:

- a. costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material or non-material damage, which includes emotional distress);
- b. loss or damage to reputation, brand or goodwill;
- c. to the extent permitted by applicable laws and regulations:
  - i. administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
  - ii. compensation paid to a Data Subject; and
  - iii. the costs of compliance with investigations by a Supervisory Authority;

**“DPIA”** means a data protection impact assessment or privacy impact assessment (as defined or used in Data Protection Laws, including relevant guidance from Supervisory Authorities);

**“GDPR”** means the Regulation of the European Parliament and of the Council 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);

**“Security Breach”** means a breach of security or other action or inaction leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;

**“Services”** means the services to be provided to Weebly by the COMPANY pursuant to the Original Agreement;

**“Supervisory Authority”** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws; and

1.1 References to the COMPANY that follow this section 1, are references to the COMPANY and any other parties acting under its authority.

## **2. COMPLIANCE**

2.1 Each Party shall comply with Data Protection Laws and its obligations under this Amendment Agreement.

## **3. DATA PROCESSING INSTRUCTIONS**

3.1 The details of the Personal Data processing carried out by the COMPANY are set out in Schedule 1 of this Amendment Agreement.

3.2 The COMPANY shall only process Personal Data only for the purposes of providing the Services under the Original Agreement and in accordance with Weebly’s documented instructions. In the event the COMPANY is of the view that these instructions infringe Data Protection Laws, the COMPANY shall promptly inform Weebly of this.

## **4. SUPPLIER PERSONNEL AND SUB PROCESSORS**

4.1 The COMPANY shall ensure all the COMPANY personnel who process Personal Data have signed agreements requiring them to keep Personal Data confidential.

4.2 The COMPANY shall not engage any sub-processor without prior written approval from Weebly.

4.3 The COMPANY shall ensure any sub-processor (approved under section 5.2 above) processing Personal Data enters into a written agreement that imposes the same obligations on the sub-processor as are imposed on the COMPANY under this Amendment Agreement.

4.4 The COMPANY shall remain fully liable to Weebly for the performance of the sub-processor’s data protection obligations under the written agreement in section 4.3 above, in the event the sub-processor fails to fulfil those obligations.

## **5. DATA TRANSFERS**

5.1 The COMPANY shall not transfer nor permit the transfer of Personal Data to another country without Weebly’s prior approval and relevant safeguards being put in place as required.

**6. SECURITY AND DATA BREACH NOTIFICATION.**

- 6.1 The COMPANY shall implement and maintain appropriate technical and organizational measures in relation to the processing of Personal Data to ensure a level of security appropriate to the risk of accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction of Personal Data.
- 6.2 The COMPANY shall notify Weebly without undue delay (but no later than 48 hours after becoming aware of the Security Breach) after becoming aware of any Security Breach and provide Weebly with reasonable assistance in complying with its Security Breach notification obligations under Data Protection Laws.

**7. ASSISTANCE**

- 7.1 To the extent related to its processing of Personal Data, the COMPANY shall:
- 7.1.1 Forward to Weebly (without undue delay) any requests received from Data Subjects of Personal Data exercising Data Subject Rights under Data Protection Laws.
- 7.1.2 Provide Weebly reasonable assistance with any requests received from Data Subjects of Personal Data exercising Data Subject rights under Data Protection Laws.
- 7.1.3 Provide Weebly with reasonable assistance to enable Weebly to conduct any DPIA's and consultations with (or notifications to) relevant regulatory authorities that it is required to undertake under Data Protection Laws.
- 7.1.4 Provide Weebly with reasonable assistance in complying with its obligation under Data Protection Laws to implement and maintain appropriate technical and organizational security measures in relation to the processing of Personal Data.

**8. DELETION OR RETURN OF DATA**

- 8.1 Upon termination or expiry of the Original Agreement, the COMPANY shall (at Weebly's request) destroy or return to Weebly all Personal Data in its possession or control, and delete existing copies (subject to any legal obligations on the COMPANY to keep Personal Data longer).

**9. INFORMATION REQUESTS AND AUDITS**

- 9.1 The COMPANY shall allow for and contribute to audits (including inspections) carried out by or on behalf of Weebly to determine COMPANY's compliance with its obligations under this Amendment Agreement and Data Protection Laws.
- 9.2 The COMPANY shall (at Weebly's request) provide Weebly with necessary information to demonstrate the COMPANY's compliance with the obligations under this Amendment Agreement.

**10. INDEMNITY**

Without prejudice to any other indemnity contained in the Original Agreement, the COMPANY shall indemnify and keep indemnified Weebly from and against all DP Losses (including, but not limited to, regulatory fines and penalties) suffered or incurred by, awarded against or agreed to be paid by Weebly, arising from or in connection with any breach by the COMPANY of this Amendment Agreement or of Data Protection Laws.

## Schedule 1

### Data Processing Information

**1. SUBJECT-MATTER, NATURE AND PURPOSE OF THE PROCESSING:**

The context for and purposes for the processing of Personal Data is the COMPANY's provision of the applicable Services.

**2. DURATION OF PROCESSING:**

Processing of the Personal Data by COMPANY shall be for the term of the Original Agreement, provided that Personal Data shall not be Processed for longer than is necessary for the purpose for which it was collected or is being Processed (except where a statutory exception applies).

**3. PERSONAL DATA IN SCOPE:**

COMPANY may Process the following types/categories of Personal Data:

Personal Data, which may consist of personal details, contact details, family details, lifestyle and social circumstances, financial or payment details, employment information, marketing information, data analytics, images or video.

Sensitive Personal Data/other special categories of Personal Data, which may consist of physical or mental health data, genetic data or biometric data, criminal offences or other data relating to alleged offences and proceedings, racial or ethnic group information, religious or philosophical beliefs, trade union membership, sex life or sexual orientation.

**4. PERSONS AFFECTED (DATA SUBJECTS):**

The group of Data Subjects affected by the processing of their Personal Data may consist of customers and clients, employees and staff, contractors, consultants or other professional experts, research participants or children.