Flowmailer
Data Processor Agreement

Flowmailer Data Processor Agreement
This document is an example of the DPA between a private company (hereafter known as the "Controller")
and Flowmailer B.V., with its registered office and with its principal place of business in Rotterdam at Van Nelleweg 1,
3044 BC (further herein referred to as the "Processor")

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Preamble

The Controller has entered into one or more agreements with the Processor on Processor to provide various services to the Controller or will enter into such an agreement. This agreement or these agreements jointly further herein referred to as 'the Main Agreement'.

In performing the Main Agreement the Processor will process data for which the Controller is, and remains, responsible. These data include personal data within the sense of the General Data Protection Regulation (EU 2016/679), further herein the 'GDPR'. Considering the provisions in **Article 28 paragraph 3** of GDPR the Parties wish to lay down in this Agreement the conditions on which these personal data will be processed.

The Agreement

This Agreement is applicable to providing the services by the Processor to the Controller under the Main Agreement whereby one or more processing operations are carried out (as included in Annex 1).

The processing operations of Annex 1 which are carried out in providing the services by the Processor to the Controller are further herein referred to as: the 'Processing Operations'.

The personal data processed in this connection are: the 'Personal Data'.

With regard to the Processing Operations the Controller is responsible for the Processing Operations and the Processor is processing the Personal Data on behalf of the Controller. The natural persons who pursuant to the Main Agreement are actually using the services of the Processor and their representatives, if any, are further herein also referred to as the 'End Users'.

All terms in this Agreement have the meaning given to them in the GDPR.

If more and other personal data are processed under the instructions of the Controller or if they are processed otherwise than described in this Agreement, this Agreement applies as much as possible to those Processing Operations as well.

Processors often enter into a user agreement/ license agreement with the End Users. This is only possible if the Processor is responsible for the respective data. If a file is provided by the Controller (responsible party) and the Processor sends an e-mail with this file, the foregoing does not apply.

The following Annexes form part of this Agreement:

- **Annex 1:** The Processing Operations, the Personal Data and the retention periods;
- **Annex 2:** The sub-processors and sub-processor categories which are approved by the Controller.

The Subject

The Controller has and retains full control of the Personal Data. If the Controller does not process the Personal Data himself by using the systems of the Processor, the Processor will exclusively process on the basis of written instructions from the Controller, for instance with regard to any Personal Data being passed on to third parties outside the European Economic Area (European Union. Norway, Liechtenstein and Iceland) (EEA).

The Main Agreement is considered as a generic instruction in this connection.

The Processing Operations are only carried out in connection with the Main Agreement. The Processor shall not process Personal Data other than as provided for in the Main Agreement. In particular, the Processor shall not use the Personal Data for its own purposes.

The Processor will perform the Processing Operations in a proper way and with due care.

Security Measures

The Processor shall take all technical and organizational security measures which are required under the GDPR and in particular pursuant to Article 32 GDPR.

The Processor shall ensure that persons, not limited to employees, who participate in the Processing Operations are obliged to observe confidentiality with regard to the Personal Data.

Data Breach & Privacy Impact Assessment

The Processor shall notify the Controller of any 'personal data breach' as meant in Article 4 under 12 GDPR. Such a breach is hereafter referred to as: a 'Data Breach'.

The Processor will provide the Controller within due time with all information necessary to fulfill the obligations in Article 33 GDPR. For that matter, the Processor must provide the respective information as soon as possible in a standard format to be determined by the Controller.

The Processor will not inform the Controller of a Data Break if it is evident that the Data Breach does not form a risk to the rights and freedoms of data subjects. If there is a reason to doubt this, the Processor shall notify the Controller of the Data Breach in order to enable the Controller to form its opinion on any notification of the Data Breach.

The Processor shall document all breaches, also those which do not have to be reported and communicated to the Controller, and provide the Controller with that documentation quarterly.

It is exclusively up to the Controller to determine whether a Data Breach established at the Processor is to be reported to the Dutch Authority for Personal Data and/or to the data subjects involved.

The Processor will assist the Controller – as far as is reasonably possible and taking into account the nature of the Processing Operations and the latest technology – in fulfilling the obligations under Articles 35 and 36 GDPR.

Engagement of sub-processors

In performing the Processing Operations the Processor is not entitled to engage a third party as sub-processor without the prior written consent of the Controller. The consent of the Controller can also relate to a certain category of sub-processors.

If the Controller consents to a sub-processor, the Processor must ensure that the Processor enters into an agreement with the respective sub-processor in which at least the same legal obligations and any additional obligations under this Agreement are set out.

If a sub-processor does not want to accept the additional obligations under this Agreement, the Controller may decide to release the Processor from the additional obligations for the respective Processing Operations, in which case the Processor can still enter into the sub-processing agreement.

In the event that the consent relates to a certain category of sub-processors, the Processor shall inform the Controller about the sub-processors as engaged by the Processor. The Controller may object to the sub-processors of the Processor.

The Controller hereby consents to the sub-processors and/or categories of sub-processors as included in Annex 2.

Confidentiality obligation

The Processor will keep the Personal Data confidential.
The Processor ensures that the Personal Data will not directly or indirectly become available to any third parties. The term third parties also includes the employees of the Processor, as far as it is not necessary for them to take note of the Personal Data, unless otherwise set out in this Agreement and/or if a statutory regulation or judgment requires any disclosure. The Processor shall inform the Controller of any request for access to, provision of or other form of requesting and communicating of Personal Data contrary to the confidentiality obligation as included in this clause.

Retention periods and deletion

The Controller is responsible for determining the retention periods with regard to the Personal Data. Insofar as Personal Data are under the control of the Controller (for instance in the event of hosting services) he will delete them himself within due time.

The Processor shall delete the Personal Data within thirty days after the termination of the Main Agreement or, at the discretion of the Controller, transfer the Personal Data to the Controller, unless the Personal Data must be retained longer, such as in connection with the (statutory) obligations of the Processor, or if the Controller requests that Personal Data is retained longer and the Processor and the Controller reach an agreement concerning the costs and the other conditions of such longer retention, the latter notwithstanding the responsibility of the Controller to observe the statutory retention periods. Any transfer to Controller takes place at the expense of the Controller.

The Processor will state at the request of the Controller that the deletion meant in the previous paragraph has taken place. The Controller may verify at his own expense whether the deletion actually took place. Clause 10 of this Agreement applies. As far as necessary, Processor shall inform all sub-processors involved in processing the Personal Data of any termination of the Main Agreement and will instruct them to act as provided for therein.

Unless otherwise agreed, the Controller will take care of a back-up of the Personal Data.

Rights of persons involved

If the Controller has access to the Personal Data the Controller shall comply with all requests by the data subjects involved relating to the Personal Data. The Processor shall immediately pass on to the Controller any requests as received by the Processor.

Only if Controller is not able to comply with requests from data subjects as set out above, Processor shall fully cooperate with Controller to:

- ✔ Provide the persons involved with access to their respective Personal Data after approval from and on the instructions of the Controller,
- ✔ Remove or correct Personal Data,
- ✔ Demonstrate that Personal Data have been removed or corrected if they are incorrect (or, in the event that the Controller does not agree that the Personal Data are incorrect, to record the fact that the person involved considers his Personal Data to be incorrect);
- ✔ Provide the Controller or the third party appointed by the Controller with the respective Personal Data in a structured, usual and machine-readable form, and;
- ✔ Enable the Controller otherwise to comply with his obligations under the GDPR or other applicable legislation in the area of processing Personal Data.

The costs of and requirements imposed on the cooperation referred to in the previous paragraph is jointly determined between the Controller and the Processor. Without any agreements in this respect, the costs will be borne by the Controller.

Liability

The Controller is responsible and on that account fully liable for (the stipulated purpose of) the Processing Operations, the use and content of the Personal Data, the provision to third parties, the duration of the storage of the Personal Data, the manner of processing and the means applied to this end.

The Processor is liable to the Controller as provided for in the Main Agreement.

Verification

The Controller is entitled to verify the compliance with the provisions of this Agreement on a yearly basis at his own expense or to have them verified by an independent registered auditor or registered informatics professional.

The Processor shall provide the Controller with all information necessary to demonstrate that the obligations in Article 28 GDPR have been complied with. If the third party (including sub-processors) engaged by the Controller gives an instruction which in the opinion of the Processor constitutes an infringement of the GDPR, the Processor will inform the Controller of this immediately.

The investigation of the Controller will always be limited to the systems of the Processor being used for the Processing Operations. The information obtained during the verification shall be dealt with confidentially by the Controller and only be used to verify the compliance of the Processor with the obligations under this Agreement and the information or parts of it will be deleted as soon as possible. The Controller warrants that any third parties (including sub- processors) engaged will also undertake these obligations.

Other provisions

Any amendments to this Agreement are only valid if they have been agreed between the Controller and the Processor in writing.

The Controller and the Processor will adjust this Agreement to any amended or supplemented regulations, supplementary instructions of the relevant authorities and increasing insight into the application of the GDPR (for instance by, but not limited to, case law or reports), the introduction of standard provisions and/or other events or insights which require such adjustment.

This Agreement is effective for as long as the Main Agreement is effective. The provisions of this Agreement remain in force as far as necessary for settlement of this Agreement and to the extent they are meant to survive the termination of this Agreement. The last category of provisions include but without limitation, the provisions with regard to confidentiality and disputes.

This Agreement prevails over all other agreements between the Controller and the Processor.

This Agreement is exclusively governed by Dutch law. The Controller and the Processor will exclusively submit their disputes in connection with this Agreement to the District Court of Amsterdam.

Annexes

Annex 1: Processing Operations of Personal Data and retention periods

This Annex forms part of the Processor Agreement and must be initiated by the parties.

I. The Personal Data that the parties expect to process:

- Name, address and domicile
- Telephone number
- Email address
- Date of birth
- Gender
- Occupation
- Lifestyle characteristics (for instance family composition, housing situation, interests, demographic characteristics)
- Data with regard to transactions/donations/purchase history/payments
- Data obtained from social profiles (Facebook, Twitter account etc.)
- Data with regard to nationality, health, sexual inclination, religion or philosophy of life, political preferences, membership of trade unions or personal identification marks.
- Financial data (bank account number, credit card number)
- Derived financial data (income category, home ownership, car ownership)
- Credit scoring
- Other, namely.....

II. The use (= processing method(s)) of the Personal Data and the purposes of and the resources for the processing:

[Description of the End Users or type of End Users to which the Processing relates, what will be done with the Personal Data (for instance storage in a file, emailing etc.), what is the purpose of the processing (for instance marketing, customer acquisition, performance of agreement) and which resources are used (for instance CRM software).]

III. The terms of use and retention periods of the (various types of) Personal Data.

Annex 2: Sub-processors/sub-processor categories

This Annex forms part of the Processor Agreement and must be initiated by the parties.

This Annex includes an overview of the sub-processors.