

## pudding App Data Processing Addendum

This Data Processing Addendum (“DPA”) is entered into between  **pudding App, Inc. (“ pudding App”)** and the entity identified below (“**Customer**”). pudding App and Customer may each be referred to as a “Party” and collectively referred to as the “Parties”. This DPA shall be effective on the date it has been fully executed by the Parties and when it has been provided to pudding App in accordance with the instructions below (the “DPA Effective Date”). As of the DPA Effective Date, this DPA shall be incorporated by reference into the agreement between Customer and pudding App that governs Customer’s use of the Service, whether such agreement is online or in a written agreement executed in counterparts with pudding App (“Agreement”). All capitalized terms used in this DPA but not defined shall have the meaning set forth in the Agreement. To the extent of any conflict or inconsistency between this DPA and the remaining terms of the Agreement, this DPA will govern.

This DPA sets out the terms that apply when Personal Data is Processed by pudding App under the Agreement. The purpose of the DPA is to ensure such Processing is conducted in accordance with Applicable Law and respects the rights of individuals whose Personal Data are Processed under the Agreement.

### HOW TO EXECUTE THIS DPA

This DPA has been pre-signed by pudding App. When pudding App receives the completed and signed DPA as specified below, this DPA will become a legally binding addendum to the Agreement. To make this DPA a part of the Agreement, Customer must complete the information in the signature block of this DPA and have an authorized representative sign it.

#### 1. Definitions

“**Applicable Law(s)**” means all applicable laws, regulations, and other legal or regulatory requirements in any jurisdiction relating to privacy, data protection/security, or the Processing of Personal Data, including without limitation the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 *et seq.* (“**CCPA**”) and the General Data Protection Regulation, Regulation (EU) 2016/679 (“**GDPR**”). For the avoidance of doubt, if pudding App’s processing activities involving Personal Data are not within the scope of an Applicable Law, such law is not applicable for purposes of this Addendum.

“ **pudding App**” means pudding App, Inc., a company incorporated in Delaware.

“**EEA**” means the European Economic Area, which constitutes the member states of the European Union and Norway, Iceland and Liechtenstein, as well as, for the purposes of this DPA, Switzerland and the United Kingdom.

“**Personal Data Breach**” means the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data.

“**Personal Data**” includes “personal data,” “personal information,” and “personally identifiable information,” and such terms shall have the same meaning as defined by Applicable Law.

“**Process**” and “**Processing**” mean any operation or set of operations performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, creating, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making such data available, alignment or combination, restriction, erasure or destruction.

**“Standard Contractual Clauses”** means the annex found in EU Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of Personal Data from the EEA to processors established in third countries under Directive 95/46/EC of the European Parliament and of the European Council (available as of April 2019 at <https://eur-lex.europa.eu/eli/dec/2010/87/oj>), completed as described in the “Data Transfers” section below.

**“Subprocessor”** means any Pudding App Affiliate or party engaged by Pudding App for the Processing of Personal Data in connection with the Service.

## **2. Relationship of the Parties**

Customer is (or represents that it is acting with full authority on behalf of) the “Controller”, and Pudding App is the “Processor”, as such terms (or the equivalent thereof) are defined in Applicable Law, with respect to the Personal Data Processed under the Agreement. In some circumstances, Customer may be a Processor, in which case Customer appoints Pudding App as Customer’s subprocessor, which shall not change the obligations of either Customer or Pudding App under this DPA.

## **3. Customer’s Instructions to Pudding App**

3.1 Purpose Limitation. Pudding App will not sell Personal Data or otherwise Process Personal Data for any purpose other than for the specific purposes set forth in this Agreement, unless obligated to do otherwise by Applicable Law. In such case, Pudding App will inform Customer of that legal requirement before the Processing unless legally prohibited from doing so. Further details regarding Pudding App’s Processing operations are set forth in Annex A. For purposes of this paragraph, “sell” shall have the meaning set forth in the CCPA.

3.2 Lawful Instructions. Customer will not instruct Pudding App to Process Personal Data in violation of Applicable Law. Pudding App has no obligation to monitor the compliance of Customer’s use of the Service with Applicable Law, though Pudding App will immediately inform Customer if, in Pudding App’s opinion, an instruction from Customer infringes Applicable Law. The Agreement, including this DPA, along with Customer’s configuration of the Service (as Customer may be able to modify from time to time) and any features applicable to Customer’s then-current version of the Service, constitute Customer’s complete and final instructions to Pudding App regarding the Processing of Personal Data, including for purposes of the Standard Contractual Clauses.

## **4. Subprocessing**

Customer acknowledges and agrees that Pudding App’s Affiliates and certain third parties may be retained as Subprocessors to Process Personal Data on Pudding App’s behalf (under this DPA as well as under the Standard Contractual Clauses, if they apply) in order to provide the Service. Pudding App’s third-party Subprocessors are listed at <https://pudding.app/policy/pudding-app-subprocessors/> (the “Subprocessor List”). Prior to a Subprocessor’s Processing of Personal Data, Pudding App will impose contractual obligations on the Subprocessor substantially the same as those imposed on Pudding App under this DPA. Pudding App remains liable for its Subprocessors’ performance under this DPA to the same extent Pudding App is liable for its own performance.

## **5. Assistance & Cooperation**

5.1 Security. Pudding App will provide reasonable assistance to Customer regarding Customer's compliance with its security obligations under Applicable Law relevant to Pudding App's role in Processing the Personal Data, taking into account the nature of Processing and the information available to Pudding App, by implementing technical and organizational measures set forth in the Agreement, without prejudice to Pudding App's right to make future replacements or updates to the measures that do not lower the level of protection of Personal Data. Pudding App will ensure that the persons Pudding App authorizes to Process the Personal Data are subject to written confidentiality agreements or are under an appropriate statutory obligation of confidentiality no less protective than the confidentiality obligations set forth in the Agreement.

5.2 Personal Data Breach Notification & Response. Pudding App will comply with the Personal Data Breach-related obligations directly applicable to it under Applicable Law. Taking into account the nature of Processing and the information available to Pudding App, Pudding App will assist Customer by informing it of a confirmed Personal Data Breach without undue delay or within the time period required under Applicable Law. Pudding App will notify Customer at the email address provided in the signature block of this DPA for purposes of Personal Data Breach notifications. Any such notification is not an acknowledgement of fault or responsibility. To the extent available, this notification will include Pudding App's then-current assessment of the following, which may be based on incomplete information:

(a) the nature of the Personal Data Breach, 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 likely consequences of the Personal Data Breach; and

(c) measures taken or proposed to be taken by Pudding App to address the Personal Data Breach, including, where applicable, measures to mitigate its possible adverse effects.

Pudding App will not assess the contents of Customer Data in order to identify information subject to any specific legal requirements. Customer is solely responsible for complying with legal requirements for incident notification applicable to Customer and fulfilling any third-party notification obligations related to any Customer Data Incident(s). Nothing in this DPA or in the Standard Contractual Clauses shall be construed to require Pudding App to violate, or delay compliance with, any legal obligation it may have with respect to a Personal Data Breach or other security incidents generally.

## **6. Responding to Individuals Exercising Their Rights Under Applicable Law**

To the extent legally permitted, Pudding App shall promptly notify Customer if Pudding App receives any requests from an individual seeking to exercise any rights afforded to them under Applicable Law regarding their Personal Data, which may include: access, rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, objection to the Processing, or to not be subject to an automated individual decision making (each, a "Data Subject Request"). To the extent Customer, in its use of the Service, does not have the ability to address a Data Subject Request, Pudding App shall, upon Customer's request, provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Pudding App is legally permitted to do so and the response to such Data Subject Request is required under Applicable Law. To the extent legally permitted, Customer shall be responsible for any costs arising from Pudding App's provision of such assistance, including any fees associated with provision of additional functionality.

## **7. DPIAs and Consultation with Supervisory Authorities or other Regulatory Authorities**

Taking into account the nature of the Processing and the information available to Pudding App, Pudding App will provide reasonable assistance to and cooperation with Customer for Customer's performance of any legally required data protection impact assessment of the Processing or proposed Processing of the Personal Data involving Pudding App, and in consultation with supervisory authorities or other regulatory authorities as required, by providing Customer with any publicly available documentation for the Service or by complying with the Audits section below. Additional support for data protection impact assessments or relations with regulators may be available and would require mutual agreement on fees, the scope of Pudding App's involvement, and any other terms that the Parties deem appropriate.

## **8. Data Transfers**

8.1 Customer authorizes Pudding App and its Sub-Processors to make international transfers of the Personal Data in accordance with this DPA so long as Applicable Law for such transfers is respected. As of the DPA Effective Date, Pudding App is a member of the EU-U.S. and Swiss-U.S. Privacy Shield frameworks ("Privacy Shield Certification"). Pudding App will inform Customer if Pudding App determines that it can no longer provide the level of protection required by such frameworks.

8.2 For transfers of Personal Data under this DPA from the EEA to countries which do not ensure an adequate level of data protection within the meaning of Applicable Law of the foregoing territories, to the extent such transfers are subject to such Applicable Law: 1) Pudding App's Privacy Shield Certification applies; but 2) to the extent that Pudding App's Privacy Shield Certification lapses or expires or if the EU-US Privacy Shield framework is invalidated, the Standard Contractual Clauses shall apply.

8.3 The Standard Contractual Clauses will be deemed completed as follows:

(a) The "exporter" is the Customer, and the exporter's contact information is set forth below.

(b) The "importer" is Pudding App, and Pudding App's contact information is set forth below.

(c) Appendices 1 and 2 of the Standard Contractual Clauses are set forth in Annex A below.

By entering into this DPA, the Parties are deemed to be signing the Standard Contractual Clauses and its applicable Appendices.

## **9. Audits**

Pudding App shall allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer subject to the following conditions: so long as the Agreement remains in effect and at Customer's sole expense, Customer may request that Pudding App provide it with documentation, data, and records ("Records") no more than once annually relating to Pudding App's compliance with this DPA (an "Audit"). To the extent Customer uses a third-party representative to conduct the Audit, Customer shall ensure that such third party representative is bound by obligations of confidentiality no less protective than those contained in this Agreement. Customer shall provide Pudding App with fourteen (14) days prior written notice of its intention to conduct an Audit. Customer shall conduct its Audit in a manner that will result in minimal disruption to Pudding App's business operations and shall not be entitled to receive data or information of other clients of Pudding App

or any other Confidential Information of Pudding App that is not directly relevant for the authorized purposes of the Audit. If any material non-compliance is identified by an Audit, Pudding App shall take prompt action to correct such non-compliance. For the avoidance of doubt, this provision does not grant Customer any right to conduct an on-site audit of Pudding App's premises. Customer shall reimburse Pudding App for any time expended for an Audit at the Pudding App's then-current rates, which shall be made available to Customer upon request.

#### **10. Return or Destruction of Personal Data**

Upon written request from Customer's authorized representative (which for purposes of this section is any Customer employee that is either a billing owner or an Administrator of the Service or who has confirmed in writing that they are authorized to make decisions on behalf of the Customer), Pudding App shall delete or anonymize such Personal Data in accordance with its requirements under Applicable Law. Notwithstanding the foregoing, this provision will not require Pudding App to delete Personal Data from archival and back-up files except as provided by Pudding App's internal data deletion practices and as required by Applicable Law.

Accepted and agreed to by the authorized representatives of each Party:

Pudding App, Inc.

Company:

By:

By:

Name: Vikas Arya

Name:

Date:

Date:

Address:

3998 Fossano Common,  
Fremont CA 94538  
USA

Address:

Notice copy: dpa@pudding.app

Email:

Data Protection Officer (if any):

GDPR Representative in the EU (if any):

## **Annex A**

### **Appendix 1 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses.

#### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer): Customer, a user of the Service.

#### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer): Pudding App, Inc. provider of the Service.

#### **Data subjects**

The Personal Data transferred concerns the following categories of data subjects (please specify): Depending on Customer's usage, this could include the data exporter's personnel, as well as individuals in other categories, such as the data exporter's customers, service providers, business partners, affiliates and other End Users.

#### **Categories of Personal Data**

The Personal Data transferred concern the following categories of data (please specify): The Service does not impose a technical restriction on the categories of Personal Data Customer may provide. The Personal Data Processed by Pudding App may thus include name, email address, telephone, title, and other categories of Personal Data, subject to the following section.

#### **Special categories of data (if appropriate)**

The Personal Data transferred concerns the following special categories of data (please specify): None anticipated, as the Agreement prohibits Customer from uploading special categories of data, but the Service does not impose a technical restriction on the categories of Personal Data Customer may provide.

#### **Processing operations**

The Personal Data transferred will be subject to the following basic processing activities (please specify): The subject matter, nature and purpose of the processing are Pudding App's provision of the Service to Customer as further described in the Agreement. This involves storing Personal Data, making it available to Customer for modification and transmission, and deleting Personal Data. The processing takes place from the commencement of the Agreement until deletion of all Personal Data by Pudding App in accordance with the DPA.

## **Appendix 2 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) can be found in the Agreement between the Parties.