

# General Data Processing Agreement

THIS GENERAL DATA PROCESSING AGREEMENT (THE “DPA AGREEMENT”) GOVERNS YOUR ACCESS AND USE OF THE WEB SERVICES PROS SERVICES AND PRODUCTS. BY ACCEPTING THIS DPA AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, BY USING THE WEB SERVICES PROS PRODUCTS AND SERVICES, OR BY EXECUTING THIS DPA AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS DPA AGREEMENT, YOU AGREE TO THE TERMS OF THIS DPA AGREEMENT. IF YOU ARE ENTERING INTO THIS DPA AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS DPA AGREEMENT AND MAY NOT USE THE WEB SERVICES PROS PRODUCTS AND SERVICES.

The Customer agreeing to these terms ("Customer") and Web Services Pros, Inc. ("WebServicesPros") as from the Amendment Effective Date (as defined below) effectively replaces any previously applicable data processing amendment and/or other terms previously applicable to privacy, data processing and/or data security.

## 1. Introduction

This Data Processing Amendment reflects the parties' agreement with respect to the terms governing the processing and security of Customer Data under the applicable Agreement.

## 2. Definitions

Capitalized terms used but not defined in this Data Processing Amendment have the meanings given elsewhere in the applicable Agreement. In this Data Processing Amendment, unless stated otherwise:

"Customer Data" means data submitted, stored, sent, or received via the Services by Customer, or End Users.

"Data Incident" means a breach of WebServicesPros's security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data on systems managed by or otherwise controlled by WebServicesPros.

"Data Incidents" will not include unsuccessful attempts or activities that do not compromise the security of Customer Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

"GDPR" means 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.

"Non-European Data Protection Legislation" means data protection or privacy legislation in force outside the European Economic Area and Switzerland.

"Services" means the following services, as applicable: (a) WebServicesPros APIs, (b) WebServicesPros Account Portal, (c) WebServicesPros other Product or Services.

"Term" means the period from the Amendment Effective Date until the end of WebServicesPros's provision of the Services under the applicable Agreement, including, if applicable, any period during which provision of the Services may be suspended and any post-termination period during which WebServicesPros may

continue providing the Services for transitional purposes.

The terms "personal data", "data subject", "processing", "controller", "processor" and "supervisory authority" as used in this Data Processing Amendment have the meanings given in the GDPR, and the terms "data importer" and "data exporter" have the meanings given in the Model Contract Clauses, in each case irrespective of whether the European Data Protection Legislation or Non-European Data Protection Legislation applies.

"Subprocessors" means third parties authorized under this Data Processing Amendment to have logical access to and process Customer Data in order to provide parts of the Services and related technical support.

"Amendment Effective Date" means the date on which Customer accepted, or the parties otherwise agreed to, this Data Processing Amendment.

"Notification Email Address" means the email address(es) designated by Customer in the Admin Console or the Order Form to receive certain notifications from WebServicesPros.

### **3. Processing**

1. WebServicesPros is a processor of that Customer Personal Data under the European Data Protection Legislation;
2. Processor and Controller Responsibilities. If the European Data Protection Legislation applies to the processing of Customer Personal Data, the parties acknowledge and agree that:
  - i. WebServicesPros is a processor of that Customer Personal Data under the European Data Protection Legislation;

- ii. Customer is a controller or processor, as applicable, of that Customer Personal Data under the European Data Protection Legislation; and
  - iii. each party will comply with the obligations applicable to it under the European Data Protection Legislation with respect to the processing of that Customer's Personal Data.
  - iv. WebServicesPros will process Customer Personal Data submitted, stored, sent or received by Customer, its Affiliates or End Users via the Services for the purposes of providing the Services and related technical support to Customer in accordance with the Data Processing Amendment.
3. Authorization by Third Party Controller. If the European Data Protection Legislation applies to the processing of Customer Personal Data and Customer is a processor, Customer warrants to WebServicesPros that Customer's instructions and actions with respect to that Customer Personal Data, including its appointment of WebServicesPros as another processor, have been authorized by the relevant controller.
4. Responsibilities under Non-European Legislation. If Non-European Data Protection Legislation applies to either party's processing of Customer Personal Data, the parties acknowledge and agree that the relevant party will comply with any obligations applicable to it under that legislation with respect to the processing of that Customer Personal Data.

## **4. Category**

Personal or non-personal data submitted, stored, sent, or received by Customers, or End Users via the Services may include the following categories of data:

Product information such as SKU, UPC, Descriptions, Color, Size, Media, Product Pricing, Product Inventory Levels, and Order information such as Order Number, Items orders, the Customer Name, phone, email, bill-to, and the ship to addresses.

## 5. Duration

This Data Processing Amendment will take effect on the Amendment Effective Date and, notwithstanding the expiry of the Term, remain in effect until, and automatically expire upon, deletion of all Customer Data by WebServicesPros as described in this Data Processing Amendment.

## 6. Data Deletion

WebServicesPros will enable Customers and/or End Users to delete Customer Data during the applicable Term upon request by the Customer via Support

<https://support.webservicespros.com/>. WebServicesPros will comply with this instruction as soon as reasonably practicable and within a maximum period of 180 days unless EU or EU Member State law requires storage.

## 7. Data Security

1. WebServicesPros's Security Measures, Controls, and Assistance
  - i. WebServicesPros's Security Measures. WebServicesPros will implement and maintain technical and organizational measures to protect Customer Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure. WebServicesPros may update or modify the Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services.
  - ii. Security Compliance by WebServicesPros Staff. WebServicesPros will take appropriate steps to ensure compliance with the Security Measures by its employees, contractors, and Subprocessors to the extent applicable to their scope of performance, including ensuring that all persons authorized to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

## 2. Data Incidents

- i. Incident Notification. If WebServicesPros becomes aware of a Data Incident, WebServicesPros will: (a) notify Customer of the Data Incident promptly and without undue delay; and (b) promptly take reasonable steps to minimize harm and secure Customer Data.
- ii. Details of Data Incident. Notifications made pursuant to this section will describe, to the extent possible, details of the Data Incident, including steps taken to mitigate the potential risks and steps WebServicesPros recommends Customer take to address the Data Incident.
- iii. Delivery of Notification. Notification(s) of any Data Incident(s) will be delivered to the Notification Email Address or, at WebServicesPros's discretion, by direct communication (for example, by phone call or an in-person meeting). Customer is solely responsible for ensuring that the Notification Email Address is current and valid.
- iv. No Assessment of Customer Data by WebServicesPros. WebServicesPros will not assess the contents of Customer Data in order to identify information subject to any specific legal requirements. Without prejudice to WebServicesPros's obligations under this Section 7.2 (Data Incidents), Customer is solely responsible for complying with incident notification laws applicable to Customer and fulfilling any third-party notification obligations related to any Data Incident(s).
- v. No Acknowledgement of Fault by WebServicesPros. WebServicesPros's notification of or response to a Data Incident under this Section 7.2 (Data Incidents) will not be construed as an acknowledgment by WebServicesPros of any fault or liability with respect to the Data Incident.

## 3. Customer's Security Responsibilities and Assessment

- i. Customer's Security Responsibilities. Customer agrees that, without prejudice to WebServicesPros's obligations under Section 7.1 (WebServicesPros's Security Measures, Controls and Assistance) and Section 7.2 (Data Incidents):
  - a. Customer is solely responsible for its use of the Services, including:

- i. making appropriate use of the Services and the Additional Security Controls to ensure a level of security appropriate to the risk in respect of the Customer Data;
    - ii. securing the account authentication credentials, systems, and devices Customer uses to access the Services; and
    - iii. retaining copies of its Customer Data as appropriate; and
  - b. WebServicesPros has no obligation to protect copies of Customer Data that Customer elects to store or transfer outside of WebServicesPros's and its Subprocessors' systems (for example, offline or on-premise storage), or to protect Customer Data by implementing or maintaining Additional Security Controls except to the extent Customer has opted to use them.
- ii. Customer's Security Assessment
  - a. Customer is solely responsible for reviewing the Security Documentation and evaluating for itself whether the Services, the Security Measures, the Additional Security Controls, and WebServicesPros's commitments under this Section 7 (Data Security) will meet Customer's needs, including with respect to any security obligations of Customer under the European Data Protection Legislation and/or Non-European Data Protection Legislation, as applicable.
  - b. Customer acknowledges and agrees that (taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of the processing of Customer Personal Data as well as the risks to individuals) the Security Measures implemented and maintained by WebServicesPros as set out in Section 7.1.1 (WebServicesPros's Security Measures) provide a level of security appropriate to the risk in respect of the Customer Data.

## **8. Data Subjects**

Personal or non Personal data submitted, stored, sent, or received via the Services may concern the following categories of data subjects: End Users including Customer's employees and contractors; the personnel of Customer's customers, suppliers, and

subcontractors; and any other person who transmits data via the Services, including individuals collaborating and communicating with End Users.

## **9. Data Subject Rights - Data Export**

1. Access; Rectification; Restricted Processing; Portability. During the applicable Term, WebServicesPros will, in a manner consistent with the functionality of the Services, enable Customer to access, rectify and restrict processing of Customer Data, including via the deletion functionality provided by WebServicesPros as described in Section 6.1 (Deletion During Term), and to export Customer Data.
2. Data Subject Requests
  - i. Customer's Responsibility for Requests. During the applicable Term, if WebServicesPros receives any request from a data subject in relation to Customer Personal Data, WebServicesPros will advise the data subject to submit his/her request to Customer, and Customer will be responsible for responding to any such request including, where necessary, by using the functionality of the Services.
  - ii. WebServicesPros's Data Subject Request Assistance. Customer agrees that (taking into account the nature of the processing of Customer Personal Data) WebServicesPros will assist Customer in fulfilling any obligation to respond to requests by data subjects, including if applicable Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR, by:
    - a. complying with the commitments set out in Section 9.1 (Access; Rectification; Restricted Processing; Portability) and Section 9.2.1 (Customer's Responsibility for Requests).

## **10. Data Transfers**

1. Data Storage and Processing Facilities. Customer agrees that WebServicesPros may, subject to Section 10.2 (Transfers of Data Out of the EEA), store and process Customer Data in the United States and any other country in which WebServicesPros or any of its Subprocessors maintains facilities.
2. Transfers of Data Out of the EEA
  - i. WebServicesPros's Transfer Obligations. If the storage and/or processing of Customer Personal Data involves transfers of Customer Personal Data

out of the EEA and the European Data Protection Legislation applies to the transfers of such data ("Transferred Personal Data") under any Agreement, WebServicesPros will, in relation to Transferred Personal Data under all Agreements:

- a. if requested to do so by Customer, ensure that WebServicesPros LLC as the data importer of the Transferred Personal Data enters into Model Contract Clauses with Customer as the data exporter of such data, and that the transfers are made in accordance with such Model Contract Clauses; and/or
    - b. offer an Alternative Transfer Solution, ensure that the transfers are made in accordance with such Alternative Transfer Solution, and make information available to Customer about such Alternative Transfer Solution.
  - ii. Customer's Transfer Obligations. In respect of Transferred Personal Data under any Agreement, Customer agrees that:
    - a. if under the European Data Protection Legislation WebServicesPros reasonably requires Customer to enter into Model Contract Clauses in respect of such transfers, Customer will do so; and
    - b. if under the European Data Protection Legislation WebServicesPros reasonably requires Customer to use an Alternative Transfer Solution offered by WebServicesPros, and reasonably requests that Customer take any action (which may include execution of documents) strictly required to give full effect to such solution, Customer will do so.
3. Data Center Information. Information about the locations of WebServicesPros data centers is available upon request from Support at <https://support.webservicespros.com/>
4. Disclosure of Confidential Information Containing Personal Data. If Customer has entered into Model Contract Clauses as described in Section 10.2 (Transfers of Data Out of the EEA), WebServicesPros will, notwithstanding any term to the contrary in the applicable Agreement, ensure that any disclosure of Customer's Confidential Information containing personal data, and any notifications relating to any such disclosures, will be made in accordance with such Model Contract

Clauses.

## 11. Subprocessors

1. Consent to Subprocessor Engagement. The customer specifically authorizes the engagement as Subprocessors by WebServicesPros. In addition, Customer generally authorizes the engagement as Subprocessors of any other third parties ("New Third Party Subprocessors"). If Customer has entered into Model Contract Clauses as described in Section 10.2 (Transfers of Data Out of the EEA), the above authorizations will constitute Customer's prior written consent to the subcontracting by WebServicesPros, LLC of the processing of Customer Data if such consent is required under the Model Contract Clauses.
2. Information about Subprocessors. Information about Subprocessors, including their functions and locations, is available upon request from Support at <https://support.webservicespros.com/>
3. Requirements for Subprocessor Engagement. When engaging any Subprocessor, WebServicesPros will:
  - i. ensure via a contract or terms that:
  - ii. the Subprocessor only accesses and uses Customer Data to the extent required to perform the obligations subcontracted to it, and does so in accordance with the applicable Agreement (including this Data Processing Amendment) and any Model Contract Clauses entered into or Alternative Transfer Solution adopted by WebServicesPros as described in Section 10.2 (Transfers of Data Out of the EEA); and
  - iii. if the GDPR applies to the processing of Customer Personal Data, the data protection obligations set out in Article 28(3) of the GDPR, as described in this Data Processing Amendment, are imposed on the Subprocessor
4. Before onboarding Subprocessors, WebServicesPros conducts an audit or review of the security and privacy practices of Subprocessors to ensure Subprocessors provide a level of security and privacy appropriate to their access to data and the scope of the services they are engaged to provide. Once WebServicesPros has assessed the risks presented by the Subprocessor, the Subprocessor is required to enter into appropriate security, confidentiality and

privacy terms.

## **12. Liability**

WHEN PERMITTED BY LAW, WebServicesPros, AND WebServicesPros'S SUPPLIERS AND DISTRIBUTORS, WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA; FINANCIAL LOSSES; OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF WebServicesPros, AND ITS SUPPLIERS AND DISTRIBUTORS, FOR ANY CLAIM UNDER THE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE APPLICABLE APIS (OR, IF WE CHOOSE, TO SUPPLYING YOU THE APIS AGAIN) DURING THE SIX MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

IN ALL CASES, WebServicesPros, AND ITS SUPPLIERS AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY EXPENSE, LOSS, OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

This agreement must be accepted to proceed to use Web Services Pros' all products and services.