

DATA PROCESSING ADDENDUM

This Data Processing Addendum ("**DPA**") forms part of the Terms available at agilepennygame.com/pages/imprint between Agile Penny Game; and the entity listed in the signature block below ("**Customer**"). Agile Penny Game and Customer are each a "Party" and collectively, the "Parties".

Except as modified below, the Terms shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the Parties hereby agree that:

The terms and conditions set out below shall be added as an addendum to the Terms.

Except where the context requires otherwise, references in this DPA to the Terms are to the Terms as amended by, and including, this DPA.

DEFINITIONS AND INTERPRETATION

In this DPA, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

"**GDPR**" means EU General Data Protection Regulation 2016/679;

The terms, "**Commission**", "**Controller**", "**Processor**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly;

"**Customer Personal Data**" means any Personal Data Processed by Agile Penny Game on behalf of the Customer pursuant to or in connection with the Terms and this DPA;

"**Standard Contractual Clauses**" means the contractual clauses pursuant to European Commission's Decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection;

"**Subprocessor**" means any person appointed by or on behalf of Agile Penny Game to Process Personal Data on behalf of any Customer in connection with the Terms and this DPA;

"**Appropriate Safeguards**" means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under the GDPR, especially but not limited to Art 46 GDPR.

The word "**include**" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

Capitalized terms not otherwise defined herein shall have the meaning given to them in the Terms.

1. PROCESSING OF CUSTOMER PERSONAL DATA

1.1. Role of the Parties. The Parties acknowledge and agree that with regard to the Processing of Customer Personal Data, Customer is the Controller, Agile Penny Game is the Processor and that Agile Penny Game will engage Subprocessors pursuant to the requirements set out in Clause 4 Subprocessors below.

1.2. Customer's Processing of Customer Personal Data. Customer shall, in its use of the Services and instructions to Agile Penny Game:

- a) comply with the GDPR in the Processing of Customer Personal Data; and
- b) have sole responsibility for the accuracy, quality and legality of Customer Personal Data and the means by which Customer acquired Customer Personal Data.

1.3. Agile Penny Game's Processing of Customer Personal Data. Agile Penny Game shall:

- a) comply with the GDPR in the Processing of Customer Personal Data; and
- b) treat Customer Personal Data as Confidential Information; and
- c) not Process Customer Personal Data other than on the relevant Customer's documented instructions unless Processing is required by applicable laws to which Agile Penny Game is subject, in which case Agile Penny Game shall to the extent permitted by applicable laws inform Customer of that legal requirement before the relevant Processing of that Customer Personal Data.

1.4. Processing Instructions. Customer instructs Agile Penny Game and authorises Agile Penny Game to Process Customer Personal Data; and in particular, transfer Customer Personal Data to any country, territory or an international organisation, as reasonably necessary:

- a) for the provision of the Services and consistent with the Terms and this DPA;
- b) to comply with other documented reasonable instructions provided by Customer where such instructions are consistent with the Terms and this DPA;
- c) for the Processing initiated by Customer or Customer's Users in their use of the Services.

1.5. Details of the Processing. Exhibit 1 to this DPA sets out certain information regarding Agile Penny Game's Processing of the Customer Personal Data as required by article 28(3) of the GDPR.

2. DATA SUBJECT RIGHTS

- 2.1. **Data Subject Request.** Agile Penny Game shall, to the extent legally permitted, notify Customer without undue delay if Agile Penny Game receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("**Data Subject Request**").
- 2.2. **Agile Penny Game Assistance.** Taking into account the nature of the Processing, Agile Penny Game shall assist Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests to exercise Data Subject rights under the GDPR particularly as laid down in Chapter III of the GDPR. Agile Penny Game shall not be liable for Customer's failure to address Data Subject Requests.

3. AGILE PENNY GAME PERSONNEL

- 3.1. **Confidentiality.** Agile Penny Game shall ensure that its personnel engaged in the Processing of Customer Personal Data are informed of the confidential nature of Customer Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. Agile Penny Game shall ensure that confidentiality obligations regarding Customer Personal Data survive the termination of the personnel engagement.
- 3.2. **Limitation of access.** Agile Penny Game shall ensure in each case that access is strictly limited to those individuals who need to know / access the relevant Customer Personal Data, as strictly necessary for the purposes of the Terms and this DPA, and to comply with applicable laws in the context of that individual's duties to Agile Penny Game.

4. SUBPROCESSING

- 4.1. **Appointment.** Customer authorises Agile Penny Game to appoint Subprocessors in connection with the Services and in accordance with this Clause 4.
- 4.2. **Current Subprocessors.** Agile Penny Game shall make available to Customer the current list of Subprocessors for the Services, including the identities of those Subprocessors and their country of location at agilepennygame.com/pages/imprint#3rd-party-providers. Agile Penny Game may continue to use those Subprocessors already engaged by Agile Penny Game as at the date of this DPA, subject to Agile Penny Game in each case as soon as practicable meeting the obligations set out in this Clause 4.

- 4.3. **New Subprocessors.** Agile Penny Game will notify customers of new Sub-processors by updating the list of Subprocessors above. Customer may also sign up to receive notifications of new Sub-processors via email by e-mailing legal@agilepennygame.com with the subject “Subscribe to New Subprocessor Notifications”. If, within a reasonable time specified in the notice, Customer notifies Agile Penny Game in writing of any objections to the proposed appointment based on reasonable grounds relating to data protection: Agile Penny Game shall work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Subprocessor. Where such a change cannot be made, notwithstanding anything in the Terms, Customer may by written notice to Agile Penny Game with immediate effect terminate the relationship to the extent that it relates to the Services which require the use of the proposed Subprocessor. Such termination is without prejudice to any fees incurred by Customer prior to the termination.
- 4.4. With respect to each Subprocessor, Agile Penny Game shall:
- a) carry out adequate due diligence before the Subprocessor first Processes Customer Personal Data to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by the GDPR;
 - b) ensure that the arrangement between on the one hand Agile Penny Game and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Customer Personal Data as those set out in the GDPR.
- 4.5. **Liability.** Agile Penny Game shall be liable for the acts and omissions of its Subprocessors to the same extent Agile Penny Game would be liable if performing the services of each Subprocessor directly under the terms of this DPA.

5. SECURITY

- 5.1. **Agile Penny Game obligations.** 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, Agile Penny Game shall, at its cost and expense, in relation to Customer Personal Data implement appropriate technical and organizational measures in accordance with the Agile Penny Game Security Standards to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in the GDPR, especially Article 32 of the GDPR. In assessing the appropriate level of security, Agile Penny Game shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.
- 5.2. These measures should entail physical, logical and data access control as well as data transfer, instruction, entry, availability and separation control.

- 5.3. **Customer obligations.** Notwithstanding the above, Customer agrees that except as provided by this DPA, Customer is responsible for its secure use of the Services, including securing its account authentication credentials, protecting the security of Customer Personal Data when in transit to and from the Services.

6. PERSONAL DATA BREACH

- 6.1. Agile Penny Game shall notify Customer without undue delay upon Agile Penny Game becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information to allow Customer to meet its obligations to report or inform Data Subjects of the Personal Data Breach under the GDPR.
- 6.2. Agile Penny Game shall co-operate with Customer and take such reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
- 6.3. Agile Penny Game shall promptly resolve as far as possible, at its own cost and expense, all data protection and security issues discovered by Customer and reported to Agile Penny Game that reveal a breach or potential breach by Agile Penny Game of its obligations under this DPA.
- 6.4. If Agile Penny Game is in breach of its obligations under this DPA, Customer may suspend the transfer of Customer Personal Data to Agile Penny Game until the breach is remedied.

7. ASSISTANCE, INFORMATION, RECORDS AND AUDIT

- 7.1. Agile Penny Game shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available.
- 7.2. Agile Penny Game contracts with respected external security firms who perform regular audits of the Agile Penny Game Services to verify that our security practices are sound and to monitor Agile Penny Game Services for any new vulnerabilities discovered by security research community. The most recent report from the audit is available upon Customer request once the Customer enters into a non-disclosure agreement with Agile Penny Game.
- 7.3. Agile Penny Game shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in the GDPR and upon reasonable notice by Customer and at Customer's expense allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer. Before the commencement of any such on-site audit, Customer and Agile Penny Game shall mutually agree upon the scope, timing, and

duration of the audit, in addition to a reasonable reimbursement rate. Customer shall promptly notify Agile Penny Game with information regarding any noncompliance discovered during the course of an audit in order to allow Agile Penny Game to deal with it promptly.

8. DELETION OR RETURN OF CUSTOMER PERSONAL DATA

8.1. Agile Penny Game shall, at the choice of the Customer, delete or return all the Customer Personal Data to the Customer after the end of the provision of Services, and deletes existing copies unless applicable law requires storage of the Customer Personal Data.

9. LIMITATION OF LIABILITY

9.1. Each Party's liability, taken together in the aggregate, arising out of or related to this DPA, whether in contract, tort or under any other theory of liability is subject to the limitation of liability clauses of the Terms.

10. TRANSFER MECHANISMS

10.1. In the absence of an adequacy decision, Customer Personal Data may only be transferred to a third country outside the EEA or to an international organisation where there are Appropriate Safeguards – e.g. pursuant to the Standard Contractual Clauses as issued by the relevant authorities, including equivalent obligations on the Sub-processor in respect of Customer Personal Data under GDPR.

GENERAL TERMS

11. Term

11.1. The term of this DPA shall correspond to the term of the Terms.

12. Authority and Third Parties

12.1. Parties warrant and represent that they have full power and authority to enter into and perform their respective obligations under the DPA.

12.2. Except as otherwise provided hereunder or under applicable law, no one other than a Party to this DPA, its successors and permitted assigns shall have any right to enforce any of its terms.

13. Governing Law and Jurisdiction

13.1. Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses: the Parties to this DPA hereby submit to the jurisdiction of German courts with respect to any disputes or claims howsoever arising under this DPA, including disputes regarding its existence, validity or termination or the consequences of its nullity; and this DPA and all noncontractual or other obligations arising out of or in connection with it are governed by the laws of Germany notwithstanding the conflict of law provisions and other mandatory legal provisions.

14. Order Of Precedence

14.1. The Parties agree that DPA shall replace any existing DPA the Parties may have previously entered into in connection with the Services.

14.2. Nothing in this DPA reduces Agile Penny Game's obligations under the Terms in relation to the protection of Customer Personal Data or permits Agile Penny Game to Process (or permit the Processing of) Customer Personal Data in a manner which is prohibited by the Terms.

14.3. With regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and any other agreements between the parties, including the Terms and including (except where explicitly agreed otherwise in writing, signed on behalf of the Parties) agreements entered into or purported to be entered into after the date of this DPA, the provisions of this DPA shall prevail.

15. Severance

15.1. Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this DPA is entered into and becomes a binding part of the Terms.

EXHIBIT 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

This Exhibit 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Customer Personal Data

Subject matter: The subject matter of the data Processing under this DPA is the Customer Personal Data.

Duration: As between Agile Penny Game and Customer, the duration of Customer Personal Data Processing under this DPA is until the termination of the Terms in accordance with their terms.

The nature and purpose of the Processing of Customer Personal Data

Nature: Agile Penny Game provides a software as a service solution through a cloud based platform that enables real-time active engagement of participants at meetings, trainings, workshops or events organised by organisers as described in the Terms.

Purpose: The purpose of the Customer Personal Data Processing under this DPA is:

- a) to allow Agile Penny Game to provide the Services to the Customer consistently with the Terms or this DPA,
- b) to comply with other documented reasonable instructions provided by Customer where such instructions are consistent with the Terms and this DPA or to process requests initiated by Customer or Customer's Users in their use of the Services;
- c) for Agile Penny Game legitimate business purposes - Customer acknowledges that Agile Penny Game shall have a right to use and disclose data relating to the operation, support and/or use of the Services for its legitimate business purposes, such as billing, account management, technical support, product development and sales and marketing;
- d) to comply with any legal obligation.

The categories of Data Subject to whom the Customer Personal Data relates

Any User of the Service as defined in the Terms, including but not limited to organisers and participants of Customer's Agile Penny Game events, or Customer's employees, directors, affiliates, advisors, agents, independent contractors, data sub-processors, and consultants that issue Agile Penny Game with processing instructions (including but not limited to during procurement, legal, IT&security and audit processes).

The types of Customer Personal Data to be Processed

Any Customer Personal Information contained in Customer Data as defined in the Terms and this DPA:

Data submitted by the Data Subjects:

- **First and last name – compulsory only for organiser**
- **Business contact information (company, email, phone, physical business address) – some may be compulsory for organiser**
- **Billing details if payment by invoice**

Technical data collected automatically:

- **Agile Penny Game HTTP Cookie**
- **Technical information / Connection data (date, time, x-edge-location, sc-bytes, c-ip, csmethod, cs(Host), cs-uri-stem, sc-status, cs(Referer), cs(User-Agent), cs-uri-query, cs(Cookie), x-edge-result-type, x-edge-request-id, x-host-header, cs-protocol, cs-bytes, timetaken, x-forwarded-for, ssl-protocol, ssl-cipher, x-edge-response-result-type, cs-protocolversion)**

Any other Personal Data submitted by the Data Subjects via the Services, determined by Customer or its Data Subjects.

Special categories of data

Customer, Customer's organisers and/ or participants may submit Personal Data to Agile Penny Game through the Services, the extent of which is determined by Customer or its Data Subjects.

The obligations and rights of Customer

The obligations and rights of Customer are set out in the Terms and this DPA.