Whimsical Data Processing Addendum

This Data Processing Addendum ("**DPA**") is an agreement between you and/or the entity you represent ("**Customer**" or "**you**") and Whimsical, Inc. ("**Whimsical**"), and supplements the Whimsical Terms of Service available at https://whimsical.com/terms or, if applicable, the SaaS Services Agreement entered into between Whimsical and Customer (the "**Agreement**"). All capitalized terms not otherwise defined in this DPA will have the meaning given to them in the Agreement. Under the Agreement, Whimsical provides certain services to Customer that involve Whimsical handling Customer Data, which may include Personal Information (defined below). This DPA is effective as of the date of Customer's first use of the services or, if applicable, the date of the Agreement (the "**DPA Effective Date**").

This DPA forms part of the Agreement and contains certain terms and conditions required by Customer relating to data protection, privacy and security to include certain requirements of The General Data Protection Regulation (EU) 2016/679 ("**GDPR**") and The California Consumer Privacy Act of 2018 (Cal. Civ. Code, Title 1.81.5 comprising §§ 1798.100 – 1798.198 (as amended) ("**CCPA**"), where applicable. In the event (and to the extent only) that there is a conflict between the GDPR and the CCPA, the parties agree to comply with the more onerous requirement or higher standard as determined by Customer.

This DPA consists of the Data Processing Addendum Terms and its appendices. This DPA is intended to reflect the parties' agreement with respect to the processing of Personal Information in accordance with the requirements of this DPA and Data Protection Legislation.

DATA PROCESSING ADDENDUM TERMS

1. DEFINITIONS

1.1. "**Controller**", "**Data Subject,**" "**personal data**," "**Process,**" "**Processed**," "**Processing,**" and "**Processor**" have the same meanings as in GDPR. With respect to CCPA, Customer and Whimsical hereby agree that Customer, when Customer is a legal entity and not an individual, is a "**Business**" and Whimsical is the "**Service Provider**," as defined under the CCPA and with respect to Personal Information (defined below).

1.2. "**Customer Data**" means any content, data, information or other materials (including Personal Information) submitted or shared by or for Customer to or through the Services. Customer Data does not include Registration Data, Usage Data, or information owned or licensed to Whimsical and purchased or licensed from Whimsical as part of the Services purchased by Customer.

1.3. "**Data Protection Legislation**" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area, including Switzerland (the "**EEA**"), and their member states, as well as all U.S. laws and regulations, as applicable to the Processing of Personal Information under the Agreement.

1.4. "**Personal Information**" means information relating to a living individual or household who is, relates to, describes or can be, reasonably identified or linked, directly or indirectly from information, either alone or in conjunction with other information, within Whimsical's control and which is stored, collected, Processed or submitted to or via the Services as Customer Data, Registration Data, or Usage Data.

1.5. "**Registration Data**" means (i) Customer's or an individual user of Customer's (if Customer is an entity) email address; (ii) if provided, Customer's name and Avatar photo or image; (iii) if Customer purchases a subscription to utilize the Services, Customer's additional personal and payment information necessary for processing the transaction. For avoidance of doubt, the only Registration Data that is required to be provided is a valid email address.

1.6. "**Services**" means the services provided by Whimsical to Customer pursuant to the Agreement.

1.7. "**Standard Contractual Clauses**" means the "Standard Contractual Clauses" annexed to the European Commission's decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council .

1.8. "**Usage Data**" means Customer's or an individual user of Customer's (if Customer is an entity) data that is collected automatically through use of the Services, including but not limited to log information, location information, and information collected through the use of cookies.

1.9. Any phrase introduced by the terms "other," "including," "include" or any similar expression shall be construed without limitation.

2. Confidentiality

2.1. <u>Customer Data</u>. Customer Data is deemed to be the confidential information of Customer.

2.2. <u>Confidentiality of Processing Agreements</u>. The parties agree that each party may disclose an appropriately redacted version of the Agreement (and all attachments) to third parties to the extent necessary to fulfill its obligations hereunder as required by Data Protection Legislation.

3. Data Processing

3.1. Whimsical will:

(a) only process Personal Information on behalf of and in accordance with Customer's instructions for the provision of the Services. This DPA and the Agreement consist of Customer's written instructions to Whimsical for the Processing of Personal Information and Whimsical. Any additional or different instructions require a signed agreement between the parties and may be subject to additional fees. For the avoidance of doubt, Customer's instructions for the Processing of Personal Information shall comply with Data Protection Legislation;

(b) comply with applicable Data Protection Legislation;

(c) access, collect, retain, use, disclose, and otherwise Process Customer's Personal Information solely to fulfill its obligations to Customer under the Agreement (including Statements of Work) and this DPA, and on Customer's behalf, and for no other purposes;

(d) to the extent an individual identifies Customer as the entity that collected its Personal Information or its relevant Data Controller, notify Customer of any individuals' access requests, rectification or deletion requests, complaints, claims or allegations, individuals' requests for copies it receives regarding Personal Information, and to the extent the Services do not enable Customer to fulfill such requests, and subject to additional fees as applicable and agreed upon, cooperate with and assist with Customer in investigating and responding to individuals exercising their legal rights and fulfilling such requests;

(e) not attempt to link, identify, or otherwise create a relationship between Personal Information and non-Personal Information or any other data without the express authorization of Customer;

(f) not sell or license Personal Information or otherwise disclose Personal Information for a commercial or non-commercial purpose;

(g) hereby certify that it understands its restrictions set forth in Section 1798.140(w)(2)(A) of the CCPA and will comply with the same to the extent the Personal Information are subject to the CCPA and no other CCPA exemptions apply;

(h) ensure that its staff, contractors or persons engaged by them are authorized to process Customer Data and have committed themselves to confidentiality of the same or are under an appropriate obligation of confidentiality;

(i) at the choice of Customer, delete or return all the Personal Information after the end of the provision of services relating to processing, and delete existing copies unless applicable law requires retention of that Personal Information or to protect Whimsical's legal rights;

(j) cooperate with Customer's assessment and audit rights in the Agreement and this DPA as set forth in Section 6 in this DPA; and

(k) inform Customer if, in its opinion, an instruction from Customer infringes the Data Protection Legislation, provided, however, Whimsical is not responsible for performing legal research and/or for providing legal advice to Customer.

4. Sub-processors

4.1. Whimsical will:

(a) maintain an accurate and updated list ("**Sub-processor List**") of all of Whimsical's subcontractors who will be involved with or assist in providing the Services and who may Process any Customer Data in the course of doing so (each a "**Sub-processor**"). The Sub-processor List is available at any time in Whimsical's Privacy Notice located at https://whimsical.com/privacy ("**Privacy Notice**") under the heading "Data Processors". Whimsical will provide Customer with a written copy of its Sub-processor List upon request. The Sub-processor List includes a description of the services that those Sub-processors provide with respect to the Customer Data;

(b) provide Customer with notice of the addition of any new Sub-Processor to the Sub-processor List at any time during the term of the Agreement, with such notice being provided on Whimsical's website;

(c) provide Customer with additional information about any Sub-processor on the Sub-processor List that Customer may reasonably request from time to time, to include copies of any written agreement with such Sub-processors;

(d) ensure that all Sub-processors on the Sub-processor List are bound by contractual terms no less onerous than those contained in this DPA; and

(e) be liable to Customer for the acts and omissions of its Sub-processors in relation to the Services to the same extent Whimsical would be liable if performing the services of each of those Sub-processors directly under the terms of this DPA.

4.2. Customer agrees to provide any objections to new or replacement Sub-processors promptly (in any event no later than fourteen (14) days following any notification or update), provided such objections are based on documented evidence that establish the Sub-processor does not or cannot comply with this DPA or the Data Protection Legislation and identify the reasonable data protection basis for the objection ("Objection"), so that Whimsical can evaluate the Objection and determine any appropriate action. In the event of an Objection, the parties will work together in good faith to find a mutually acceptable resolution to address such Objection, including but not limited to reviewing additional documentation supporting the Sub-processor's compliance with this DPA or Data Protection Legislation. To the extent the parties do not reach a mutually agreeable resolution in a reasonable time period, not to exceed 30 days, Customer may, without penalty or liability, in its sole discretion, terminate the Services with 30 days' written notice and Whimsical shall provide a pro-rata refund of any sums paid in advance for Services not provided by Whimsical.

4.3. For the avoidance of doubt and in accordance with Clause 9, Option 2 of the Standard Contractual Clauses, the above constitutes Customer's general authorization for Whimsical's engagement of Sub-processors and Whimsical's appointment of additional Sub-processors or replacement of any Sub-processors identified on the Sub-processor List and in Appendix 1, Annex III.

5. Security

5.1. <u>Appropriate Security Safeguards</u>. Whimsical will implement and maintain appropriate technical, administrative,

physical and organizational measures (in accordance with Appendix 1) to adequately safeguard and protect the security and confidentiality of Personal Information against accidental, unauthorized or unlawful destruction, alteration, modification, processing, disclosure, loss, or access. Whimsical will not materially decrease the overall security of the Services (or any part thereof) during the term of the Agreement.

5.2. <u>Security Incident & Data Breach Notification</u>. If Whimsical becomes aware of any unauthorized or unlawful access to, or acquisition, alteration, use, disclosure, or destruction of Personal Information that compromises the security, confidentiality or integrity of Personal Information and that requires a data breach notification to Customer according to Data Protection Legislation ("**Security Incident**"), Whimsical will notify Customer without undue delay, but in any event within 48 hours. Such notifications will be made by email to the email address on file for Customer. Whimsical's contact point for additional details regarding a Security Incident is privacy@whimsical.com. Whimsical will maintain appropriate security incident response and management plans**.** Except as required by applicable Data Protection Legislation, the notification obligations in this Section shall not apply to Security Incidents caused by Customer.

6. Information and Audits

6.1. Upon Customer's written request, and subject to the confidentiality obligations set forth in the Agreement, Whimsical shall make available to Customer information related to Whimsical's compliance with its security policies and procedures under this DPA. Customer may only use such information to confirm Whimsical's compliance with this DPA and to assist Customer with complying with its obligations under Data Protection Legislation. If no such information is available at the time of Customer's request, Whimsical will allow audits as set forth below.

6.2. Upon Customer's reasonable belief that Whimsical is not in compliance with its security policies and procedures under this DPA or the Agreement regarding Customer Data, or if such audit is required by Customer's supervisory authorities in accordance with Data Protection Legislation, Customer may conduct, either itself or through a third party independent contractor selected by Customer at Customer's expense, an on-site or off-site audit and review of Whimsical's architecture, systems, infrastructure and procedures used in connection with the Services. Customer must provide Whimsical with a proposed audit plan at least two weeks in advance of the audit, after which Customer and Whimsical shall discuss in good faith and finalize the audit plan prior to commencement of audit activities. Such audits may be conducted up to one time per year unless additional audits are required by Data Protection Legislation or by any supervisory authority with authority to request same from Customer.

6.3. Upon Whimsical's request, after conducting an audit, Customer must notify Whimsical of the manner in which Whimsical does not comply with any of the security, confidentiality or privacy obligations herein, if applicable. Upon such notice, Whimsical will use commercially reasonable efforts to make any necessary changes to ensure compliance with its obligations.

6.4. Audits described in Section 6.2 of this DPA will be conducted during reasonable times and will be of reasonable duration and will not unreasonably interfere with Whimsical's day-to-day operations. If Customer conducts an audit through a third-party independent contractor, such independent contractor will be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Agreement to protect Whimsical's proprietary information.

6.5. On an annual basis, Whimsical will provide a copy of Whimsical's then most recent third party audits or certifications (if any), or any summaries thereof, that Whimsical generally makes available to its customers at the time of such request.

6.6. All information and audit results, reports, and findings provided to or obtained by Customer shall be Whimsical Confidential Information.

7. Cross-Border Transfer Mechanisms for International Data Transfers

7.1. To the extent that Customer's use of the Services requires a transfer of Personal Information from within the EEA or United Kingdom (the "**UK**") to a jurisdiction outside the EEA or UK, respectively, Whimsical will take such measures as are necessary to ensure the transfer is in compliance with applicable Data Protection Legislation.

7.2. Whimsical will only transfer Personal Information from the EEA or the UK to countries outside the EEA or the UK (a) that are recognized by the European Commission or Data Protection Legislation as providing an adequate level of protection for Personal Information; (b) that are covered by a suitable framework recognized by the European Commission or Data Protection Legislation as providing an adequate level of protection for Personal Information; or (c) through the use of other legally recognized validation methods such as Standard Contractual Clauses.

7.3. Whimsical currently transfers Personal Information from the EEA or the UK to countries outside the EEA and UK under the Standard Contractual Clauses. The parties further agree that the Standard Contractual Clauses will apply to Personal Information that is transferred via the Services from the EEA or the UK to outside the EEA or the UK, either directly or via onward transfer, to any country or recipient not recognized by the European Commission as providing an adequate level of protection for Personal Information.

7.4. Customer shall be deemed to have signed the Standard Contractual Clauses in Appendix 1 in its capacity of "data exporter" and Whimsical in its capacity as "data importer."

7.5. Any Personal Information included in Registration Data and/or Usage Data is transferred pursuant to Module One of the Standard Contractual Clauses. Any Personal Information included in Customer Data is transferred pursuant to Module Two or Module Three of the Standard Contractual Clauses depending on whether Customer is Data Controller of the Personal Information (for Module Two) or a Data Processor of the Personal Information on behalf of its end customer(s) (for Module Three). If Module Three applies, Customer hereby notifies Whimsical that Customer is a Processor and the instructions shall be as set forth in Section 3.1(a).

7.6. For purposes of Clauses 17 and 18 of the Standard Contractual Clauses, the parties select the Republic of Latvia. Additional provisions applicable to Personal Information transferred pursuant to Standard Contractual Clauses and based on the "Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data" are set forth in Appendix 2.

7.7. Where Personal Information originating from the UK specifically is Processed by Whimsical outside of the UK in a territory that has not been designated by the UK Information Commissioner's Office as ensuring an adequate level of protection pursuant to Data Protection Legislation, and to the extent such Processing and transfer would be subject to the Standard Contractual Clauses and Data Protection Legislation applicable in the UK ("UK Data Protection Legislation") the parties agree that: (i) general and specific references in the Standard Contractual Clauses to the GDPR have the same meaning as the equivalent reference in UK Data Protection Legislation; (ii) references in the Standard Contractual Clauses to a "Member State" mean the UK and references to a "supervisory authority" shall mean the UK Information Commissioner's Office; and (iii) any other obligation in the Standard Contractual Clauses determined by the Member State in which the data exporter is established refer to an equivalent obligation under UK Data Protection Legislation.

7.8. The Standard Contractual Clauses will cease to apply if Whimsical has implemented an alternative recognized compliance mechanism for the lawful transfer of Personal Information in accordance with applicable Data Protection Legislation and has informed Customer thereof.

8. **Privacy Shield Principles**

8.1. Whimsical is certified under the EU-US Privacy Shield Framework Agreement ("**Privacy Shield**") and hereby agrees to remain subject to the Privacy Shield and/or any successor thereto. Whimsical provides at least the same levels of privacy protection as are mandated and required under the Privacy Shield and Processes the Personal Information in a manner consistent with Customer's obligations under the Privacy Shield Principles. Whimsical acknowledges that the Court of Justice of the European Union struck down the Privacy Shield as a

valid mechanism to comply with EU data protection requirements when transferring Personal Information from the EU to the USA. Whimsical will continue to monitor guidance from the EU supervisory authorities regarding the Privacy Shield.

8.2. Whimsical will notify Customer if it ever determines that it can no longer provide this level of protection and, upon notice, take reasonable and appropriate steps to stop and remediate unauthorized processing.

9. General Provisions

9.1. <u>Governing Law and Dispute Resolution.</u> Notwithstanding any governing law provisions of the Agreement, this DPA shall be governed by the laws of the Republic of Latvia and the parties submit to the exclusive jurisdiction of the Latvian courts except in the case of any alleged breach of current or future privacy laws, regulations, standards, regulatory guidance, and self-regulatory guidelines at state or federal level in the United States of America, in which case the laws of the State of Delaware shall govern unless otherwise dictated by that law. Notwithstanding any provision in the Agreement, if any dispute arises in connection with laws and regulations of the European Union, the European Economic Area and their member states, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. The commencement of mediation will not prevent the parties commencing or continuing court proceedings/interlocutory action(s). No party may commence any court proceedings/arbitration in relation to any dispute arising out of this DPA until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. The mediation will take place in Dublin, Ireland and the language of the mediation will be English. If the dispute is not settled by mediation within 20 working days of commencement of the mediation, Customer may refer the dispute to be finally resolved by court proceedings.

9.2. <u>General Compliance</u>. Each party remains exclusively liable for its own compliance with Data Protection Legislation. Customer warrants that it has provided all required notices and obtained all permissions or, if applicable and sufficient under applicable Data Protection Legislation, another valid legal basis, required under applicable Data Protection Legislation to provide Whimsical with any Personal Information.

9.3. <u>Special or Sensitive Data</u>. Unless set forth in a statement of work, order, or other document, Personal Information may not include any sensitive or special data that imposes specific data security or data protection obligations on Whimsical in addition to or different from those specified in any documentation or which are not provided as part of the Services. Whimsical does not require and does not request any sensitive or special data to provide the Services. Customer understands and agrees that Whimsical does not differentiate between different types of data sensitivity when Processing Customer Data or treat certain types of Personal Information differently from other types and applies the same security measures to all Customer Data as set forth in Section 5 of this DPA.

9.4. <u>Precedence</u>. This DPA will prevail over the Agreement in relation to the processing of Personal Information to the extent any conflict or inconsistency exists between those two documents.

APPENDIX 1
APPENDIX TO THE STANDARD CONTRACTUAL CLAUSES

ANNEX I

A. LIST OF PARTIES

Data exporter:
Name: The Customer who has purchased Services from data importer.
Address: as set forth in the Agreement or as set forth in data exporter's account for the Services.
Contact person: as set forth in the Agreement or as set forth in data exporter's account for the Services.
Activities relevant to the data transferred under these Clauses: as set forth in the Agreement.
Signature and date: refer to DPA.
Role: controller, except when processing data on behalf of another entity, in which case data exporter is a processor.

Data importer:
Name: Whimsical, Inc.
Address: as set forth in the Agreement.
Contact person: as set forth in the Notices provision in the Agreement.
Activities relevant to the data transferred under these Clauses: as set forth in the Agreement.
Signature and date: refer to DPA.
Role: processor, or sub-processor if data exporter is a processor.

B. DESCRIPTION OF TRANSFER

Categories of Data subjects: The categories of data subjects are Whimsical's customers and Whimsical's customers' employees.

Categories of personal data transferred: Data exporter may submit personal data to the Service, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include those categories listed in the Agreement.

Sensitive data transferred (if applicable): As set forth in Section 10.3 of the DPA.

The frequency of the transfer: As set forth in the Agreement.

Nature of the processing: The nature of the processing is provision of the Services.

Purposes of the data transfer and further processing: The objective of the transfer of personal data and further processing is provision of the Services.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period: As set forth in the DPA and Agreement.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing: As set forth in the DPA and Agreement.

C. COMPETENT SUPERVISORY AUTHORITY

If the data exporter is established in an EU Member state, the competent Supervisory Authority shall be the Supervisory Authority applicable to the establishment location of the data exporter. If the data exporter is not established in an EU Member state, the competent Supervisory Authority shall be the Supervisory Authority located where the data exporter has appointed its EU Representative. If the data exporter is not established in an EU Member state and is not required to appoint an EU Representative, the competent Supervisory Authority shall be the supervisory authority applicable to the location of the data subject whose data is at issue.

ANNEX II

Technical and organizational measures including technical and organizational measures to ensure the security of the Customer Personal Data:

Data importer will maintain appropriate administrative, physical, and technical safeguards ("Security Safeguards") for protection of the security, confidentiality and integrity of Personal Information provided by data exporter in connection with the Standard Contractual Clauses. The Security Safeguards are described at https://whimsical.com/security and may be updated from time to time as required as set forth in the DPA.

ANNEX III

List of Data Importer's Subprocessors

As set forth on the webpage https://whimsical.com/privacy

APPENDIX 2 – ADDITIONAL SCC PROVISIONS
BASED ON EUROPEAN DATA PROTECTION BOARD RECOMMENDATIONS 01/2020

The provisions set forth in this Appendix 2 apply to Personal Data (as defined in GDPR) originating from or relating to Data Subjects located in the EEA or the UK ("**European Personal Data**") (together, the "**Supplementary Clauses**"):

1.1. <u>Encryption</u>: Customer and Whimsical shall encrypt all transfers of European Personal Data between them, and Whimsical shall encrypt any onward transfers it makes of such data.

1.2. <u>Non-receipt of directives under FISA Section 702</u>: Whimsical has, as of the DPA Effective Date, not received any national security orders under Foreign Intelligence Surveillance Act ("FISA") Section 702.

1.3. <u>FISA Section 702 Status</u>: As of the DPA Effective Date, no court has found Whimsical to be the type of entity defined in 50 U.S.C § 1881(b)(4) eligible to receive process issued under FISA Section 702.

1.4. <u>"Back Doors"</u>: Whimsical has not purposefully created "back doors" or similar programming in its systems that provide Services that could be used to access the systems and/or European Personal Data, nor has Whimsical purposefully created or changed its business processes in a manner that facilitates access to European Personal Data or its systems that provide the Services. To the best of Whimsical's knowledge, United States Data Protection Legislation does not require Whimsical to create or maintain "back doors" or to facilitate access to European Personal Data or systems that provide Services or for Whimsical to possess or provide the encryption key in connection with a United States Disclosure Request (as defined below).

1.5. <u>Security Testing</u>: Whimsical shall regularly test, assess and evaluate the effectiveness of the security measures set forth in Appendix 1.

1.6. <u>Government Requests</u>:

1.6.1. Whimsical shall, unless prohibited by law or a legally binding order of an applicable government body or agency, promptly notify Customer of any request for the disclosure of European Personal Data by a governmental or regulatory body or law enforcement authority (including any Supervisory Authority) ("Disclosure Request") and shall provide reasonable information and assistance to customer regarding the request. Whimsical shall not respond to such request unless required by applicable law (including to provide acknowledgement of receipt of the request).

1.6.2. Whimsical will review applicable law to evaluate and challenge the Disclosure Request if, after a careful assessment, it concludes that there are grounds under applicable law to do so. When challenging a Disclosure Request, Whimsical shall seek reasonable interim measures to suspend the effects of the Disclosure Request until an applicable court or other authority has decided on the merits. Whimsical shall not disclose data requested until required to do so under applicable law and shall only provide the minimum amount of data permissible when responding to the Disclosure Request, based on a reasonable interpretation of the request.

1.6.3. If the Disclosure Request is incompatible with the cross-border data transfer mechanism applicable in accordance with Section 7 of the DPA, Whimsical will so notify the requesting authority and, if permitted by applicable law, notify the competent government authority with jurisdiction over the data subject to the Disclosure Request.

1.6.4. Whimsical will maintain a record of Disclosure Requests and its evaluation, response, and handling of the requests and upon written request will provide Customer with access to such records except as prohibited by applicable law or legal process or in the interest in protecting Whimsical's legal rights in connection with threatened, pending, or current litigation.