

Whimsical Data Processing Addendum

This Whimsical Data Processing Addendum (“**Addendum**”) is an agreement between you and/or the entity you represent (“**Customer**”) and Whimsical, Inc. (“**Whimsical**”). This Addendum is subject to 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 Addendum 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 Addendum is effective as of the date of Customer’s first use of the services or, if applicable, the date of the Agreement (the “**Addendum Effective Date**”).

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

DATA PROCESSING ADDENDUM TERMS

1. DEFINITIONS

- 1.1. “**Controller**”, “**Data Subject**”, “**personal data**”, “**Process**”, “**Processed**”, “**Processing**”, “**Processor**”, and “**Supervisory Authority**” 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. Customer Data. Customer Data is deemed to be the confidential information of Customer.
- 2.2. Confidentiality of Processing Agreements. 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 Addendum and the Agreement consist of Customer’s written instructions to Whimsical for the Processing of Personal Information. 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 in its Processing of Personal Information within Customer Data;
 - (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 Addendum, 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 Addendum as set forth in Section 6 in this Addendum; 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. Subprocessors

4.1. Whimsical will:

- (a) maintain an accurate and updated list ("**Subprocessor 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 "**Subprocessor**"). The Subprocessor List is available at any time at <https://whimsical.com/privacy/Subprocessors> ("**Subprocessor List**");
- (b) provide Customer with notice of any new Subprocessor to the Subprocessor List, with such notice being provided by an update to the Subprocessor List; *provided, however*, that Customer may request to be notified via email of new Subprocessors by providing Customer's email address to Whimsical via the registration form provided on the Subprocessor List;
- (c) provide Customer with additional information about any Subprocessor on the Subprocessor List that Customer may reasonably request from time to time;
- (d) ensure that all Subprocessors on the Subprocessor List are bound by contractual terms no less onerous than those contained in this Addendum; and
- (e) be liable to Customer for the acts and omissions of its Subprocessors in relation to the Services to the same extent Whimsical would be liable if performing the services of each of those Subprocessors directly under the terms of this Addendum.

4.2. Customer agrees to provide any objections to new or replacement Subprocessors 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 Subprocessor does not or cannot comply with this Addendum or 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 Subprocessor's compliance with the Addendum 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 Subprocessors and Whimsical's appointment of additional Subprocessors or replacement of any Subprocessors identified on the Subprocessor List and in Appendix 1, Annex III.

5. Security

5.1. Appropriate Security Safeguards. 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 may update such measures during the term of the Agreement but will not materially decrease the overall security of the Services (or any part thereof) during the term.

- 5.2. **Security Incident & Data Breach Notification.** 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. Customer and Whimsical shall work together in good faith within the timeframes for Customer to provide notifications in accordance with Data Protection Legislation to finalize the content of any such notifications to Data Subjects or Supervisory Authorities, as required by Data Protection Legislation. Whimsical’s prior written approval shall be required for any statements regarding, or references to, the Security Incident or Whimsical made by Customer in any such notifications.

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 Addendum. Customer may only use such information to confirm Whimsical’s compliance with this Addendum 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. 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 that Process Customer’s Personal Information. Customer must provide Whimsical with a proposed audit plan at least 30 days 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. Each party will bear its own costs in relation to the audit, unless Whimsical informs Customer that Whimsical expects to incur additional charges or fees in the performance of the audit that are not covered by the fees payable under the Agreement, for example for professional services. The parties will negotiate in good faith with respect to any such charges or fees.
- 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 and agreement of the parties, 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 Addendum 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 must be approved by Whimsical (such approval not to be unreasonably withheld) and 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 complies 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 invalidated the Privacy Shield as a 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. Governing Law. Notwithstanding any governing law provisions of the Agreement, any claims under this Addendum related to the laws or regulations of the EEA shall be governed by the laws of the Republic of Latvia and the parties submit to the exclusive jurisdiction of the Latvian courts, and any other claims under this Addendum shall be governed by the laws of the State of Delaware unless otherwise dictated by that law and the parties submit to the exclusive jurisdiction of the federal courts located in Denver, Colorado, USA.
- 9.2. General Compliance. 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. Special or Sensitive Data. 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 Addendum.
- 9.4. Precedence. This Addendum 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 Addendum.

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 Addendum.

Role: processor, or Subprocessor 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 Addendum.

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 Addendum and Agreement.

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

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 and processed by Whimsical in connection with the Agreement (“**European Personal Data**”):

- 1.1. Encryption: 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. Non-receipt of directives under FISA Section 702: Whimsical has, as of the Addendum Effective Date, not received any national security orders under Foreign Intelligence Surveillance Act (“FISA”) Section 702.
- 1.3. FISA Section 702 Status: As of the Addendum 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. “Back Doors”: 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. Security Testing: Whimsical shall regularly test, assess and evaluate the effectiveness of the security measures set forth in Appendix 1.
- 1.6. Government Requests:
 - 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 Addendum, 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.