

**FLYWHEEL**  
**GENERAL DATA PROTECTION REGULATION**  
**DATA PROCESSING ADDENDUM**

(Current as of April 2018)

**WHO SHOULD EXECUTE THIS ADDENDUM:**

If you have determined that you qualify as a data controller under the GDPR, and need a data processing addendum ("Addendum") in place with vendors that process personal data on your behalf, our GDPR-compliant Addendum is attached and ready for your signature in accordance with the instructions below.

**HOW THIS ADDENDUM APPLIES**

This Addendum is an addendum to and forms part of the Terms of Service Agreement (the "Service Agreement"). The Client entity signing this Addendum must be the same as the Client entity party to the Service Agreement.

In the course of providing the Service to Client pursuant to the Service Agreement, Flywheel may process personal data on behalf of Client. Flywheel agrees to comply with the following provisions with respect to any Personal Data submitted by or for Client to Flywheel or collected and processed by or for Client using Flywheel's services.

**HOW TO EXECUTE THIS ADDENDUM:**

1. This Addendum consists of two parts: the main body of the Addendum, and Annexes 1, 2, and 3 (including Appendices 1 to 2).
2. This Addendum has been pre-signed on behalf of Flywheel. The Standard Contractual Clauses in Annex 2 (including Appendix 1 thereto) and the Security Measures in Annex 3 have been pre-signed by Flywheel as the data processor.
3. To complete this Addendum, Client must complete the information in the signature boxes and sign on Pages 6, 12, 14 and 18.
4. Send the completed and signed Addendum to Flywheel by email, indicating the Client's legal name, to [compliance@getflywheel.com](mailto:compliance@getflywheel.com).

Upon receipt of the validly completed Addendum by Flywheel at this email address, this Addendum will become legally binding.

## GENERAL DATA PROTECTION REGULATION DATA PROCESSING ADDENDUM

This Data Processing Addendum ("Addendum"), forms part of the Terms of Service Agreement entered into by and between Fancy Chap, Inc. d/b/a Flywheel ("Flywheel") and the undersigned client of Flywheel (the "Client") for website hosting services (the "Service") provided by Flywheel (the "Service Agreement"). Each of Flywheel and Client may be referred to herein as a "party" and together as the "parties."

The parties have agreed to enter into this Addendum in order to ensure that adequate safeguards are put in place with respect to the protection of such Personal Data as required by EU Data Protection Laws.

The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Terms of Service Agreement. Except as modified below, the terms of the Principal Agreement 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 of Service Agreement. Except where the context requires otherwise, references in this Addendum to the Terms of Service Agreement are to the Terms of Service Agreement as amended by, and including, this Addendum.

The parties agree that the obligations under this Addendum that are specific to the GDPR shall not apply until the GDPR has come into full force and effect on May 25, 2018.

### 1. Definitions

1.1 The following definitions are used in this Addendum:

- a. "Adequate Country" means a country or territory that is recognized under EU Data Protection Laws as providing adequate protection for Personal Data.
- b. "Affiliate" means, with respect to a party, any corporate entity that, directly or indirectly, Controls, is Controlled by, or is under Common Control with such party (but only for so long as such Control exists).
- c. "Flywheel" means Flywheel and any of its Affiliates.
- d. "Client Group" means Client and any of its Affiliates established and/or doing business in the EEA, or United Kingdom.
- e. "Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country
- f. "EU Data Protection Laws" means all laws and regulations of the European Union, the European Economic Area, their member states, and the United Kingdom, applicable to the processing of Personal Data under the Service Agreement, including, where applicable, the GDPR.
- g. "GDPR" means the General Data Protection Regulation (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).
- h. "Personal Data" means all data that is defined as "*personal data*" under EU Data Protection Laws and to which EU Data Protection Laws apply and that is provided by Client to Flywheel, and accessed, stored or otherwise processed by Flywheel as a data processor as part of its provision of the Service to Client.
- i. "Processing," "data controller," "data subject," "supervisory authority," and "data processor" shall have the meanings ascribed to them in EU Data Protection Laws.

1.2 An entity "Controls" another entity if it: (a) holds a majority of the voting rights in it; (b) is a member or shareholder of it and has the right to remove a majority of its board of directors or equivalent managing body; (c) is a member or shareholder of it and controls alone or pursuant to an agreement with other shareholders or members, a majority of the voting rights in it; or (d) has the right to exercise a dominant influence over it pursuant to its constitutional documents or pursuant to a contract; and two entities are

treated as being in "Common Control" if either controls the other (directly or indirectly) or both are controlled (directly or indirectly) by the same entity.

## **2. Status of the Parties**

- 2.1 The type of Personal Data processed pursuant to this Addendum and the subject matter, duration, nature and purpose of the processing, and the categories of data subjects, are as described in Annex 1.
- 2.2 Each party warrants in relation to Personal Data that it will comply (and will ensure that any of its personnel comply and use commercially reasonable efforts to ensure that its sub-processors comply), with the EU Data Protection Laws. As between the parties, Client shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which the Client acquired Personal Data.
- 2.3 In respect of the parties' rights and obligations under this Addendum regarding the Personal Data, the parties hereby acknowledge and agree that the Client is the data controller or processor, and Flywheel is the data processor or sub-processor, as applicable, and accordingly, Flywheel agrees that it shall process all Personal Data in accordance with its obligations pursuant to this Addendum.
- 2.4 If Client is a data processor, Client warrants to Flywheel that Client's instructions and actions with respect to the Personal Data, including its appointment of Flywheel as a sub-processor and concluding the standard contractual clauses (Annex 2), have been authorized by the relevant data controller.
- 2.5 Where and to the extent that Flywheel processes data that is defined as "personal data" under the EU Data Protection Laws as a data controller as set out in Flywheel Privacy Policy available at <https://getflywheel.com/legal/privacy-policy/>, Flywheel will comply with applicable the EU Data Protection Laws in respect of that processing.
- 2.6 Each party shall appoint an individual within its organization authorized to respond from time to time to inquiries regarding the Personal Data and each party shall deal with such inquiries promptly.

## **3. Flywheel Obligations**

- 3.1 With respect to all Personal Data, Flywheel warrants that it shall:
  - a. Only process Personal Data in order to provide the Service, and shall act only in accordance with: (i) this Addendum, (ii) the Client's written instructions as represented by the Service Agreement and this Addendum, and (iii) as required by applicable laws;
  - b. Upon becoming aware, inform the Client if, in Flywheel's opinion, any instructions provided by the Client under Clause 3.1(a) infringe the GDPR;
  - c. Implement appropriate technical and organizational measures to ensure a level of security appropriate to the risks that are presented by the processing of Personal Data, in particular protection against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data. Such measures include, without limitation, the security measures set out in Annex 3;
  - d. Take reasonable steps to ensure that only authorized personnel have access to such Personal Data and that any persons whom it authorizes to have access to the Personal Data are under obligations of confidentiality;
  - e. Without undue delay after becoming aware, notify the Client of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by Flywheel, its sub-processors, or any other identified or unidentified third party (a "Security Breach");
  - f. Promptly provide the Client with reasonable cooperation and assistance in respect of a Security Breach and all reasonable information in Flywheel's possession concerning such Security Breach insofar as it affects the Client, including the following to the extent then known:
    - i. the possible cause and consequences for the data subjects of the Security Breach;
    - ii. the categories of Personal Data involved;
    - iii. a summary of the possible consequences for the relevant data subjects;

- iv. a summary of the unauthorized recipients of the Personal Data; and
  - v. the measures taken by Flywheel to mitigate any damage.
- g. Not make any public announcement about a Security Breach (a "Breach Notice") without the prior written consent of the Client, unless required by applicable law;
- h. Promptly notify the Client if it receives a request from a data subject to access, rectify or erase that individual's Personal Data, or if a data subject objects to the processing of, or makes a data portability request in respect of, such Personal Data (each a "Data Subject Request"). Flywheel shall not respond to a Data Subject Request without the Client's prior written consent except to confirm that such request relates to the Client, to which the Client hereby agrees. To the extent that the Client does not have the ability to address a Data Subject Request, then upon Client's request Flywheel shall provide reasonable assistance to the Client to facilitate such Data Subject Request to the extent able and in line with applicable law. Client shall cover all costs incurred by Flywheel in connection with its provision of such assistance;
- i. Other than to the extent required to comply with applicable law, following termination or expiration of the Service Agreement or completion of the Service, Flywheel will delete all Personal Data (including copies thereof) processed pursuant to this Addendum; and
- j. Taking into account the nature of processing and the information available to Flywheel, provide such assistance to the Client as the Client reasonably requests in relation to Flywheel's obligations under EU Data Protection Laws with respect to:
- i. data protection impact assessments (as such term is defined in the GDPR);
  - ii. notifications to the supervisory authority under the EU Data Protection Laws and/or communications to data subjects by the Client in response to any Security Breach; and
  - iii. the Client's compliance with its obligations under the GDPR with respect to the security of processing;

provided that the Client shall cover all costs incurred by Flywheel in connection with its provision of such assistance.

#### **4. Sub-Processing**

- 4.1 The Client grants a general authorization: (a) to Flywheel to appoint third party data center operators, and outsourced marketing, business, engineering and Client support providers as sub-processors to support the performance of the Service.
- 4.2 Flywheel will maintain a list of sub-processors and will add the names of new and replacement sub-processors to the list prior to them starting sub-processing of Personal Data, and will provide such list to Client upon request. If the Client has a reasonable objection to any new or replacement sub-processor, it shall notify Flywheel of such objections in writing within ten (10) days of the notification and the parties will seek to resolve the matter in good faith. If Flywheel is reasonably able to provide the Service to the Client in accordance with the Service Agreement without using the sub-processor and decides in its sole discretion to do so, then the Client will have no further rights under this Clause 4.2 in respect of the proposed use of the sub-processor. If Flywheel requires use of the sub-processor in its discretion and is unable to satisfy the Client as to the suitability of the sub-processor or the documentation and protections in place between Flywheel and the sub-processor within ninety (90) days from the Client's notification of objections, the Client may, within thirty (30) days following the end of the ninety (90) day period referred to above, terminate the applicable Service Agreement with at least thirty (30) days written notice, solely with respect to the Service(s) to which the proposed new sub-processor's processing of Personal Data relates. If the Client does not provide a timely objection to any new or replacement sub-processor in accordance with this Clause 4.2, the Client will be deemed to have consented to the sub-processor and waived its right to object. Flywheel may use a new or replacement sub-processor while the objection procedure in this Clause 4.2 is in process.
- 4.3 Flywheel will ensure that any sub-processor it engages to provide an aspect of the Service on its behalf in connection with this Addendum does so only on the basis of a written contract that imposes on such sub-processor terms substantially no less protective of Personal Data than those imposed on Flywheel in this

Addendum (the "Relevant Terms"). Flywheel shall procure the performance by such sub-processor of the Relevant Terms and shall be liable to the Client for any breach by such person of any of the Relevant Terms.

## **5. Audit and Records**

- 5.1 Flywheel shall, in accordance with EU Data Protection Laws, make available to the Client such information in Flywheel's possession or control as the Client may reasonably request with a view to demonstrating Flywheel's compliance with the obligations of data processors under EU Data Protection Law in relation to its processing of Personal Data.
- 5.2 The Client may exercise its right of audit under EU Data Protection Laws in relation to Personal Data, through Flywheel providing:
- a. an audit report not older than eighteen (18) months, prepared by an independent external auditor demonstrating that Flywheel's technical and organizational measures are sufficient and in accordance with an accepted industry audit standard; and
  - b. additional information in Flywheel's possession or control to an EU supervisory authority when it requests or requires additional information in relation to the processing of Personal Data carried out by Flywheel under this Addendum.

## **6. Data Transfers**

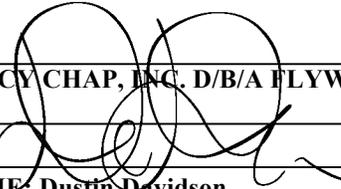
- 6.1 To the extent any processing of Personal Data by Flywheel takes place in any country outside the EEA (except if in an Adequate Country), the parties agree that the standard contractual clauses approved by the EU authorities under EU Data Protection Laws and set out in Annex 2 will apply in respect of that processing, and Flywheel will comply with the obligations of the "data importer" in the standard contractual clauses and the Client will comply with the obligations of the "data exporter."
- 6.2 The Client acknowledges and accepts that the provision of the Service under the Service Agreement may require the processing of Personal Data by sub-processors in countries outside the EEA.
- 6.3 If, in the performance of this Addendum, Flywheel transfers any Personal Data to a sub-processor located outside of the EEA (without prejudice to Clause 4), Flywheel shall in advance of any such transfer ensure that a legal mechanism to achieve adequacy in respect of that processing is in place, such as:
- a. The requirement for Flywheel to execute or procure that the sub-processor execute to the benefit of the Client standard contractual clauses approved by the EU authorities under EU Data Protection Laws and set out in Annex 2;
  - b. The requirement for the sub-processor to be certified under the EU-U.S. Privacy Shield Framework; or
  - c. The existence of any other specifically approved safeguard for data transfers (as recognised under EU Data Protection Laws) and/or a European Commission finding of adequacy.
- 6.4 The following terms shall apply to the standard contractual clauses set out in Annex 2:
- a. The Client may exercise its right of audit under Clause 5.1.f of the standard contractual clauses as set out in, and subject to the requirements of, Clause 5.2 of this Addendum; and
  - b. Flywheel may appoint sub-processors as set out, and subject to the requirements of, Clauses 4 and 6.3 of this Addendum.

## **7. General**

- 7.1 This Addendum is without prejudice to the rights and obligations of the parties under the Service Agreement, which shall continue to have full force and effect. In the event of any conflict between the terms of this Addendum and the terms of the Service Agreement, the terms of this Addendum shall prevail so far as the subject matter concerns the processing of Personal Data.
- 7.2 Flywheel's liability under or in connection with this Addendum (including under the standard contractual clauses set out in Annex 3) is subject to the limitations on liability contained in the Service Agreement.

- 7.3 This Addendum does not confer any third-party beneficiary rights, it is intended for the benefit of the parties hereto and their respective permitted successors and assigns only, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.
- 7.4 This Addendum and any action related thereto shall be governed by and construed in accordance with the laws of the State of Nebraska, without giving effect to any conflicts of laws principles. The parties consent to the personal jurisdiction of, and venue in, the courts of Omaha, Nebraska.
- 7.5 This Addendum is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions and agreements between the parties with respect to such subject matter. Other than in respect of statements made fraudulently, no other representations or terms shall apply or form part of this Addendum. No modification of, amendment to, or waiver of any rights under the Addendum will be effective unless in writing and signed by an authorized signatory of each party. This Addendum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Each person signing below represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Addendum. Each party represents and warrants to the other that the execution and delivery of this Addendum and the performance of such party's obligations hereunder, have been duly authorized and that this Addendum is a valid and legally binding agreement on each such party, enforceable in accordance with its terms.

**IN WITNESS WHEREOF**, the parties have each caused this Addendum to be signed and delivered by its duly authorized representative.

<b>CLIENT:</b>	<b>FANCY CHAP, INC. D/B/A FLYWHEEL</b>
<b>BY:</b>	<b>BY:</b> 
<b>NAME:</b>	<b>NAME: Dustin Davidson</b>
<b>TITLE:</b>	<b>TITLE: CEO</b>
<b>ADDRESS:</b>	<b>ADDRESS:</b> 1405 Harney Street, #201 Omaha, NE 68102
<b>DATE:</b>	<b>DATE: May 24<sup>th</sup>, 2018</b>

## ANNEX 1

### Details of the Personal Data and Processing Activities

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

- a. The Subject Matter of the Personal Data: the subject matter of the Processing of the Personal Data is set out in the Service Agreement and this Addendum
- b. The Duration of the Processing of Personal Data: until the earliest of (i) expiration or termination of the Service Agreement, or (ii) the date upon which processing is no longer necessary for the purposes of either party performing its obligations under the Service Agreement (to the extent applicable).
- c. The Nature and Purpose of the Processing: processing necessary to provide the Service to Client, pursuant to the Service Agreement;
- d. The Purpose(s) of the Processing Is/Are: necessary for the provision of the Service;
- e. The Categories of Data Subject to whom the Personal Data Relates: [insert categories]
- f. The Obligations and Rights of Client and Client Affiliates: the obligations and rights of Client and Client Affiliates are set out in the Service Agreement and this Addendum.

## ANNEX 2

### **Standard Contract Clauses**

#### **INTRODUCTION**

Both parties have agreed on the following Contractual Clauses (the "Clauses") in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer that is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law.

#### **AGREED TERMS**

##### **1. Definitions**

For the purposes of the Clauses:

- a. "personal data", "special categories of data", "process/processing", "controller", "processor", "data subject" and "supervisory authority" shall have the same meaning as in EU Data Protection Laws 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- b. the "data exporter" means the entity who transfers the personal data;
- c. the "data importer" means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of EU Data Protection Laws 95/46/EC;
- d. the "sub-processor" means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- e. the "applicable data protection law" means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established; and
- f. "technical and organisational security measures" means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

##### **2. Details of the Transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

##### **3. Third-Party Beneficiary Clause**

3.1 The data subject can enforce against the data exporter this Clause, Clause 4.1.b to i, Clause 5.a to e, and g to j, Clause 6.1 and 2, Clause 7, Clause 8.2, and Clauses 9 to 12 as third-party beneficiary.

3.2 The data subject can enforce against the data importer this Clause, Clause 5.a to e and g, Clause 6, Clause 7, Clause 8.2, and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless an successor entity has assumed the entire legal obligations of the data exporter by contract or by

operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3.3 The data subject can enforce against the sub-processor this Clause, Clause 5.a to e and g, Clause 6, Clause 7, Clause 8.2, and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3.4 The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### **4. Obligations of the Data Exporter**

4.1 The data exporter agrees and warrants:

- a. that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- b. that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- c. that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- d. that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- e. that it will ensure compliance with the security measures;
- f. that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of EU Data Protection Laws 95/46/EC;
- g. to forward any notification received from the data importer or any sub-processor pursuant to Clause 5.b and Clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- h. to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- i. that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- j. that it will ensure compliance with Clause 4.a to i.

#### **5. Obligations of the Data Importer**

5.1 The data importer agrees and warrants:

- a. to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- b. that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- c. that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- d. that it will promptly notify the data exporter about:
  - i. any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - ii. any accidental or unauthorized access; and
  - iii. any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so;
- e. to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- f. at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- g. to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- h. that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- i. that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- j. to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## **6. Liability**

6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## **7. Mediation and Jurisdiction**

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- a. to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- b. to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8. Cooperation with Supervisory Authorities**

8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5.b.

## **9. Governing Law**

The Clauses shall be governed by the laws of the Member State in which the data exporter is established.

## **10. Variation of the Contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

## **11. Sub-Processing**

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfill its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

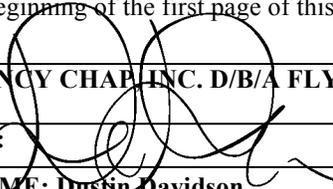
11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5.1.j, which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

**12. Obligation After the Termination of Personal Data-Processing Services**

12.1 The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

This agreement has been entered into on the date shown at the beginning of the first page of this agreement.

<b>CLIENT:</b>	<b>FANCY CHAIR INC. D/B/A FLYWHEEL</b>
<b>BY:</b>	<b>BY:</b> 
<b>NAME:</b>	<b>NAME: Dustin Davidson</b>
<b>TITLE:</b>	<b>TITLE: CEO</b>
<b>ADDRESS:</b>	<b>ADDRESS:</b> 1405 Harney Street, #201 Omaha, NE 68102
<b>DATE:</b>	<b>DATE: May 24<sup>th</sup>, 2018</b>

**APPENDIX 1**  
**to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

**Data Exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

The (i) legal entity that has created an account with Fancy Chap, Inc. ("Flywheel") for provision of the Service, and executed the Clauses as a data exporter and, (ii) all affiliates of such entity established within the EEA, which have purchased services from Flywheel or its Affiliates.

**Data Importer**

The data importer is (please specify briefly activities relevant to the transfer):

Flywheel, which processes Personal Data upon the instruction of the data exporter in accordance with the terms of the agreement between the data exporter and Flywheel.

**Data Subjects**

The personal data transferred concern the following categories of data subjects (please specify):

The data exporter may submit Personal Data to Flywheel and its Affiliates, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospective clients, clients, resellers, referrers, business partners, and vendors of the data exporter (who are natural persons);
- Employees or contact persons of the data exporter's prospective clients, clients, resellers, referrers, subcontractors, business partners, and vendors (who are natural persons);
- Employees, agents, advisors, and freelancers of the data exporter (who are natural persons); and/or
- Natural persons authorized by the data exporter to use the services provided by Flywheel to the data exporter.

**Categories of Data**

The personal data transferred concern the following categories of data (please specify):

The data exporter may submit Personal Data to Flywheel, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to, the following categories of Personal Data:

- Names, titles, position, employer, contact information (email, phone, fax, physical address etc.), identification data, professional life data, personal life data, connection data, or localization data (including IP addresses).

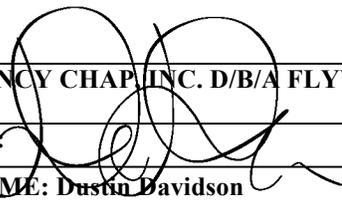
**Special Categories of Data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

The data exporter may submit special categories of data to Flywheel, the extent of which is determined and controlled by the data exporter in its sole discretion. Such special categories of data include, but may not be limited to, Personal Data with information revealing racial or ethnic origins, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning an individual's health or sex life.

**Processing Operations**

The personal data transferred will be subject to the following basic processing activities (please specify): The objective of the processing of Personal Data by Flywheel is to provide the Service, pursuant to the Service Agreement.

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**APPENDIX 2**  
**to the Standard Contractual Clauses**  
**Security Measures**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

A. Data importer/sub-processor has implemented and shall maintain a security program in accordance with industry standards.

B. More specifically, data importer/sub-processor's security program shall include:

**Access Control of Processing Areas**

Data importer/sub-processor implements suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment (namely telephones, database and application servers and related hardware) where the personal data are processed or used, including:

- establishing security areas;
- protection and restriction of access paths;
- establishing access authorizations for employees and third parties, including the respective documentation;
- all access to the data center where personal data are hosted is logged, monitored, and tracked; and
- the data center where personal data are hosted is secured by a security alarm system, and other appropriate security measures.

**Access Control to Data Processing Systems**

Data importer/sub-processor implements suitable measures to prevent their data processing systems from being used by unauthorized persons, including:

- use of adequate encryption technologies;
- identification of the terminal and/or the terminal user to the data importer/sub-processor and processing systems;
- automatic temporary lock-out of user terminal if left idle, identification and password required to reopen;
- automatic temporary lock-out of the user ID when several erroneous passwords are entered, log file of events, monitoring of break-in-attempts (alerts); and
- all access to data content is logged, monitored, and tracked.

**Access Control to Use Specific Areas of Data Processing Systems**

Data importer/sub-processor commits that the persons entitled to use their data processing system are only able to access the data within the scope and to the extent covered by their respective access permission (authorization) and that personal data cannot be read, copied or modified or removed without authorization. This shall be accomplished by various measures including:

- employee policies and training in respect of each employee's access rights to the personal data;
- allocation of individual terminals and /or terminal user, and identification characteristics exclusive to specific functions;
- monitoring capability in respect of individuals who delete, add or modify the personal data;

- release of data only to authorized persons, including allocation of differentiated access rights and roles;
- use of adequate encryption technologies; and
- control of files, controlled and documented destruction of data.

### **Availability Control**

Data importer/sub-processor implements suitable measures to ensure that personal data are protected from accidental destruction or loss, including:

- infrastructure redundancy; and
- backup is stored at an alternative site and available for restore in case of failure of the primary system.

### **Transmission Control**

Data importer/sub-processor implements suitable measures to prevent the personal data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media. This is accomplished by various measures including:

- use of adequate firewall, VPN and encryption technologies to protect the gateways and pipelines through which the data travels;
- certain highly confidential employee data (e.g., personally identifiable information such as National ID numbers, credit or debit card numbers) is also encrypted within the system; and
- providing user alert upon incomplete transfer of data (end to end check); and
- as far as possible, all data transmissions are logged, monitored and tracked.

### **Input Control**

Data importer/sub-processor implements suitable input control measures, including:

- an authorization policy for the input, reading, alteration and deletion of data;
- authentication of the authorized personnel;
- protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data;
- utilization of unique authentication credentials or codes (passwords);
- providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are kept locked;
- automatic log-off of user ID's that have not been used for a substantial period of time; and
- proof established within data importer/sub-processor's organization of the input authorization; and
- electronic recording of entries.

### **Separation of Processing for different Purposes**

Data importer/sub-processor implements suitable measures to ensure that data collected for different purposes can be processed separately, including:

- access to data is separated through application security for the appropriate users;
- modules within the data importer/sub-processor's data base separate which data is used for which purpose, i.e., by functionality and function;
- at the database level, data is stored in different normalized tables, separated per module, per Controller Client or function they support; and

- interfaces, batch processes and reports are designed for only specific purposes and functions, so data collected for specific purposes is processed separately.

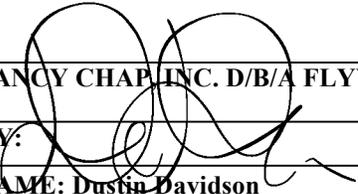
**Documentation**

Data importer/sub-processor will keep documentation of technical and organizational measures in case of audits and for the conservation of evidence. Data importer/sub-processor shall take reasonable steps to ensure that persons employed by it, and other persons at the place of work concerned, are aware of and comply with the technical and organizational measures set forth in this Appendix 2.

**Monitoring**

Data importer/sub-processor shall implement suitable measures to monitor access restrictions to data importer/sub-processor’s system administrators and to ensure that they act in accordance with instructions received. This is accomplished by various measures including:

- individual appointment of system administrators;
- adoption of suitable measures to register system administrators' access logs to the infrastructure and keep them secure, accurate and unmodified for at least six months;
- yearly audits of system administrators’ activity to assess compliance with assigned tasks, the instructions received by the data importer/sub-processor and applicable laws;
- keeping an updated list with system administrators’ identification details (e.g., name, surname, function or organizational area) and tasks assigned and providing it promptly to data exporter upon request.

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