

DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) amends and supplements the SmugMug Terms of Use (“**Agreement**”) entered into between you, the user, together with any company or other business entity you are representing, if any (collectively, “**Photographer**”), and SmugMug, Inc. (“SmugMug”) and is hereby incorporated by reference into the Agreement. All capitalized terms not otherwise defined in this DPA will have the meaning given to them in the Agreement. If there is any inconsistency or conflict between this DPA and the Agreement as it relates to data protection, this DPA will govern. This DPA applies only to the extent Photographer uses the Services or Products to process personal data from residents of the European Economic Area (“**EEA**”) or Switzerland.

1. DEFINITIONS.

“**Photographer Personal Data**” means Personal Data originating in the EEA or Switzerland and Processed by SmugMug on behalf of Photographer in provision of the Services or Products.

“**Data Subject**” means the individual to whom Photographer Personal Data relates.

“**Controller to Processor Standard Clauses**” means the standard clauses for the transfer of Personal Data to Processors established in third countries approved by the European Commission from time to time, the approved version of which in force at present is that set out in the European Commission’s Decision 2010/87/EU of 5 February 2010, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>.

“**Data Protection Legislation**” means as applicable: (a) the GDPR; and/or (b) the Federal Data Protection Act of 19 June 1992 (Switzerland).

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, and any amendment or replacement to it.

“**Personal Data**” means any information that relates to a Data Subject, including but not limited to a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the Data Subject.

“**Process**” or “**Processing**” means any operation or set of operations which is performed on Personal Data, whether or not by automated means, such as the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Photographer Personal Data.

“**Security Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Photographer Personal Data transmitted, stored or otherwise Processed. The terms “**controller**,” “**data subject**,” “**personal data**,” “**processor**,” and “**supervisory authority**” as used in this DPA will have the meanings ascribed to them in the GDPR.

2. PROCESSING OF DATA.

2.1. Purpose of Processing. The purpose of data Processing under this Agreement is the provision of the Services or Products pursuant to the Agreement.

- 2.2. Processor and Controller Responsibilities. The parties acknowledge and agree that: (a) SmugMug is a processor of Photographer Personal Data under the Data Protection Legislation; (b) Photographer is a controller of Photographer Personal Data under the Data Protection Legislation; and (c) each party will comply with the obligations applicable to it under the Data Protection Legislation with respect to the Processing of Photographer Personal Data.
- 2.4. Photographer Instructions. Photographer instructs SmugMug to Process Photographer Personal Data: (a) in accordance with the Agreement; and (b) to comply with other reasonable written instructions provided by Photographer where such instructions are consistent with the terms of the Agreement. Photographer will ensure that its instructions for the Processing of Photographer Personal Data shall comply with the Data Protection Legislation. Photographer shall have sole responsibility for the accuracy, quality, and legality of Photographer Personal Data and the means by which Photographer obtained the Photographer Personal Data.
- 2.5. SmugMug's Compliance With Photographer Instructions. SmugMug shall only Process Photographer Personal Data in accordance with Photographer's instructions and shall treat Photographer Personal Data as confidential information. SmugMug may Process Photographer Personal Data other than on the written instructions of Photographer if it is required under applicable law to which SmugMug is subject. In this situation, SmugMug shall inform Photographer of such requirement before SmugMug Processes the Photographer Personal Data unless prohibited by applicable law. If SmugMug believes or becomes aware that any of Photographer's instructions conflict with any Data Protection Legislation, SmugMug shall inform Photographer immediately.

3. SECURITY; PRIVACY IMPACT ASSESSMENTS.

- 3.1. SmugMug Personnel. SmugMug shall ensure that its personnel engaged in the Processing of Photographer Personal Data are informed of the confidential nature of the Photographer Personal Data, and are subject to obligations of confidentiality and such obligations survive the termination of that individual's engagement with SmugMug.
- 3.2. Security. SmugMug will implement appropriate technical and organizational measures to safeguard Photographer Personal Data taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 3.3. Data Privacy Impact Assessments. SmugMug will take reasonable measures to cooperate and assist Photographer in conducting a data protection impact assessment and related consultations with any supervisory authority, if Photographer is required to do so under Data Protection Legislation.

4. DATA SUBJECT RIGHTS.

- 4.1. Assistance with Photographer's Obligations. To the extent Photographer, in its use or receipt of the Services or Products, does not have the ability to correct, amend, restrict, block or delete Photographer Personal Data, as required by Data Protection Legislation, SmugMug shall promptly comply with reasonable requests by Photographer to facilitate such actions to the extent SmugMug is legally permitted and able to do so.
- 4.2. Notification Obligations. SmugMug shall, to the extent legally permitted, promptly notify Photographer if it receives a request from a Data Subject for access to, correction, amendment, deletion of or objection to the Processing of Photographer Personal Data relating to such individual. SmugMug shall not respond to any such Data Subject request relating to Photographer Personal Data without Photographer's prior written consent except to confirm that the request

relates to Photographer. SmugMug shall provide Photographer with commercially reasonable cooperation and assistance in relation to handling of a Data Subject request, to the extent legally permitted and to the extent Photographer does not have access to such Photographer Personal Data through its use or receipt of the Services or Products.

5. SUBCONTRACTORS.

- 5.1. General Authorization. Photographer generally authorizes the use of subprocessors to Process Photographer Personal Data in connection with fulfilling SmugMug's obligations under the Agreement and/ or this DPA.
- 5.2. New Subprocessors. When SmugMug engages any new subprocessor to process Photographer Personal Data, SmugMug will inform Photographer of the engagement via email to the email address on file for Photographer's account and give Photographer the opportunity to object to such subprocessor
- 5.3. SmugMug Obligations. SmugMug will remain liable for the acts and omissions of its subprocessors to the same extent SmugMug would be liable if performing the services of each subprocessor directly under the terms of this DPA. SmugMug will contractually impose data protection obligations on its subprocessors that are at least equivalent to those data protection obligations imposed on SmugMug under this DPA.

6. DATA TRANSFERS.

- 6.1. Governing Terms. When a Photographer located in a Member State of the EEA or Switzerland transfers or discloses Personal Data to SmugMug, such transfers will be governed by the Controller to Processor Standard Clauses. For purposes of the Controller to Processor Standard Clauses, (i) the Photographer located in the EEA or Switzerland will be referred to as the "Data Exporter" and (ii) SmugMug will be referred to as the "Data Importer." Annex 1 to this Agreement shall apply as Appendix 1 of the Controller to Processor Standard Clauses.

7. SECURITY BREACH.

- 7.1. Notification Obligations. In the event SmugMug becomes aware of any Security Breach, SmugMug will notify Photographer of the Security Breach without undue delay. The obligations in this Section 7 do not apply to incidents that are caused by Photographer or Photographer's personnel or end users or to unsuccessful attempts or activities that do not compromise the security of Photographer Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.
- 7.2. Manner of Notification. Notification(s) of Security Breaches, if any, will be delivered to one or more of Photographer's business, technical or administrative contacts by any means SmugMug selects, including via email. It is Photographer's sole responsibility to ensure it maintains accurate contact information on SmugMug's support systems at all times.

8. TERM AND TERMINATION.

- 8.1. Term of DPA. This DPA will remain in effect until, and automatically expire upon, deletion of all Photographer Personal Data as described in this DPA.
- 8.2. Deletion of Photographer Data. SmugMug shall delete or return Photographer Personal Data to Photographer after the end of the provision of Services or Products under the Agreement and shall

delete all existing copies thereof, except to the extent that SmugMug is required under Data Protection Legislation to keep a copy of the Photographer Personal Data.

9. COMPLIANCE INFORMATION.

9.1. Information Available. SmugMug will make available all information necessary to demonstrate compliance with the obligations set forth in this Addendum and will contribute to audits as necessary.

10. LIMITATION OF LIABILITY. SmugMug's liability for breach of its obligations in this DPA are subject to the limitation of liability provision in the Agreement.

ANNEX 1: APPENDIX 1 TO THE CONTROLLER TO PROCESSOR STANDARD CLAUSES

Data exporter

The data exporter is: *The Photographer who has agreed to the SmugMug Terms of Use and uses SmugMug's Services or Products to collect Personal Data from individuals residing in the EEA or Switzerland.*

Data importer

The data importer is: *SmugMug*

Data subjects

The personal data transferred concern the following categories of data subjects: *Individuals who use Photographer's services or interact with Photographer's SmugMug-powered website or mobile application.*

Categories of data

The personal data transferred concern the following categories of data: *Names, contact information, payment information, purchase history, location.*

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data: *None*

Processing operations

The personal data transferred will be subject to the following basic processing activities: *Storage, marketing in accordance with the Photographer's direction, and order processing.*