

## Push Data Processing Agreement

### RECITALS:

- A. Push is the owner and operator of a software as a service cloud based video production, editing and distribution service. Push and Customer may be referred to together as the Parties and separately as a Party.
- B. As part of providing the Managed Services, Push will be required to process certain Customer Personal Information (as defined below) and the Parties wish to enter into this DPA setting out the instructions from the Customer for processing Customer Personal Information for the sole purpose of Push providing the Services to the Customer.
- C. Customer warrants, represents that it has obtained all necessary consents to enable Push to process the Customer Personal Information for the sole purpose of providing the Services to the Customer.
- D. The Parties wish to enter into this DPA setting out in full the terms and conditions upon which Push will process the Customer Personal Information for and on behalf of the Customer.

Now the Parties agree as follows:

### 1. DEFINITIONS

For the purposes of this Agreement, where capitalised terms are not defined below, they shall have the meaning as set out in the Push Standard Terms:

**Agreement** means the Agreement between PUSH and the Customer.

**Applicable Law** means (i) any and all laws, statutes, regulations, by-laws, orders, ordinances and court decrees that apply to the performance and supply of the Services or the processing of Customer Personal Information including the Data Protection Legislation and (ii) the terms and conditions of any applicable approvals, consents, exemptions, filings, licences, authorities, permits, registrations or waivers issued or granted by, or any binding requirement, instruction, direction or order of, any applicable government department, authority or Company having jurisdiction in respect of that matter.

**Customer** means the Customer as set out in the Agreement.

**DPA** means this data processing Agreement.

**Data Protection Legislation** means all Applicable Laws and codes of practice applicable to the processing of Personal Information including the GDPR and the Data Protection Act.

**DP Losses** means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material and non-material damage); and (b) to the extent permitted by Applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a court or regulatory authority; (ii) compensation to a data subject ordered by a court or regulatory authority; and (iii) the costs of compliance with investigations by a regulatory authority.

**GDPR** means 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

Information and on the free movement of such data as applicable as of 25 May 2018, as may be amended from time to time.

**Personal Information** has the meaning attributed to it in the Data Protection Legislation and which the Customer has provided to Push for the purposes of providing the Services.

**Processing Instructions** has the meaning set out in Clause 3.

**Security Incident** means the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of, or access to, Customer Personal Information while in the custody of Push or a Sub-Processor.

**Sub-Processor** means another processor engaged at the direction of the Customer for the purposes of rendering or carrying out processing activities in respect of the Personal Information on behalf of the Customer.

**“controller”, “data subject”, “Personal Information”, “processing” and “processor”** have the meanings set out in the Data Protection Act (and related terms such as “process” have corresponding meanings).

## **2. DATA PROCESSING**

- 2.1 To the extent that Push is processing Personal Information the terms contained in this DPA will apply.
- 2.2 If the Services are altered during the term of the Agreement and the Services involve new or amended processing of Personal Information, the Parties will ensure that the Processing Instructions are updated as appropriate before such processing commences.
- 2.3 If there is any conflict or inconsistency between this and DPA and the Standard Terms, this DPA will take precedence and apply to the extent of the conflict or inconsistency.
- 2.4 In respect of processing of Personal Information carried out pursuant to the Agreement the Parties agree that Push is the processor and that the Customer is the controller.
- 2.5 The parties shall comply with and process all Personal Information in accordance with applicable Data Protection Legislation.
- 2.6 This DPA shall be co-terminous with the Agreement and shall expire upon the termination or expiration of the Agreement without further formality.

## **3. PROCESSING INSTRUCTIONS**

- 3.1 The Processing Instructions:
  - (i) As part of the Managed Services, the Customer will provide various video assets and accompanying meta data to Push for the purposes of providing the Services;
  - (ii) The Customer may require the rendering or other sub-processing of Personal Information through various sub-processors that may be located anywhere in the world for and on behalf of the Customer, details of which are set out in Processing Instructions and the Customer warrants represents that it has obtained all necessary consents for the sub-processing of such Personal Information; and
  - (iii) The Customer acknowledges that some of the rendering services or other services necessary for effectively delivering the Services may be located outside the EU and the Customer has advised all individuals of such processing outside of the EU and has the appropriate consents in respect thereto.

- 3.2 Push shall:
- (i) unless Applicable Law requires otherwise, only process Personal Information in accordance with the Customer's documented instructions as set out in these processing instructions or any amendment thereto in writing (**Processing Instructions**);
  - (ii) unless prohibited by Applicable Law, notify the Customer if Applicable Law requires it to process Customer Personal Information other than in accordance with Processing Instructions (such notification to be given before such processing commences); and
  - (iii) notify the Customer if, in its opinion, the processing of Customer Personal Information in accordance with Processing Instructions infringes Data Protection Legislation.
- 3.3 Push shall not permit any Sub-Processor to process Customer Personal Information without:
- (i) the Customer's prior written confirmation (not to be unreasonably withheld, conditioned or delayed) that all necessary consents have been obtained from individuals whose Personal Information is being processed; and
  - (ii) entering into an Agreement which binds the Sub-Processor to substantially similar obligations with respect to the processing of Personal Information as to which Push is bound by this DPA.
- 3.4 Customer agrees that if a Sub-Processor fails to fulfil its obligations under the Agreement required by Clause 3.3 (ii), Push shall remain fully liable to the Customer for the Sub-Processor's performance.
- 3.5 After the business purposes for which Customer Personal Information was processed have been fulfilled (or earlier upon the Customer's written request) Push shall, at the Customer's option, either delete or return all Personal Information and delete any existing copies of the same (unless storage of such copies is required by Applicable Law).

#### **4. CUSTOMER WARRANTIES**

- 4.1 The Customer warrants and represents that:
- (a) the processing of Personal Information by the Customer will be carried out in accordance with Data Protection Legislation;
  - (b) Push is entitled to process Personal Information pursuant to this DPA for the purpose of providing the Services as set out in the Agreement and such use will comply with Data Protection Legislation;
  - (c) all Personal Information provided by the Customer to Push is necessary, accurate and up-to-date;
  - (d) all Processing Instructions shall at all times be in accordance with Data Protection Legislation; and
  - (e) it is satisfied that:
    - (i) Push's processing operations are suitable for the purposes for which the Customer proposes to use the Services and engage Push to process Personal Information; and
    - (ii) Push has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Legislation.

#### **5. SECURITY AND DELEGATION**

- 5.1 Push shall:
- (a) implement and maintain throughout the term of the Agreement appropriate technical and organisational measures intended to protect Customer Personal Information against accidental, unauthorised or unlawful access, disclosure, alteration, loss, damage or destruction; and
  - (b) take reasonable steps to ensure that its personnel do not process Personal Information other than in accordance with Processing Instructions (unless required to do so by Applicable Law) and are obligated to maintain the security and confidentiality of any Personal Information to which they have access.

## **6. NOTIFICATIONS**

- 6.1 Push shall, without undue delay, notify the Customer if:
- (a) it becomes aware of a Security Incident; or
  - (b) it receives a request from or on behalf of a data subject of Customer Personal Information to exercise any of the rights given to data subjects by Data Protection Legislation.
- 6.2 Push shall (at the Customer's expense) provide such further information and assistance as the Customer reasonably requires in handling and responding to such notifications in accordance with its obligations under Data Protection Legislation.

## **7. INSPECTIONS AND ASSISTANCE WITH REGULATORS**

- 7.1 Subject to reasonable written advance notice from the Customer, Push shall:
- (a) permit the Customer to conduct (and shall contribute to) audits and inspections of its systems and processes in relation to the processing of Customer Personal Information subject to the Customer ensuring:
    - (i) that such audit or inspection is undertaken during normal business hours and with minimal disruption to Push's business and the business of other Customers of Push; and
    - (ii) that all information obtained or generated by the Customer or its auditor(s) in connection with such audits and inspections is kept strictly confidential (save for disclosure to a regulatory authority or as otherwise required by Applicable Law);
  - (b) give the Customer such information as is reasonably necessary to verify that Push is in compliance with its obligations under Data Protection Legislation; and
  - (c) co-operate and assist the Customer with any data protection impact assessments and consultations with any regulatory authority that the Customer reasonably considers are relevant pursuant to Data Protection Legislation in relation to the Customer Personal Information.
- 7.2 The cost of such audit, inspection, provision of information or data protection impact assessment shall be borne by the Customer.
- 7.3 The Customer may require Push to conduct an audit or inspection of the Sub-Processor's systems and processes in relation to the processing of Personal Information. The cost of such an audit or inspection shall be borne by the Customer.

## **8. INDEMNITY AND LIMITATION OF LIABILITY**

- 8.1 Subject to the limitation in Clause 8.3, the Customer shall indemnify and keep indemnified Push, on demand, in respect of all DP Losses suffered or incurred by, awarded against or agreed to be paid by, Push or as a result of any default by any Sub-Processor nominated by the Customer, arising from or in connection with any:
- (a) non-compliance by the Customer with Data Protection Legislation;
  - (b) processing carried out by Push or any Sub-Processor pursuant to any Processing Instruction that infringes Data Protection Legislation; or
  - (c) breach by the Customer of any of its obligations under this DPA; and
  - (d) except to the extent that Push is liable under Clause 8.2.
- 8.2 Subject to the limitation in Clause 8.3, Push shall indemnify the Customer for DP Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this DPA:
- (a) only to the extent caused by the processing of Personal Information under this DPA and directly resulting from Push's breach of this DPA; and
  - (b) in no circumstances to the extent that any DP Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this DPA by the Customer or Sub-Processor.
- 8.3 The Parties' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this DPA or any collateral agreement shall in all circumstances be limited to the greater of (a) 100% of the fees paid or payable or (b) the upper limit amount of Company's insurance coverage with respect to the claim giving rise to such liability and damages during the 12 months preceding the event triggering Clause 8.1 or 8.2.

## **9. GENERAL**

- 9.1 Nothing in this DPA is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way or to hold itself out in its advertising or otherwise in any manner which would indicate or imply any such relationship with the other.
- 9.2 No modification or variation of this DPA shall be valid unless it is in writing and signed by or on behalf of each of the Parties to this DPA. For the avoidance of doubt, no modification or variation of this Agreement shall be valid if made by email.
- 9.3 Unless expressly so agreed, no modification or variation of this DPA shall constitute or be construed as a general waiver of any provisions of this DPA, nor shall it affect any rights, obligations or liabilities under this DPA which have already accrued up to the date of such modification or waiver, and the rights and obligations of the Parties under this DPA shall remain in full force and effect, except and only to the extent that they are so modified or varied.
- 9.4 Customer shall execute or cause to be executed all such other documents and do or cause to be done all such further acts and things consistent with the terms of this DPA as Push may from time to time reasonably require for the purpose of giving Push the full benefit of the provisions of this DPA.

- 9.5 In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.
- 9.6 The rights and remedies provided by this DPA are cumulative and (unless otherwise provided in this Agreement) do not exclude any other rights or remedies available in law.
- 9.7 This DPA, comprising the Schedules and the Agreement and any documents referenced herein constitute the entire agreement and understanding of the Parties relating to the subject matter of this DPA and supersedes any previous agreement or understanding between the Parties in relation to such subject matter.
- 9.8 This Agreement has been drafted in the English language. In the event that it is translated into any other language, it shall be interpreted in accordance with the original English language version, which shall prevail in all circumstances.
- 9.9 The validity, construction and performance of this Agreement (and any claim, dispute or matter arising under or in connection with it or its enforceability) and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales, so long as such laws do not supersede the duty to observe any applicable data transfer laws. Each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales. over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum.

**DPA1**  
**DATA PROCESSING INSTRUCTIONS**

<b>Subject Matter, Nature and Purpose of processing</b>	<p>The purpose of processing is to enable Push to provide Services to the Customer whereby the Customer shall provide various video assets and/or live feeds for production, editing and/or distribution of those video assets or live feeds to various digital platforms as set out in the SOW.</p> <p>Customer may direct the rendering of the video content outside of the European Union and in such instance, will not direct Push to do so without all necessary consents and notification to any person providing Personal Information.</p>
<b>Duration</b>	<p>This DPA shall be contemporaneous with the Term of the Agreement.</p>
<b>Customer Personal Information</b>	<p>Video images</p> <p>Names of suppliers and producers, directors and any other staff of the Customer for log in details and email exchanges providing instructions.</p> <p>In the event of music – names of artists and identifying</p>
<b>Data Subjects</b>	<p>Those persons depicted in the video footage, music artists (if applicable)</p>

Specific Restrictions	Not applicable.		
Processor DPO			
Permitted Sub-Processors and Transfers			
Not applicable.			
Name	Services	Location/Transfers	Mechanism
Not applicable	(Set out here the permitted services that they will undertake in relation to Customer Personal Information)	(Set out here the location in which the entity will process the Customer Personal Information, indicating where and from whom this has been transferred where relevant)	(Set out here the agreed mechanism for ensuring any transfer is compliant with Data Protection Legislation pursuant to this Data Processing Schedule)