**Data Processing Agreement (DPA)**

This Defradar Data Processing Agreement and its Annexes (“DPA”) reflects the parties’ agreement with respect to the Processing of Personal Data by Defradar on behalf of Customer in connection with the Defradar Subscription Services under the [Defradar Customer Terms of Service](https://legal.hubspot.com/terms-of-service?hsLang=fr) between Defradar and Customer (the “Agreement”).

This DPA is supplemental to, and forms an integral part of, the Agreement and is effective upon its incorporation into the Agreement, which incorporation may be specified in the Agreement, an Order or an executed amendment to the Agreement. In case of any conflict or inconsistency with the terms of the Agreement, this DPA shall take precedence over the terms of the Agreement to the extent of such conflict or inconsistency.

We periodically update these terms. If you have an active Defradar subscription, we will let you know when we do via email (if you have subscribed to receive email notifications via the link in our Agreement) or via in-app notification.

The term of this DPA shall follow the term of the Agreement. Terms not otherwise defined herein shall have the meaning as set forth in the Agreement.

1. **Definitions**

***“California Personal Information”*** means Personal Data that is subject to the protection of the CCPA.

***"CCPA"*** means California Civil Code Sec. 1798.100 et seq. (also known as the California Consumer Privacy Act of 2018).

***"Consumer",*** ***"Business",*** ***"Sell"*** and ***"Service Provider"*** shall have the meanings given to them in the CCPA.

**“Controller”** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

**“Data Protection Laws”** means all applicable worldwide legislation relating to data protection and privacy which applies to the respective party in the role of Processing Personal Data in question under the Agreement, including without limitation European Data Protection Laws, the CCPA and the data protection and privacy laws of Australia and Singapore; in each case as amended, repealed, consolidated or replaced from time to time.

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

**"Europe"** means the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom.

**“European Data”** means Personal Data that is subject to the protection of European Data Protection Laws.

**"European Data Protection Laws"** means data protection and Europe, including:

1. Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ("GDPR");
2. Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector; and
3. applicable national implementations of (i) and (ii); or (iii) in respect of the United Kingdom, any applicable national legislation that replaces or converts in domestic law the GDPR or any other law relating to data and privacy as a consequence of the United Kingdom leaving the European Union; and (iv) Swiss Federal Data Protection Act on 19 June 1992 and its Ordinance; in each case, as may be amended, superseded or replaced.

**“Instructions”** means the written, documented instructions issued by a Controller to a Processor, and directing the same to perform a specific or general action with regard to Personal Data (including, but not limited to, depersonalizing, blocking, deletion, making available).

**"Permitted Affiliates"** means any of Customer's Affiliates that

1. are permitted to use the Subscription Services pursuant to the Agreement, but have not signed their own separate agreement with Defradar and are not a “Customer” as defined under the Agreement,
2. qualify as a Controller of Personal Data Processed by Defradar, and
3. are subject to European Data Protection Laws.

**“Personal Data”** means any information relating to an identified or identifiable individual where such information is contained within Customer Data and is protected similarly as personal data, personal information or personally identifiable information under applicable Data Protection Laws.

**“Personal Data Breach”** means a 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 Defradar and/or its Sub-Processors in connection with the provision of the Subscription Services. "Personal Data Breach" shall not include unsuccessful attempts or activities that do not compromise the security of Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

**"Privacy Shield"** means the EU-U.S. and Swiss-US Privacy Shield self-certification program operated by the U.S. Department of Commerce and approved by the European Commission pursuant to its Decision of July, 12 2016 and by the Swiss Federal Council on January 11, 2017 respectively.

**"Privacy Shield Principles"** means the Privacy Shield Principles (as supplemented by the Supplemental Principles) contained in Annex II to the European Commission Decision of July, 12 2016.

**“Processing”** means any operation or set of operations which is performed on Personal Data, encompassing the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction or erasure of Personal Data. The terms “Process”, “Processes” and “Processed” will be construed accordingly.

**“Processor”** means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller.

**“Standard Contractual Clauses”** means the standard contractual clauses for Processors.

**“Sub-Processor”** means any Processor engaged by Defradar or its Affiliates to assist in fulfilling Defradar's obligations with respect to the provision of the Subscription Services under the Agreement.  Sub-Processors may include third parties or Defradar Affiliates but shall exclude any Defradar employee or consultant.

1. **Customer Responsibilities**

**a. Compliance with Laws.** Within the scope of the Agreement and in its use of the services, Customer shall be responsible for complying with all requirements that apply to it under applicable Data Protection Laws with respect to its Processing of Personal Data and the Instructions it issues to Defradar.

In particular but without prejudice to the generality of the foregoing, Customer acknowledges and agrees that it shall be solely responsible for:

1. the accuracy, quality, and legality of Customer Data and the means by which Customer acquired Personal Data;
2. complying with all necessary transparency and lawfulness requirements under applicable Data Protection Laws for the collection and use of the Personal Data, including obtaining any necessary consents and authorizations (particularly for use by Customer for marketing purposes);
3. ensuring it has the right to transfer, or provide access to, the Personal Data to Defradar for Processing in accordance with the terms of the Agreement (including this DPA);
4. ensuring that its Instructions to Defradar regarding the Processing of Personal Data comply with applicable laws, including Data Protection Laws; and
5. complying with all laws (including Data Protection Laws) applicable to any emails or other content created, sent or managed through the Subscription Services, including those relating to obtaining consents (where required) to send emails, the content of the emails and its email deployment practices.

Customer shall inform Defradar without undue delay if it is not able to comply with its responsibilities under this sub-section (a) or applicable Data Protection Laws.

**b. Controller Instructions.** The  parties agree that the Agreement (including this DPA), together with Customer's use of the Subscription Service in accordance with the Agreement, constitute Customer’s complete and final Instructions to Defradar in relation to the Processing of Personal Data, and additional instructions outside the scope of the Instructions shall require prior written agreement between Customer and Defradar.

1. **Defradar Obligations**

**a. Compliance with Instructions.** Defradar shall only Process Personal Data for the purposes described in this DPA or as otherwise agreed within the scope of Customer’s lawful Instructions, except where and to the extent otherwise required by applicable law. Defradar is not responsible for compliance with any Data Protection Laws applicable to Customer or Customer's industry that are not generally applicable to Defradar.

**b. Conflict of Laws.** If Defradar becomes aware that it cannot Process Personal Data in accordance with Customer's Instructions due to a legal requirement under any applicable law, Defradar will:

(i) promptly notify Customer of that legal requirement to the extent permitted by the applicable law; and

(ii) where necessary, cease all Processing (other than merely storing and maintaining the security of the affected Personal Data) until such time as Customer issues new Instructions with which Defradar is able to comply. If this provision is invoked, Defradar will not be liable to Customer under the Agreement for any failure to perform the applicable Subscription Services until such time as Customer issues new lawful Instructions with regard to the Processing.

**c. Security.** Defradar shall implement and maintain appropriate technical and organizational measures to protect Personal Data from Personal Data Breaches, as described under Annex 2 to this DPA ("Security Measures"). Notwithstanding any provision to the contrary, Defradar may modify or update the Security Measures at its discretion provided that such modification or update does not result in a material degradation in the protection offered by the Security Measures.

**d. Confidentiality.** Defradar shall ensure that any personnel whom Defradar authorizes to Process Personal Data on its behalf is subject to appropriate confidentiality obligations (whether a contractual or statutory duty) with respect to that Personal Data.

**e. Personal Data Breaches.** Defradar will notify Customer without undue delay after it becomes aware of any Personal Data Breach and shall provide timely information relating to the Personal Data Breach as it becomes known or reasonably requested by Customer. At Customer’s request, Defradar will promptly provide Customer with such reasonable assistance as necessary to enable Customer to notify relevant Personal Data Breaches to competent authorities and/or affected Data Subjects, if Customer is required to do so under Data Protection Laws.

**f. Deletion or Return of Personal Data.** Defradar will delete or return all Personal Data (including copies thereof) Processed pursuant to this DPA in accordance with the procedures and timeframes set out in the Agreement, save that this requirement shall not apply to the extent Defradar is required by applicable law to retain some or all of the Personal Data, or to Personal Data it has archived on back-up systems, which data Defradar shall securely isolate and protect from any further Processing and delete in accordance with its deletion practices.

1. **Data Subject Requests**

The Subscription Service provides Customer with a number of controls that Customer may use to retrieve, correct, delete or restrict Personal Data, which Customer may use to assist it in connection with its obligations under Data Protection Laws, including its obligations relating to responding to requests from Data Subjects to exercise their rights under applicable Data Protection Laws ("Data Subject Requests").

To the extent that Customer is unable to independently address a Data Subject Request through the Subscription Service, then upon Customer’s written request Defradar shall provide reasonable assistance to Customer to respond to any Data Subject Requests or requests from data protection authorities relating to the Processing of Personal Data under the Agreement. Customer shall reimburse Defradar for the commercially reasonable costs arising from this assistance.

If a Data Subject Request or other communication regarding the Processing of Personal Data under the Agreement is made directly to Defradar, Defradar will promptly inform Customer and will advise the Data Subject to submit their request to Customer. Customer shall be solely responsible for responding substantively to any such Data Subject Requests or communications involving Personal Data.

1. **Sub-Processors**

Customer agrees that Defradar may engage Sub-Processors to Process Personal Data on Customer's behalf. Defradar has currently appointed, as Sub-Processors, the Defradar Affiliates and third parties listed on its Sub-Processors Page. Defradar shall notify Customer if it adds or removes Sub-Processors listed on the Sub-Processor Page prior to any such changes, if Customer opts-in to receive such email notifications.

Where Defradar engages Sub-Processors, Defradar will impose data protection terms on the Sub-Processors that provide at least the same level of protection for Personal Data as those in this DPA, to the extent applicable to the nature of the services provided by such Sub-Processors. Defradar will remain responsible for each Sub-Processor’s compliance with the obligations of this DPA and for any acts or omissions of such Sub-Processor that cause Defradar to breach any of its obligations under this DPA.

1. **Data Transfers**

Customer acknowledges and agrees that Defradar may access and Process Personal Data on a global basis as necessary to provide the Subscription Service in accordance with the Agreement, and in particular that Personal Data will be transferred to and Processed by Defradar, in the United States and to other jurisdictions where Defradar Affiliates and Sub-Processors have operations. Defradar shall ensure such transfers are made in compliance with the requirements of Data Protection Laws.

1. **Additional Provisions for European Data**

**a. Scope.** This Section 7 (Additional Provisions for European Data) shall apply only with respect to European Data.

**b. Roles of the Parties.** When Processing European Data in accordance with Customer's Instructions, the parties acknowledge and agree that Customer is the Controller of European Data and Defradar is the Processor.

**c. Instructions.** If Defradar believes that an Instruction of Customer infringes European Data Protection Laws (where applicable), it will inform Customer without delay.

**d. Notification and Objection to New Sub-Processors.** Defradar will notify Customer of any changes to Sub-processors by updating the Sub-Processors Page and will give Customer the opportunity to object to the engagement of the new Sub-Processor on reasonable grounds relating to the protection of Personal Data within 30 days after updating the Sub-Processors Page. If Customer does notify Defradar of such an objection, the parties will discuss Customer's concerns in good faith with a view to achieving a commercially reasonable resolution. If no such resolution can be reached, Defradar will, at its sole discretion, either not appoint the new Sub-Processor, or permit Customer to suspend or terminate the affected Subscription Service in accordance with the termination provisions of the Agreement without liability to either party (but without prejudice to any fees incurred by Customer prior to suspension or termination).

**e. Data Protection Impact Assessments and Consultation with Supervisory Authorities.** To the extent that the required information is reasonably available to Defradar, and Customer does not otherwise have access to the required information, Defradar will provide reasonable assistance to Customer with any data protection impact assessments, and prior consultations with supervisory authorities or other competent data privacy authorities to the extent required by European Data Protection Laws.

**f. Transfer Mechanisms for Data Transfers.**

(A) Defradar shall not transfer European Data to any country or recipient not recognized as providing an adequate level of protection for Personal Data (within the meaning of European Data Protection Law), unless it first takes all such measures as are necessary to ensure the transfer is in compliance with applicable European Data Protection Laws. Such measures may include (without limitation) transferring such data to a recipient that is self-certified to the Privacy Shield, to a recipient that has achieved binding corporate rules authorization in accordance with European Data Protection Law, or to a recipient that has executed appropriate standard contractual clauses adopted or approved by the European Commission.

(B) Customer acknowledges that in connection with the performance of the Subscription Services, Defradar. is a recipient of European Data in the United States.

The parties agree that Defradar makes available the transfer mechanisms listed below:

(a) **Standard Contractual Clauses**: Defradar agrees to abide by and process European Data in compliance with the Standard Contractual Clauses, provided that notwithstanding the foregoing the parties agree that where the Defradar contracting entity under the Agreement is not Defradar, such contracting entity (not Defradar) will remain fully and solely responsible and liable to Customer for the performance of the Standard Contractual Clauses by Defradar If and to the extent the Standard Contractual Clauses (where applicable) conflict with any provision of this DPA, the Standard Contractual Clauses shall prevail to the extent of such conflict.

(b)**Privacy Shield**: For as long as Defradar. is self-certified to the Privacy Shield and to the extent that the Standard Contractual Clauses are revoked, or held by a court of competent jurisdiction to be invalid the parties acknowledge and agree that:

(i) Defradar will be deemed to provide adequate protection for European Data (within the meaning of European Data Protection Laws) by virtue of having self-certified its compliance with Privacy Shield;

(ii) Defradar. shall process European Data in compliance with the Privacy Shield Principles; and

(iii) if Defradar is unable to comply with this requirement, Defradar shall inform Customer.

**g. Demonstration of Compliance.** Defradar shall make available to Customer all information reasonably necessary to demonstrate compliance with this DPA and allow for and contribute to audits, including inspections by Customer in order to assess compliance with this DPA. Customer acknowledges and agrees that it shall exercise its audit rights under this DPA by instructing Defradar to comply with the audit measures described in this sub-section (g). Customer acknowledges that the Subscription Service is hosted by Defradar's data center partners who maintain independently validated security programs (including SOC 2 and ISO 27001) and Defradar's systems are regularly tested by independent third party penetration testing firms. Upon request, Defradar shall supply (on a confidential basis) a summary copy of its penetration testing report(s) to Customer so that Customer can verify Defradar's compliance with this DPA.  Further, at Customer's written request, Defradar will provide written responses (on a confidential basis) to all reasonable requests for information made by Customer necessary to confirm Defradar's compliance with this DPA, provided that Customer shall not exercise this right more than once per calendar year.

1. **Additional Provisions for California Personal Information**

**a. Scope.** This Section 8 (Additional Provisions for California Personal Information) shall apply only with respect to California Personal Information.

**b. Roles of the Parties.** When processing California Personal Information in accordance with Customer's Instructions, the parties acknowledge and agree that Customer is a Business and Defradar is a Service Provider for the purposes of the CCPA.

**c. Responsibilities.** The parties agree that Defradar will process California Personal Information as a Service Provider strictly for the purpose of performing the Subscription Services under the Agreement  (the "Business Purpose"). Defradar uses service data for its own legitimate Business Purpose as per the **Product Privacy Policy.** The parties agree that Defradar shall not

(a) Sell California Personal Information (as defined in the CCPA);

(b) retain, use, or disclose California Personal Information for a commercial purpose other than for the Business Purpose or as otherwise permitted by the CCPA; or

(c) retain, use, or disclose California Personal Information outside of the direct business relationship between Customer and Defradar.

**d. Certification.** Defradar certifies that it understands and will comply with the restrictions set out in Section 8(c) (Responsibilities).

1. **General Provisions**

**a. Amendments.** Notwithstanding anything else to the contrary in the Agreement and without prejudice to Section 3(c) (Security), Defradar reserves the right to make any updates and changes to this DPA and the terms that apply in Section 9 (a), para. 1 “Amendment; No Waiver” of the Agreement shall apply.

**b. Severability.** If any individual provisions of this DPA are determined to be invalid or unenforceable, the validity and enforceability of the other provisions of this DPA shall not be affected.

**c. Limitation of Liability.** Each party and each of their Affiliates' liability, taken in aggregate,  arising out of or related to this DPA (and any other DPAs between the parties) and the Standard Contractual Clauses (where applicable), whether in contract, tort or under any other theory of liability, shall be subject to the limitations and exclusions of liability set out in the section of the Agreement entitled 'Limitation of Liability' and any reference in such section to the liability of a party means aggregate liability of that party and all of its Affiliates under the Agreement (including this DPA).  For the avoidance of doubt, if Defradar. is not a party to the Agreement, the section of the Agreement entitled ‘Limitation of Liability’ shall apply as between Customer and Defradar., and in such respect any references to ‘Defradar’, ‘we’, ‘us’ or ‘our’ shall include both Defradar. and the Defradar entity that is a party to the Agreement.

**d. Governing Law.** This DPA shall be governed by and construed in accordance with the governing law and jurisdiction provisions in the Agreement, unless required otherwise by Data Protection Laws.

1. **Parties to this DPA**

**a. Permitted Affiliates.** By signing the Agreement, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws, in the name and on behalf of its Permitted Affiliates, thereby establishing a separate DPA between Defradar and each such Permitted Affiliate subject to the Agreement and Sections 9 and 10 and this DPA. Each Permitted Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and such Permitted Affiliates.

**b. Authorization.** The legal entity agreeing to this DPA as Customer represents that it is authorized to agree to and enter into this DPA for and on behalf of itself and, as applicable, each of its Permitted Affiliates.

**c. Remedies.** Except where applicable Data Protection Laws require a Permitted Affiliate to exercise a right or seek any remedy under this DPA against Defradar directly by itself, the parties agree that

(i) solely the Customer entity that is the contracting party to the Agreement shall exercise any right or seek any remedy any Permitted Affiliate may have under this DPA on behalf of its Affiliates, and

(ii) the Customer entity that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Permitted Affiliate individually but in a combined manner for itself and all of its Permitted Affiliates together. The Customer entity that is the contracting entity is responsible for coordinating all communication with Defradar under the DPA and be entitled to make and receive any communication related to this DPA on behalf of its Permitted Affiliates.

**d. Other rights.** The parties agree that Customer shall, when reviewing Defradar's compliance with this DPA pursuant to Section 7(g) (Demonstration of Compliance), take all reasonable measures to limit any impact on Defradar and its Affiliates by combining several audit requests carried out on behalf of the Customer entity that is the contracting party to the Agreement and all of its Permitted Affiliates in one single audit.