

# Data Processing Addendum – GDPR

This Data Processing Addendum (**Addendum**) forms part of the Terms & Conditions (or where applicable Pricing Plan Agreement) (**Service Agreement**) between: (i) TrafficGuard Pty Ltd., Suite 10, 16 Brodie Hall Drive, Technology Park, WA 6102 Bentley, Australia (**TrafficGuard**) and (ii) and the Customer who agreed to and is party to the Terms & Conditions or Service Agreement (**Customer**).

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 Service Agreement. Except as modified below, the terms of the Service 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 Service Agreement. Except where the context requires otherwise, references in this Addendum to the Service Agreement are to the Service Agreement as amended by, and including, this Addendum.

## 1. Definitions

1.1 In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1 **Customer Personal Data** means any Personal Data Processed by TrafficGuard (or a Subprocessor) on behalf of Customer pursuant to or in connection with the Service Agreement;

1.1.2 **EEA** means the European Economic Area;

1.1.3 **EU** means the European Union;

1.1.4 **Data Protection Laws** means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, including the GDPR (as defined below) and laws implementing or supplementing the GDPR;

1.1.5 **GDPR** means the EU General Data Protection Regulation 2016/679;

1.1.6 **Services** means the services and other activities to be supplied to or carried out by or on behalf of TrafficGuard for Customer pursuant to the Service Agreement;

1.1.7 **Standard Contractual Clauses** means the contractual clauses set out in Annex 4 and under section 10;

1.1.8 **Subprocessor** means any person appointed by or on behalf of TrafficGuard to Process Personal Data on behalf of Customer in connection with the Service Agreement; and

1.1.9 **TrafficGuard Affiliate** means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with TrafficGuard, where control is defined as the possession, directly or indirectly, of the power to

direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.2 The terms, **Commission, Controller, Data Protection Officer, Data Subject, Member State, Personal Data, Personal Data Breach, Processing, Representative** and **Supervisory Authority** shall have the same meaning as in the GDPR, and their related terms shall be construed accordingly.

1.3 The word **include** shall be construed to mean include without limitation, and related terms shall be construed accordingly.

## **2. Processing of Personal Data**

### **2.1 TrafficGuard**

2.1.1 will Process Customer Personal Data in accordance with those Data Protection Laws, including GDPR requirements where relevant, directly applicable to TrafficGuard's provision of the Services; and

2.1.2 shall only Process Customer Personal Data on behalf of and in accordance with Customer's documented instructions.

### **2.2 Customer**

2.2.1 shall, in its use or receipt of the Services, Process Customer Personal Data in accordance with the requirements of Data Protection Laws and Customer will ensure that its instructions for the Processing of Customer Personal Data shall comply with Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Customer Personal Data and the means by which Customer acquired such Personal Data; and

2.2.2 instructs TrafficGuard to

2.2.2.1 Process Customer Personal Data; and

2.2.2.2 in particular, transfer Customer Personal Data to any country or territory, in both cases as reasonably necessary for the provision of the Services and consistent with the Service Agreement.

2.3 Annex 1 to this Addendum sets out certain information regarding the Processing of the Customer Personal Data as required by Article 28(3) of the GDPR. Upon prior written notice, Customer may request reasonable amendments to Annex 1 as Customer reasonably considers necessary to meet those requirements.

## **3. Personnel, Quality assurance and other duties of TrafficGuard**

3.1 TrafficGuard shall ensure that its personnel engaged in the Processing of Customer Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and are subject to obligations of confidentiality and such obligations survive the termination of that person's' engagement with TrafficGuard.

3.2 TrafficGuard shall take commercially reasonable steps to ensure the reliability of any TrafficGuard personnel engaged in the Processing of Customer Personal Data.

3.3 TrafficGuard shall ensure that access to Personal Data is limited to those personnel who require such access to perform the Service Agreement.

3.4 TrafficGuard has appointed a Data Protection Officer. The individual appointed may be reached at the contact details specified in Annex 2 to this Addendum.

3.5 As the TrafficGuard is established outside the EU/EEA, it has designated a Representative within the European Union pursuant to Article 27(1) of the GDPR. The contact details of the Representative are specified in Annex 2 to this Addendum.

## **4. Security**

4.1 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, Customer and TrafficGuard shall implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4.2 TrafficGuard will maintain appropriate technical and organizational measures for protection of the security, confidentiality and integrity of Customer Personal Data that meet the requirements for a Data Processor under the GDPR, as set forth in Annex 2 to this Addendum. TrafficGuard regularly monitors compliance with these safeguards. TrafficGuard will not materially decrease the overall security of the Services during the term of TrafficGuard's provision of such Services pursuant to the Service Agreement.

## **5. Subprocessors**

5.1 Customer acknowledges and agrees that (a) TrafficGuard Affiliates may be retained as Subprocessors; and (b) TrafficGuard may engage third-party Subprocessors in connection with the provision of the Services. Any such Subprocessors will be permitted to obtain Customer Personal Data only for the purposes of providing the Services. TrafficGuard has retained them to provide, and they are prohibited from using Customer Personal Data for any other purpose.

5.2 TrafficGuard shall be liable for the acts and omissions of its Subprocessors to the same extent TrafficGuard would be liable if performing the Services of each Subprocessor directly under the terms of this Addendum, except as otherwise set forth in the Service Agreement.

5.3 TrafficGuard has entered into a written agreement with each Subprocessor containing data protection obligations that are at least as protective as the terms set forth in this Addendum with respect to the protection of Customer Personal Data and meet the requirements of Article 28(3) of the GDPR or equivalent provisions of any other Data Protection Law, to the extent applicable to the nature of the Services provided by such Subprocessor.

5.4 Customer authorises TrafficGuard to appoint Subprocessors in accordance with this section 5. The list of Subprocessors currently used by TrafficGuard in connection with its provision of the Services is set forth in Annex 3.

5.5 TrafficGuard shall give Customer prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within 30 business days of receipt of that notice, Customer notifies TrafficGuard in writing of any objections (on reasonable grounds) to the proposed appointment, TrafficGuard will take commercially reasonable steps to

address the objections raised by Customer and provide Customer with reasonable written explanation of the steps taken to address such objection.

5.6 In the event that the Subprocessor provides the agreed service outside the EU/EEA, TrafficGuard shall ensure compliance with the Data Protection Laws, in particular the requirements of Articles 44 et seq. GDPR.

## **6. Rights of Data Subject**

6.1 Taking into account the nature of the Processing, TrafficGuard shall assist Customer by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests to exercise Data Subject rights under the Data Protection Laws, in particular under Chapter III of the GDPR ("Data Subject Request").

6.2 TrafficGuard shall, to the extent legally permitted, promptly notify Customer if it receives a Data Subject Request in respect of Customer Personal Data. TrafficGuard shall not respond to any such request except on the documented instructions of Customer.

6.3 Furthermore, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, TrafficGuard shall upon Customer's request provide commercially reasonable efforts to assist Customer in responding to a Data Subject Request, to the extent TrafficGuard is legally permitted to do so and provided that such Data Subject Request is required under the Data Protection Laws.

6.4 Any costs arising from the provision of assistance under this section 6 shall be the responsibility of Customer, to the extent legally permitted.

## **7. Personal Data Breach and Data Protection Impact Assessment**

7.1 TrafficGuard shall notify Customer without undue delay should TrafficGuard become aware of a Personal Data Breach affecting Customer Personal Data, and shall provide Customer with sufficient information to allow Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws. TrafficGuard shall cooperate with Customer and take such reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

7.2 TrafficGuard shall provide Customer with reasonable assistance as needed to fulfil Customer's obligation to carry out a data protection impact assessment under Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to TrafficGuard.

7.3 Any costs arising from the provision of assistance under this section 7 shall be the responsibility of Customer, to the extent legally permitted.

## **8. Deletion or return of Customer Personal Data**

At Customer's request, TrafficGuard shall delete or return all Customer Personal Data to Customer after the end of the provision of Services relating to Processing,

and delete existing copies, unless applicable Data Protection Law requires storage of the Personal Data.

## **9. Audit rights**

9.1 Subject to sections 9.2 to 9.3, TrafficGuard shall make available to Customer on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by Customer or an auditor mandated by Customer in relation to the Processing of the Customer Personal Data by TrafficGuard.

9.2 Information and audit rights of Customer only arise under section 9.1 to the extent that the Service Agreement does not otherwise give the Customer information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, point (h) of Article 28(3) GDPR).

9.3 Customer shall give TrafficGuard reasonable notice of any audit or inspection to be conducted under section 9.1 and shall take (and ensure that each of its mandated auditors takes) reasonable measures to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to TrafficGuard's premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. TrafficGuard need not give access to its premises for the purposes of such an audit or inspection:

9.3.1 to any individual unless he or she produces reasonable evidence of identity and authority;

9.3.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Customer has given notice to TrafficGuard that this is the case before attendance outside those hours begins; or

9.3.3 for the purposes of more than one audit or inspection in any calendar year, except for any additional audits or inspections where Customer is required or requested to carry out such under Data Protection Law or by a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory, and where Customer has identified the relevant requirement or request in its notice to TrafficGuard of the audit or inspection.

## **10. Standard Contractual Clauses**

10.1 The Standard Contractual Clauses in Annex 4 shall apply to Customer Personal Data that is transferred from the EU/EEA to a location outside the EU/EEA, either directly or via onward transfer, to any country or recipient: (i) not recognized by the European Commission as providing an adequate level of protection for personal data (as described pursuant to applicable Data Protection Law), and (ii) not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for Personal Data, including but not limited to Binding Corporate Rules for Processors.

10.2 For the purpose of the Standard Contractual Clauses, the Customer shall be deemed to be the "data exporter" and TrafficGuard the "data importer".

## 11. General Terms

11.1 Without prejudice to the provisions of the Standard Contractual Clauses:

11.1.1 the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Service Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

11.1.2 this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Service Agreement.

11.2 Nothing in this Addendum reduces TrafficGuard's obligations under the Service Agreement in relation to the protection of Customer Personal Data or permits TrafficGuard to Process (or permit the Processing of) Customer Personal Data in a manner which is prohibited by the Service Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

11.3 Subject to section 11.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Service Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

11.4 Customer may by at least [30 (thirty)] calendar days' written notice to TrafficGuard

11.4.1 make any variations to the Standard Contractual Clauses which are required, as a result of any change in, or decision of a competent authority under Data Protection Laws, to allow transfers of Personal Data to be made (or continue to be made) without breach of Data Protection Laws; and

11.4.2 propose any variations to this Addendum which Customer reasonably considers to be necessary to address the requirements of any Data Protection Law.

If Customer gives notice under this section 11.4, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing upon and implementing those or alternative variations designed to address the requirements identified in Customer's notice as soon as is reasonably practicable.

11.5 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Service Agreement with effect from the date first set out below.

**Customer**

**TrafficGuard Pty Ltd**

Signature

Signature

Name

Name

Date

Date

## **ANNEX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA**

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

Subject matter and duration of the Processing of Customer Personal Data

The subject matter and duration of the Processing of the Customer Personal Data are set out in the Service Agreement and this Addendum.

1. The nature and purpose of the Processing of Customer Personal Data
2. The types of Customer Personal Data to be Processed
3. The categories of Data Subject to whom the Customer Personal Data relates
4. The obligations and rights of Customer
The obligations and rights of Customer are set out in the Service Agreement and this Addendum.



## **ANNEX 2 – TECHNICAL AND ORGANIZATIONAL MEASURES**

1. Technical and organizational measures implemented to ensure an appropriate level of security
2. Data Privacy Officer
3. Representative according to Art. 27(1) of the GDPR

## **ANNEX 3 – SUB PROCESSORS LIST**

Name of Subprocessor	Address/country	Service

## **ANNEX 4: STANDARD CONTRACTUAL CLAUSES**