



Data Processing Agreement

1. _____ (Name of Company) (Data Controller)

2. Oakly B.V. (Data Processor)

Dated _____ (dd/mm/yyyy)

DATA PROCESSING AGREEMENT

This Data Processing Agreement (**DPA**) is entered into on _____ (ddmmyyyy)

Between:

- (1) _____ (**Company name**), a company incorporated in _____ (Country) (registered number (_____)) whose registered office is at _____ (Address), _____ (City) (**Client**); and
- (2) Oaky B.V., a company incorporated in the Netherlands (registered number with the Dutch Chamber of Commerce 59032936) whose registered office is at John M. Keynesplein 12, Room L4.4, Amsterdam (**Oaky**)

Each a Party and together the Parties.

WHEREAS:

- A. Client requests that the Services be supplied as described in and on the terms of the Agreement and Oaky agrees to provide the Services as described in the Agreement;
- B. Oaky is a technology partner that helps the Client to provide upsell and cross-sell technology and real-time feedback to their guests.
- C. As between Client and Oaky, Client is the Data Controller of Personal Data that will be Processed by Oaky on behalf of Client for the purpose of provision of the Services.
- D. Client will transfer to Oaky and/or Oaky will collect the relevant Personal Data in respect of C. above.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS & INTERPRETATION

- 1.1. In this DPA, unless otherwise defined, all capitalised words and expressions will have the same meanings as are assigned to them in the Agreement.
- 1.2. In the event of conflict or inconsistency between this DPA and any of the terms and conditions of the Agreement, including any in respect of data protection, this DPA will be given precedence, unless otherwise set out herein.
- 1.3. If the Client entity signing the DPA is a party to the Agreement, the Oaky entity that is party to the Agreement is a party to this DPA.
- 1.4. If the Client entity signing this DPA executed orders under the Agreement but is not a party to the Agreement, this DPA will be incorporated into such order(s) and the Oaky entity that is a party to such order(s) will be party to this DPA.
- 1.5. This DPA will not be valid and legally binding if the signing Client entity is not a party to the Agreement.

2. Agreement means the underlying services agreement relating to the Oaky Services delivered to Client.

Client means the party who is the Data Controller of the Client Personal Data.

Client Personal Data means any information relating to an identified or identifiable individual that is provided to Oaky or collected by Oaky for the purpose of Oaky rendering Services to Client.

Data Controller means Client (either alone or jointly or in common with others) that determines the purposes for which and the manner in which any Personal Data is, or is to be Processed.

Data Processor means any third party (other than an employee of the Data Controller) who Processes Client Personal Data on behalf of the Data Controller.

Data Protection Laws means local data protection legislation or any statutory equivalent in force in any part of the world which is relevant to Personal Data, including the EU Data Protection Directive 95/46/EC and the General Data Protection Regulation as of 25 May 2018.

Oaky means the Oaky entity that is a party to the Agreement, this DPA and the Standard Contractual Clauses, or a member of the Oaky Group.

Process or Processing means any operation or set of operations which is performed upon Client Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. Any derivative of the word Process has a corresponding meaning.

Standard Contractual Clauses means the Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in non-adequate countries, as defined under Directive 95/46/EC of the European Parliament and of the Council (2010/87/EU).

Services means the services provided by Oaky to Client as further detailed in the Terms of Service - Oaky Clients.

Sub-processor means any Data Processor engaged by Oaky to perform Services.

3. PROVISION OF CLIENT PERSONAL DATA

3.1. Client will provide Client Personal Data to Oaky or Oaky will collect Client Personal Data pursuant to this DPA for the purpose of Oaky rendering Services to Client and Oaky will have access to the Client Personal Data in the course of rendering the Services.

3.2. When Oaky receives the completed and signed DPA as specified below, this DPA becomes a legally binding addendum to the Agreement. To make this DPA a part of the Agreement, Client must complete the information in the signature block of this DPA and have an authorized representative sign this DPA.

4. USE OF CLIENT PERSONAL DATA

- 4.1. In providing the Services to Client pursuant to the Agreement, Oaky may Process Client Personal Data on behalf of Client. Oaky will comply with the provision of this DPA, with respect to the Processing of Personal Data provided or collected by and/or on behalf of Client using the Services.
- 4.2. Oaky shall, as instructed by Client, correct, delete or block the Client Personal Data being Processed under the Agreement. If an individual should request the correction or deletion of their personal data, Oaky shall pass this request to Client.

5. RIGHTS AND OBLIGATIONS OF CLIENT

- 5.1. Client is the Data Controller of the Client Personal Data and is responsible for the legitimacy of the Processing of Client Personal Data and any transfer of Client Personal Data to a third party. Data Protection Laws determine the rights and obligations of Client as a Data Controller as described in this Section 5.
- 5.2. Client ensures that, to the extent that the Services entail that emails are sent to the data subjects, the content of these emails is of a purely informative character and to the extent that the content is regarded as a direct marketing email, prior opt-in consent is obtained from the subscribers by Client. Client indemnifies Oaky for any claim of a data subject or authorities relating to the obtaining of the prior opt-in consent.
- 5.3. As the Data Controller, Client shall use its right to issue instructions to Oaky, as the Data Processor, on the method of Processing Client Personal Data as well as the services performed by Oaky. Client's provision of Personal Data to Oaky and instructions for Processing of Personal Data will comply with Data Protection Laws.
- 5.4. Client has the right, in relation to Client Personal Data, to review the compliance with this Data Processing Agreement by Oaky. Such review will take place during normal working days and normal working hours, subject to a 14 (fourteen) day written notice given in advance. The review of the Client Personal Data may take place at Oaky's place of business by inspecting the Processing activities taking place at the premises of Oaky in accordance with Oaky's security and access policies.
- 5.5. Data is handled in accordance with the agreed provisions and in accordance with Client's instructions. Any alterations to the data being Processed and the procedures employed will be discussed, agreed and recorded.

6. RIGHTS AND OBLIGATIONS OF OAKY

- 6.1. Oaky shall only Process Client Personal Data to the extent necessary pursuant to Client's instructions and as set forth in the Agreement. Client instructs Oaky to Process Client Personal Data: (i) in accordance with the Agreement; (ii) as part of any Processing initiated by Client in its use of the Services; and (iii) to comply with Client's reasonable instructions to the extent they are consistent with the terms of the Agreement.
- 6.2. Oaky will keep Client Personal Data confidential and take appropriate technical, physical and organisational security measures to protect Client Personal Data against unauthorised or unlawful Processing, accidental loss or damage or

destruction. Oaky's security measures are further detailed in Annex 2 of this Agreement.

- 6.3. Oaky will cooperate with reasonable requests of Client to conduct reviews as described in Section 5.3. Oaky shall not be required to disclose any commercial secrets (including, without limitation, algorithms, source codes, etc.). Oaky also will reasonably assist Client in the event of data protection checks or audits by a Data Protection Authority.
- 6.4. Oaky will promptly inform Client of a security breach involving Client Personal Data. Oaky will take adequate remedial measures and will promptly provide Client with the relevant information and assistance as reasonably requested by Client regarding the actual or suspected security breach.
- 6.5. Oaky shall inform Client as soon as reasonably possible if: (i) a formally designated authority demands the access to Client Personal Data, or (ii) a formally designated authority has taken measures against Oaky, unless Oaky is by law prohibited from informing Client about the request of such authority or the measures taken.

7. TRANSFER OF CLIENT PERSONAL DATA OUTSIDE THE EEA

- 7.1. For the purposes of Section 6.1, Client acknowledges and agrees that the performance of the Services Oaky transfers Client Personal Data outside the European Economic Area (EEA). In respect of such transfers and where no Alternative Level of Protection applies, Oaky shall ensure that in addition to the requirements described in Section 6 of this DPA, certain additional requirements shall be met, including signing the Standard Contractual Clauses or ensuring the receiving party is registered to the EU-US Privacy Shield.

8. SUB-PROCESSORS

- 8.1. Client acknowledges and expressly agrees that Oaky is entitled to engage third-party service providers as sub-processors that may provide Client support, including processing of Client Personal Data, in connection with the Services, as specified in Annex 3 of this Agreement.

9. DURATION

- 9.1. This DPA will enter into effect on the Effective Date and will remain effective notwithstanding termination of the Agreement. Where Client Personal Data is no longer required by Oaky for the performance of the Services, Oaky will either return such data immediately after termination of the Agreement, aggregate or destroy it if requested to do so by Client. At such time when Client Personal Data is either returned or destroyed, this DPA will expire automatically.
- 9.2. To the extent required by applicable Data Protection Laws, this DPA shall be governed by the applicable law of the applicable jurisdiction. In other cases, this DPA will be governed by the laws of the Netherlands.

10. CONFLICTING PROVISIONS

- 10.1. This DPA does not replace any additional rights related to processing of Client Personal Data in the Agreement.

11. NOTICES

The parties will send any communications or notices required under this DPA in writing, which includes e-mail, to the following focal points:

Client Name: _____

Client Email: _____

Oaky: Erik Tengen, erik@oakyapp.com

Signed for and on behalf of

Oaky B.V

Client

Signature: _____

Signature: _____

Printed Name: Lars Jonker

Printed Name: _____

Title: Co-Founder

Title: _____

ANNEX 1

Client Personal Data

Categories of Data Subject(s)	<ul style="list-style-type: none">• Customers of data controller
Categories of normal Client Personal Data	<ul style="list-style-type: none">• Customers<ul style="list-style-type: none">○ Name○ Email address○ Telephone number○ Language
Categories of sensitive Client Personal Data	<ul style="list-style-type: none">• None
Purpose	<ul style="list-style-type: none">• Providing Services as defined in the Services Agreement between Client and Oaky.
Data retention	<ul style="list-style-type: none">• The term of the agreement
Processing outside of the EEA	<ul style="list-style-type: none">• Yes. The sub-processor(s) located outside the EEA are registered through the EU Privacy Shield.

ANNEX 2

Oaky has implemented the following technical and organisational measures to protect the Client Personal Data:

- a) Prevent unauthorized persons from gaining access to data processing systems with which personal data are processed or used;
- b) Prevent data processing systems from being used without authorization;
- c) Ensure that persons entitled to use a data processing system have access only to the Client Personal Data to which they have a right of access;
- d) Ensure that personal data is adequately protected during transmission or transport;
- e) Ensure that the Client Personal Data is processed in accordance with the instructions of the Client.

ANNEX 3

Approved sub-processors:

Sub-Processor	Address / country	Service
Amazon Web Services	Germany, Frankfurt	Secure Cloud Service Platform for Database Storage
The Rocket Science Group LLC d/b/a MailChimp	Atlanta, USA	Secure Email Service Platform
Google LLC	Mountain View, USA	Secure Email Data Import Platform only used by Clients that send Client Personal Data via Email to Oaky.