

DATA PROCESSING ADDENDUM

3/17/2020

Effective Date: _____

This Data Processing Addendum ("DPA") is made as of the Effective Date by and between Intercom R&D Unlimited Company ("Intercom"), and Customer, pursuant to the Master SaaS Subscription Agreement or the [Subscription Terms of Service](#), as applicable ("Agreement").

This DPA amends the Agreement and sets out the terms that apply when Personal Data is processed by Intercom under the Agreement. The purpose of the DPA is to ensure such processing is conducted in accordance with applicable laws and with due respect for the rights and freedoms of individuals whose Personal Data are processed. Other capitalized terms used but not defined in this DPA have the same meanings as set out in the Agreement.

1. Definitions

For the purposes of this DPA:

- a) "EEA" means the European Economic Area, which constitutes the member states of the European Union, the United Kingdom, Norway, Iceland and Liechtenstein.
- b) "EU Data Protection Legislation" means 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 ("GDPR");
- c) "Controller" shall mean the entity which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;
- d) "Processor" shall mean an entity which processes Personal Data on behalf of the Controller;
- e) "Personal Data" means any information relating to an identified or identifiable natural person;
- f) "Privacy Shield" means the EU-US and Swiss-US Privacy Shield Frameworks, as operated by the U.S. Department of Commerce; and
- g) "Privacy Shield Principles" means the Privacy Shield Framework Principles (as supplemented by the Supplemental Principles) contained in Annex II to the European Commission Decision of 12 July 2016 pursuant to Directive 95/46/EC, details of which can be found at www.privacyshield.gov/eu-us-framework

2. Applicability and scope of DPA.

- 2.1. Applicability. This DPA will apply only to the extent that Intercom processes Personal Data from the EEA on behalf of the Customer.
- 2.2. Scope. The subject-matter of the data processing is the provision of the Services and the processing will be carried out for the duration of the Agreement. Exhibit A sets out the nature and purpose of the processing, the types of Personal Data Intercom processes and the categories of data subjects whose Personal Data is processed.

3. Roles and responsibilities.

- 3.1. Parties' Roles. To the extent that Intercom processes Personal Data in the course of providing the Services, it will do so only as a Processor acting on behalf of Customer (as Controller) and in accordance with the requirements of the Agreement.
- 3.2. Instructions. The Agreement and this DPA sets out Customer's complete documented instructions to Intercom in relation to the processing of the Personal Data and any processing required outside of the scope of these instructions will require prior written agreement between the parties.
- 3.3. Purpose Limitation. If Intercom is required to process the Personal Data for any other purpose by European Union or national law to which Intercom is subject, Intercom shall inform Customer of this requirement before the processing, except where otherwise required by such law.
- 3.4. Compliance. Customer, as Controller, shall be responsible for ensuring that:
 - a) it has complied, and will continue to comply, with all applicable laws relating to privacy and data protection,

- including EU Data Protection Legislation; and
- b) it has, and will continue to have, the right to transfer, or provide access to, the Personal Data to Intercom for processing in accordance with the terms of the Agreement and this DPA.

4. **Security.**

- 4.1. Security. Intercom will have in place and maintain throughout the term of this Agreement appropriate technical and organizational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing (a "**Security Incident**").
- 4.2. Intercom will ensure that any person that it authorizes to process the Personal Data (including its staff, agents and subcontractors) shall be subject to a duty of confidentiality) whether a contractual or a statutory duty).
- 4.3. Upon becoming aware of a Security Incident, Intercom shall notify Customer without undue delay and shall provide such timely information as Customer may reasonably require, including to enable Customer to fulfil any data breach reporting obligations under EU Data Protection Legislation. Intercom shall promptly take appropriate steps to remedy or mitigate any damage arising from such Security Incident.

5. **Subprocessing**

- 5.1. Subprocessing. Customer agrees that Intercom may engage Intercom affiliates and third party sub-processors listed here <https://www.intercom.com/terms-and-policies#security-third-parties> and as may be updated from time to time (collectively, "**Sub-processors**") to process the Personal Data on Intercom's behalf.
- 5.2. Intercom shall impose on such Sub-processors data protection obligations that protect the Personal Data to the same or substantially similar standard provided for by this DPA and shall remain liable for any breach of the DPA caused by a Sub-processor.
- 5.3. Intercom may, by giving reasonable notice to the Customer, add or make changes to the Sub-processors. If the Customer objects to the appointment of an additional Sub-processor within thirty (30) calendar days of such notice on reasonable grounds relating to the protection of the Personal Data, then Intercom will not appoint the Sub-processor and will work in good faith with the Customer to find an alternative solution. In the event that the parties are unable to find such a solution, the Customer may terminate the Agreement at no additional cost.

6. **International transfers**

- 6.1. The Customer hereby consents to Personal Data being transferred outside the EEA including to Intercom affiliates and subsidiaries, subject to continued compliance with clauses 6.2 and 6.3 below throughout the duration of this Agreement.
- 6.2. The Customer understands that effective operation of the Services may require the transfer of Personal Data to Intercom, Inc., a US entity together with its Sub-processors, including Amazon Web Services, Inc. ("**AWS**"). Transfers of Personal Data during the operation of the Services to Intercom, Inc. are permitted under EU Data Protection Legislation because, as of the Effective Date, Intercom, Inc. is registered with the Privacy Shield, and where applicable to such transfers, AWS is also registered with the Privacy Shield. The Customer and Intercom R&D may transfer Personal Data to Intercom, Inc. during the term of this DPA, provided that:
 - (a) Intercom, Inc. maintains its adherence to the Privacy Shield; and
 - (b) Intercom R&D ensures that Intercom, Inc. promptly inform the Customer if at any time Intercom, Inc. ceases to be Privacy Shield certified during the term of this Agreement, for whatever reason.
- 6.3. If, for whatever reason, the transfer of Personal Data under clause 6.2 above ceases to be lawful, Intercom shall either:
 - (a) with the Customer's consent which shall not be unreasonably withheld, implement an alternative lawful transfer mechanism; or
 - (b) allow the Customer to terminate the Agreement at no additional cost to the Customer.

7. **Data Protection Impact Assessments.**

- 7.1. Intercom shall, to the extent required by EU Data Protection Legislation, provide Customer with reasonable assistance at Customer's cost and expense with data protection impact assessments or prior consultations with data protection authorities that Customer is required to carry out under EU Data Protection Legislation.

8. Audit.

- 8.1. Whilst it is the parties' intention ordinarily to rely on the provision of the documentation to verify Intercom's compliance with this DPA, Intercom shall permit the Customer (or its appointed third party auditors) to carry out an audit of Intercom processing of Personal Data under the Agreement following a Security Incident suffered by Intercom, or upon the instruction of a data protection authority. Customer must give Intercom reasonable prior notice of such intention to audit, conduct its audit during normal business hours, and take all reasonable measures to prevent unnecessary disruption to Intercom's operations. Any such audit shall be subject to Intercom's security and confidentiality terms and guidelines. If Intercom declines to follow any instruction requested by Customer regarding audits, Customer is entitled to terminate this DPA and the Agreement.

9. Data subjects' rights.

- 9.1. Intercom shall, taking into account the nature of the processing, provide reasonable assistance to Customer insofar as this is possible and at Customer's cost and expense, to enable Customer to respond to requests from a data subject seeking to exercise their rights under EU Data Protection Legislation. In the event that such request is made directly to Intercom, Intercom shall promptly inform Customer of the same.

10. Deletion / return of Personal Data.

- 10.1 Upon termination or expiry of the Agreement, Intercom shall, at Customer's election, delete or return to Customer all relevant Personal Data (including copies) in Intercom's possession, save to the extent that Intercom is required by any applicable law to retain some or all of the Personal Data.

11. Service Data


- 11.1 Notwithstanding anything in this DPA, Intercom will have the right to collect, extract, compile, synthesize and analyze non-personally identifiable data or information resulting from Customer's use or operation of the Services ("**Service Data**") including, by way of example and without limitation, information relating to volumes, frequencies, recipients, bounce rates, or any other information regarding the communications Customer, its end users or recipients generate and send using the Services. To the extent any Service Data is collected or generated by Intercom, such data will be solely owned by Intercom and may be used by Intercom for any lawful business purpose without a duty of accounting to Customer or its recipients, provided that such data is used only in an aggregated form, without directly identifying any person. For the avoidance of doubt, this DPA will not apply to Service Data.

12. Miscellaneous

- 12.1. Except as amended by this DPA, the Agreement will remain in full force and effect.
- 12.2. If there is a conflict between the Agreement and this DPA, the terms of this DPA will control.
- 12.3. Any claims brought under this DPA shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations set forth in the Agreement.

Customer Execution

Company legal name: Capturi A/S

Signed: 
D74DA4A2F0D146B...

Name: Tue Martin Berg

Title: CEO

Date: 3/17/2020

Intercom Execution

Intercom R&D Unlimited Company

Signed: 
365A417D311845A...

Name: Bobby Pinero

Title: Sr Director Finance

Exhibit A – Data Processing Appendix

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

End users – individuals who interact with the Customer by way of the Intercom communication platform.

Categories of data

The personal data transferred concern the following categories of data (please specify):

Any Customer Data that constitutes “personal data” as defined in EU Data Protection Legislation, such as username, password, email address, and IP address.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

None

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

- Personal Data will be transferred from the Customer to Intercom for Intercom to provide a communication platform to facilitate interaction and engagement between the Customer and the end user.
- This service will consist of providing a communication platform for the Customer to use in order to on-board and retain end users as well as analyze their use of the Customer's product and / or services.
- Full details about Intercom's products and services can be found at <https://www.intercom.com/>