Data Processing Agreement

Preamble

This Data Processing Agreement ("**DPA**") specifies the data protection obligations and rights of the Parties in connection with the personal data processed by Choco as a processor on behalf of Supplier when providing the Services as per the Agreement.

For the purposes of this DPA "**Data Protection Laws**" means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data, including: (i) EU Regulation 2016/679 ("**GDPR**"); (ii) GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of Section 3 of the European Union (Withdrawal) Act 2018 (the "**UK GDPR**"); (iii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR; (iv) in the UK, the Data Protection Act 2018; (v) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC); and (vi) in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003; in each case, as updated, amended or replaced from time to time; and the terms "**data subject**", "**processing**", "**processor**" and "**controller**" shall have the meanings set out in the Data Protection Laws. "**Personal Data**" has the meaning set out in Data Protection Laws but is limited to personal data processed by Choco acting as a processor on behalf of Supplier under the Agreement as further described in Annex 1 to this DPA below.

1. Subject and Scope of the Assignment

1.1 Choco shall process the Personal Data which Supplier has provided directly or indirectly for the provision of the Services exclusively on behalf of, and in accordance with the instructions of Supplier, unless it is otherwise required by the applicable law. In such a case, Choco shall notify Supplier of such legal requirements prior to the processing, unless the relevant law prohibits such notification.

1.2 The processing of Personal Data by Choco on behalf of Supplier is specified in Annex 1 to this DPA.

1.3 The duration of the processing corresponds to the duration of the Agreement.

1.4 Supplier warrants and represents that it has obtained all necessary consents and complied with all obligations required by Data Protection Laws for making available any Personal Data to Choco and for allowing collection of Personal Data by Choco on the Supplier's behalf under this Agreement.

1.5 Supplier may issue further instructions regarding the scope of processing of Personal Data. If Choco is of the opinion that a Supplier instruction violates this DPA or Data Protection Laws, it shall without undue delay inform Supplier thereof in writing. Choco shall be entitled to suspend the execution of such instruction until Supplier confirms it in writing. If Supplier insists on the execution of an instruction despite the concerns raised by Choco, Supplier shall indemnify Choco against all damages and costs that it incurs due to the execution of the Supplier's instruction. Choco shall inform Supplier of any damages asserted against it and any costs incurred by it and shall not acknowledge any claims of third parties without Supplier's consent and shall, at Choco's option, conduct the defense in consultation with Supplier or leave it to Supplier.

2. Requirements of Personnel

2.1 Choco shall ensure that all persons who are authorized to have access to Personal Data are either under a contractual obligation to maintain confidentiality or are under an appropriate statutory obligation of confidentiality when processing the Personal Data.

3. Processing Security

3.1 Choco shall implement and maintain throughout the term of the Agreement appropriate technical and organizational measures specified in Annex-2 to this DPA ("**TOM**"), to ensure a level of protection of the Personal Data commensurate to the risk, taking into account the state of the art, the cost of implementation and, to the extent known to Choco, the nature, scope, circumstances and purposes of the processing of the Personal Data and the varying likelihood and severity of the risk to the rights and freedoms of the data subjects. Choco shall regularly assess the effectiveness of the TOMs and implement alternative measures if necessary for ensuring appropriate level of security.

3.2 It shall be incumbent upon Supplier to review the TOM taken by Choco, particularly to review whether these measures are also sufficient with regard to circumstances of the data processing that are not known to Choco.

4. Use of Sub-Processors and Data Transfers

4.1 Supplier generally authorizes Choco to make use of the services of its affiliates and sub-processors when processing the Personal Data.

4.2 The current sub-processors which are engaged by Choco are listed in Annex 3 to this DPA. Choco shall impose substantially similar data protection obligations vis-a-vis its sub-processors which are no less protective than the ones set out under this DPA and will remain liable towards the Supplier for its sub-processors' performance under this DPA.

4.3 Choco will update the list of sub-processors in Annex 3 to this DPA at least 30 days before authorizing a new sub-processor to process Personal Data on behalf of Supplier. If Supplier wants to receive an individual notification of an update to the list of sub-processors, it shall sign up to the notification mechanism available in Annex 3 to this DPA. If Supplier does not object within 14 days following Choco's notification by sending an email to legal@choco.com, then the engagement shall be deemed approved. If Supplier objects, Choco shall be entitled, at its choice, to either provide the Services without using the rejected additional sub-processor or to terminate the Agreement.

4.4 Supplier authorizes Choco, its affiliates and its sub-processors to transfer, access or process Personal Data outside the UK or the European Economic Area ("EEA"), provided that the requirements for such transfer, access or processing under Data Protection Laws are complied with.

5. Rights of the Data Subjects

5.1 Taking into account the nature of the processing of the Personal Data, Choco shall assist Supplier with

appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Supplier's obligation to respond to requests for exercising the data subject's rights laid down in the Data Protection Laws.

5.2 Choco shall in particular:

    a. inform Supplier without undue delay if a data subject contacts Choco directly with a request to exercise his/her rights;

    b. provide Supplier upon Supplier's request with all information available to Choco regarding the processing of the Personal Data that Supplier needs to respond to the request of a data subject and that Supplier does not have itself;

    c. correct, delete or restrict the processing of the Personal Data without undue delay upon the instruction of Supplier, unless Supplier is able to do so itself and it is technically possible for Choco to do so;

    d. support Supplier to the extent necessary to receive the Personal Data processed in Choco's sphere of responsibility - insofar as this is technically possible for Choco - in a structured, common and machine-readable format, insofar as a data subject asserts a right to data portability.

6. Support Obligations

6.1 Choco shall notify Supplier without undue delay after becoming aware of a breach of Personal Data. The notification shall include a description, if possible, of the nature of the breach; the categories and approximate number of data subjects affected by the breach; the probable consequences of the breach; of the measures taken or proposed by Choco to remedy the breach of the protection of the Personal Data and, if applicable, measures to mitigate its possible adverse effects.

6.2 Choco shall investigate the cause of the breach and, where appropriate, take reasonable measures to mitigate its possible adverse effects.

6.3 If Supplier is obliged to inform the supervisory authorities and/or data subjects about the personal data breach, Choco shall assist the Supplier with complying with this obligation, taking into account the nature of processing and the information available to Choco. Any additional costs incurred by Choco in this context, which exceed statutory processor obligations under the applicable law shall be borne by Supplier.

6.4 Choco shall notify Supplier of any subpoena or other judicial or administrative order, process or proceeding seeking access to, or disclosure of, the Personal Data insofar as such notification is not prohibited by law. If Supplier is obliged to provide information to a supervisory authority regarding the processing of the Personal Data or to otherwise cooperate with such authorities, Choco shall support Supplier in providing such information insofar as Supplier does not have the information itself and reasonably cooperate with Supplier and with supervisory authorities, including granting the competent supervisory authority the necessary rights of access, information and inspection.

6.5 Choco shall provide reasonable assistance to Supplier regarding Supplier's compliance with its obligations related to security of processing, data protection impact assessments and prior consultations with the supervisory authorities in each case taking into account the nature of the processing and information available to Choco. Any additional costs incurred by Choco in this context, exceeding the foreseen statutory processor obligations under the applicable law, will be borne by Supplier.

7. Data Deletion and Return

7.1 Upon termination of the Agreement and written request from Supplier, Choco will either delete or return the Personal Data, unless Choco is obliged to continue storing the Personal Data under applicable law.

7.2 Some Personal Data may be archived in Choco's back-up systems and such archived Personal Data will be deleted in accordance with Choco's retention policy. Any Personal Data archived in backups will be isolated and protected from any further processing. For the period that the data is stored after the termination of the Agreement, the rights and obligations of the Parties under this DPA shall continue to apply.

8. Verifications and Audits

8.1 Choco shall keep records of its processing activities performed on behalf of Supplier and make available to Supplier upon request these records or any other information necessary to demonstrate compliance with statutory processor obligations set out under the Data Protection Laws.

8.2 Choco shall allow for and contribute to audits, including on-site inspections, by Supplier or an auditor mandated by Supplier in relation to the processing of the Personal Data. The audits and on-site inspections shall not hinder Choco in its normal business operations and should not place an undue burden on Choco. In particular, on-site inspections at Choco for no specific reason shall not take place more than once per calendar year and only during Choco's normal business hours. Supplier shall notify Choco of inspections in written or text form at least 30 (thirty) days in advance, providing Choco with reasonable information about the scope, duration, and inspection plan. Supplier and Choco shall cooperate in good faith and mutually agree on the scope, duration, and start date of the inspection. Any costs incurred by Choco for any on-site inspections which are not clearly disproportionate or excessive, will be borne by the Supplier. Any auditor mandated by Supplier shall be an independent contractor that does not compete with Choco and such auditor may not commence its work prior to having executed a non-disclosure agreement with Choco.

9. Miscellaneous

9.1 Each Party's and their affiliates' liability taken together in the aggregate arising out of or related to this DPA whether in contract, tort, or under any other theory of liability, shall be subject to the limitation of liability provisions of the Agreement.

9.2 This DPA, including its annexes, constitutes an integral part of the Agreement between Choco and Supplier. If there are any inconsistencies between this DPA and the provisions of the Agreement, the provisions of this DPA shall prevail.

9.3 Any amendments and/or side agreements to any parts of this DPA must be made in writing. This rule also

applies to this written form requirement itself. The governing law and jurisdiction under the Agreement shall apply accordingly for any parts of this DPA.

Annex 1 - Description of Personal Data Processing

Purpose of data processing	Provision of the Onboarding and Support Services, Cloud Service and Integration Services
Nature and scope of data processing	Collection, processing, storage and transfer of Personal Data as necessary for provision and maintenance of the following Services: • Onboarding Services, such as introducing the Cloud Service to Authorized Users and Customers of Supplier, setting up accounts and execution of promotions for introducing the Cloud Service to its Customers • Support Services, such as responding to questions of Authorized Users or Customers • Cloud Service, such as the transmission of orders and messages, provision of analytic reports about orders and/or communications sent via the Cloud Service, provision of Choco-AI and other functionalities agreed between the parties • Building an Integration between the Cloud Service and Supplier's ERP and • any other services as may be instructed by Supplier.
Type of data	• Name • Email address • Phone number • Title and company name • Log-in data • Onboarding messages statistics • In-App Campaign message statistics • Any other personal data that may be provided directly or indirectly by Supplier, its Authorized Users and/or Personnel of its Customers
Group of data subjects	• Supplier's Authorized Users • Personnel of Supplier's Customers • Personnel of potential customers of the Supplier, if applicable
Duration of processing	For the duration of the Agreement as further set out in Section 7 of DPA

Annex 2 - Technical and Organizational Measures

Taking into account the state of the art, the costs of implementation and the nature, scope, circumstances and purposes of the processing, as well as the varying likelihood and severity of the risk to the rights and freedoms of natural persons, Choco shall, in its capacity as data processor, implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including, but not limited to, the following:

1 Confidentiality

1.1 Physical access control

Choco shall take appropriate measures to reduce the risk of unauthorized persons gaining access to data processing systems with which Supplier's personal data are processed and used.

Technical measures

- Automatic access control systems, control of access by gatekeeper services and alarm systems
- Lockable server cabinets
- key regulation, service directives stipulating that service rooms are to be locked when employees are absent

1.2 System access control

Choco shall take appropriate measures to prevent data processing systems (computers) from being used by unauthorized persons. For this purpose, Choco shall take the following precautions:

Technical measures:
- Login with username + password
- Smartphone encryption
- Encryption of company laptops
- Remote laptop management
- Deployment of anti-virus software for laptops and systems

Organizational measures:
- Manage user permissions
- Create user profiles
- Policies on use of Company Hardware

- General policy on data protection and / or security

1.3 Data access control

Choco shall take appropriate measures to ensure that the persons authorized to use the data processing systems can only access the personal data subject to their access authorization and that the Personal Data of Supplier cannot be read, copied, modified or removed without authorization during processing, use and after storage. For this purpose, Choco shall take the following precautions:

Technical measures:

- Erasure of data carriers on laptops before reuse.
- Logging of access to important documents, especially when entering, changing and deleting data.
- File shredder (min. level 3, cross cut)

Organizational measures:

- Creating an authorization concept
- Management of rights by system administrator
- Reduction in the number of administrators
- Closed area for sensitive documents

1.4 Separation control

Choco shall take appropriate measures to ensure that the Personal Data of Supplier collected for different purposes can be processed separately. For this purpose, Choco shall take the following precautions:

Technical measures:

- Separate storage on different software
- Software-based customer separation

Organizational measures:

- Creation of an authorization concept
- Determination of database rights

2 Integrity

2.1 Transmission control

Choco shall take reasonable measures to reduce the risk that the Personal Data of Supplier can be read, copied, modified or removed without authorization during electronic transmission or during their transport or

storage on data carriers. To this end, Choco shall take the following precautions:

Technical measures:

- Email encryption

- Logging of accesses and retrievals of important documents and data

- Provision *via* encrypted connections such as sftp, https

2.2 Data input control

Choco shall take appropriate measures to ensure that it is possible to check and determine retrospectively whether and by whom personal data of the customer have been entered into data processing systems, changed or removed. For this purpose, Choco shall take the following precautions:

Technical measures:

- Possibility of technical logging of the entry, modification and deletion of personal data.

Organizational measures:

- Traceability of entry, modification, and deletion of personal data through individual user names.

- Retention of forms from which personal data have been transferred to automated processing operations.

- Assignment of rights to enter, change, and delete personal data on the basis of an authorization concept.

3 Availability and resilience

3.1 Availability control

Choco shall take reasonable measures to ensure that the Personal Data of Supplier is protected against accidental destruction or loss. For this purpose, Choco shall take the following precautions:

Technical measures:

- Fire and smoke detection systems

- Careful selection of the hosting service provider

Organizational measures:

- Regular control of the hosting service provider

4 Procedures for regular review, assessment and evaluation.

Choco shall implement procedures for regular review, assessment and evaluation of the effectiveness of technical and organizational measures to ensure the security of processing.

4.1 Data protection management

Organizational measures:

- Central documentation of all procedures, regulations and guidelines on data protection with access for employees as required / authorized
- A review of the effectiveness of the technical protective measures is carried out regularly
- Employees trained and committed to confidentiality
- Raising employee awareness through training

4.2 Incident response management

Organizational measures:

- Documentation of security incidents and data breaches
- Regulation of responsibilities for the follow-up of security incidents and data breaches
- Security breach response support.
- Formalized process for handling requests for information from data subjects is in place.

Annex 3 - Subprocessor List

Name	Entity Location	Purpose
Amazon Web Services, Inc.	USA Location of processing: EU West 1 (Ireland, EU)	Cloud Infrastructure and AI services
Google Cloud EMEA Limited	Ireland Location of processing: EU West 1 (Ireland, EU)	Cloud Storage and AI services
salesforce.com Germany GmbH	Germany Location of processing: EU43 (Frankfurt, Germany; Paris, France)	CRM
Invisible Technologies Inc	USA	Back-office services
Iterable, Inc	USA	CRM
Mindbridge Private Limited	Pakistan	Back-office services
The Mail Track Company, S.L.	Spain	Customer outreach tool
Aircall SAS	France	Customer outreach tool
Segment.io, Inc.	US Location of processing: S3 AWS	Customer data platform

	(Ireland, EU)	
OpenAI, L.L.C.	USA	Generative AI services
Twilio Ireland Limited	Ireland	Communication tool
Salesloft Inc	USA	Communication tool
Intercom, Inc.	Ireland	Customer support and customer communication in the software
Lobster DATA GmbH	Germany	Integration tool
N8N GmbH	Germany	Integration tool
Zynk Software Limited	United Kingdom	Integration service provider
Choco Communications DACH GmbH	Germany	Intra-group services
Choco Communications Espagna SL	Spain	Intra-group services
Choco Communications SAS	France	Intra-group services
Atlantic Food Waste Partners LLC dba Choco	USA	Intra-group services

We may need to add new subprocessors to the list above. If you'd like to receive a notification of these new sub-processors, you can subscribe on this page: https://choco.com/uk/subprocessors.