

PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SERVICES (DEFINED BELOW) ARE SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.

Terms of Use

Effective date: 25th of November 2019

Welcome to Chatfuel. Chatfuel is an online platform that allows developers, individuals, companies, and agencies to easily build, host, and manage chatbots. Please read on to learn the rules and restrictions that govern your use of our website(s), products, services and applications (the “Services”). If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at tos@chatfuel.com, 490 Post Street, Suite 526, San Francisco, CA 94102, USA.

These Terms of Use (the “Terms”) are a binding contract between you and 200 Labs, Inc, d/b/a Chatfuel. (“Chatfuel,” “we” and “us”). Your use of the Services is also governed by and subject to the Facebook Platform Policies (located at <https://developers.facebook.com/policy>) and Facebook Commerce Product Merchant Agreement (currently located here: https://www.facebook.com/legal/commerce_product_merchant_agreement), which are hereby incorporated by reference and are a part of these Terms. You are solely responsible and liable for complying with the Facebook Platform Policies and Facebook Commerce Product Merchant Agreement.

You must agree to and accept all of the Terms, or you don’t have the right to use the Services. Your using the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document, as well as those in the [Privacy Policy](#) and [Copyright Dispute Policy](#).

Will these Terms ever change?

We are constantly trying to improve our Services, so these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, but if we do, we will bring it to your attention by placing a notice on the Chatfuel.com website, by sending you an email, and/or by some other means.

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

What about my privacy?

Chatfuel takes the privacy of its users very seriously. For the current Chatfuel Privacy Policy, please click [here](#).

The Children’s Online Privacy Protection Act (“COPPA”) requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. We do not knowingly collect or solicit personally identifiable information from children under 13; if you are a child under 13, please do not attempt to register for the Services or send any personal information about yourself to us. If we learn we have collected personal information from a child under 13, we will delete that information as quickly as possible. If you believe that a child under 13 may have provided us personal information, please contact us at tos@chatfuel.com.

What are the basics of using Chatfuel?

You may be required to sign up for an account and log-in to Chatfuel through your Facebook Messenger or other third party account, and select a password and user name (“Chatfuel User ID”). You promise to provide us with accurate, complete, and updated registration information about yourself. You may not transfer your account to anyone else without our prior written permission.

You represent and warrant that you are of legal age to form a binding contract (or if not, you’ve received your parent’s or guardian’s permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf). If you’re agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity’s behalf and bind them to these Terms (in which case, the references to “you” and “your” in these Terms, except for in this sentence, refer to that organization or entity).

You will only use the Services for your own internal, non-commercial use, and only in a manner that complies with all laws that apply to you, except that you may build chatbots using the Services and sell and/or otherwise exploit and commercialize the chatbots you have built. If your use of the Services is prohibited by applicable laws, then you aren’t authorized to use the Services. We can’t and won’t be responsible for your using the Services in a way that breaks the law.

You will not share your account or password with anyone, and you must protect the security of your account and your password. You’re responsible for any activity associated with your account.

Your use of the Services is subject to the following additional restrictions:

You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise create any chatbots or use the Services in a manner that:

- (a) Infringes or violates the intellectual property rights or any other rights of anyone else (including Chatfuel);
- (b) Violates any law or regulation, including any applicable export control laws;
- (c) Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) Jeopardizes the security of your Chatfuel account or anyone else’s (such as allowing someone else to log in to the Services as you);
- (e) Attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) Violates the security of any computer network, or cracks any passwords or security encryption codes;
- (g) Runs Maillist, Listserv, any form of auto-responder or “spam” on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services’ infrastructure);
- (h) “Crawls,” “scrapes,” or “spiders” any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
- (i) Copies or stores any significant portion of the Content;
- (j) Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.

What are my rights in Chatfuel?

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, User Submissions, and so forth (all of the

foregoing, the “Content”) are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Chatfuel’s) rights.

You understand that Chatfuel owns the Services. You won’t modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services.

The Services may allow you to copy or download certain Content; please remember that just because this functionality exists, doesn’t mean that all the restrictions above don’t apply – they do!

Do I have to grant any licenses to Chatfuel or to other users?

Anything you post, upload, share, store, or otherwise provide through the Services, including any chatbots you create and/or communicate with through the Services, is your “User Submission.” Some User Submissions are viewable by other users. In order to display your User Submissions on the Services, and to allow other users to enjoy them (where applicable), you grant us certain rights in those User Submissions. Please note that all of the following licenses are subject to our [Privacy Policy](#) to the extent they relate to User Submissions that are also your personally-identifiable information.

For all User Submissions, you hereby grant Chatfuel a license to translate, modify (for technical purposes, for example making sure your content is viewable on an iPhone as well as a computer) and reproduce and otherwise act with respect to such User Submissions, in each case to enable us to operate the Services, as described in more detail below. This is a license only – your ownership in User Submissions is not affected.

If you store a User Submission in your own personal Chatfuel account, in a manner that is not viewable by any other user except you (a “Personal User Submission”), you grant Chatfuel the license above, as well as a license to display, perform, and distribute your Personal User Submission for the sole purpose of making that Personal User Submission accessible to you and providing the Services necessary to do so.

If you share a User Submission only in a manner that only certain specified users can view (for example, a private message to a chatbot)(a “Limited Audience User Submission”), then you grant Chatfuel the licenses above, as well as a license to display, perform, and distribute your Limited Audience User Submission for the sole purpose of making that Limited Audience User Submission accessible to such other specified users, and providing the Services necessary to do so. Also, you grant such other specified users a license to access that Limited Audience User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

If you share a User Submission publicly on the Services and/or in a manner that more than just you or certain specified users can view, or if you provide us (in a direct email or otherwise) with any feedback, suggestions, improvements, enhancements, and/or feature requests relating to the Services (each of the foregoing, a “Public User Submission”), then you grant Chatfuel the licenses above, as well as a license to display, perform, and distribute your Public User Submission for the purpose of making that Public User Submission accessible to all Chatfuel users and providing the Services necessary to do so, as well as all other rights necessary to use and exercise all rights in that Public User Submission in connection with the Services for any purpose. Also, you grant all other users of the Services a license to access that Public User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

You agree that the licenses you grant are royalty-free, perpetual, sublicenseable, irrevocable, and worldwide.

If you are using the free version of the Services, all your chatbots created through the Services will automatically include an attribution to Chatfuel. You agree not to remove, modify, or obscure the Chatfuel attribution. In addition, whether you are using the free or paid version of the Services, you hereby grant Chatfuel a nonexclusive license to use any chatbots you create using the Services in Chatfuel's marketing materials (such as on Chatfuel.com).

Finally, you understand and agree that Chatfuel, in performing the required technical steps to provide the Services to our users (including you), may need to make changes to your User Submissions to conform and adapt those User Submissions to the technical requirements of connection networks, devices, services, or media, and the foregoing licenses include the rights to do so.

What if I see something on the Services that infringes my copyright?

You may have heard of the Digital Millennium Copyright Act (the "DMCA"), as it relates to online service providers, like Chatfuel, being asked to remove material that allegedly violates someone's copyright. We respect others' intellectual property rights, and we reserve the right to delete or disable Content alleged to be infringing, and to terminate the accounts of repeat alleged infringers; to review our complete Copyright Dispute Policy and learn how to report potentially infringing content, [click here](#). To learn more about the DMCA, click [here](#).

Who is responsible for what I see and do on the Services?

Any information or content publicly posted or privately transmitted through the Services, and any chatbots created using the Services, are the sole responsibility of the person from whom such content originated, and you access all such information and content at your own risk, and we aren't liable for any errors or omissions in that information or content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can't guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

The Services may contain links or connections to third party websites or services that are not owned or controlled by Chatfuel. When you access third party websites or use third party services, you accept that there are risks in doing so, and that Chatfuel is not responsible for such risks. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third party website or service that you visit or utilize.

Chatfuel has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites or by any third party that you interact with through the Services. In addition, Chatfuel will not and cannot monitor, verify, censor or edit the content of any third party site or service. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third party website or service.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Chatfuel shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site, or between users and any third party, you agree that Chatfuel is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Chatfuel, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. If you are a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor."

Will Chatfuel ever change the Services?

We're always trying to improve the Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We'll try to give you notice when we make a material change to the Services that would adversely affect you, but this isn't always practical. Similarly, we reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

Do the Services Cost Anything?

Chatfuel currently offers both a free version of the Services and a paid PRO Subscription version of the Services (PRO Plan). If you are using the paid PRO Subscription version of the Services, you agree to pay all applicable fees for such Services. Chatfuel reserves the right to charge for certain or all services in the future. We will notify you before any Services you are then using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services.

What if I want to stop using Chatfuel?

You're free to stop using the Services at any time; please refer to our [Privacy Policy](#), as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

Chatfuel is also free to terminate (or suspend access to) your use of the Services or your account, for any reason in our discretion, including your breach of these Terms. Chatfuel has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Account termination may result in destruction of any chatbots and Content associated with your account, so keep that in mind before you decide to terminate your account. We will try to provide advance notice to you prior to our terminating your account so that you are able to retrieve any important User Submissions you may have stored in your account (to the extent allowed by law and these Terms), but we may not do so if we determine it would be impractical, illegal, not in the interest of someone's safety or security, or otherwise harmful to the rights or property of Chatfuel.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

What else do I need to know?

Warranty Disclaimer. Neither Chatfuel nor its licensors or suppliers makes any representations or warranties concerning any content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in

or accessed through the Services. We (and our licensors and suppliers) make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. THE SERVICES AND CONTENT ARE PROVIDED BY CHATFUEL (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL CHATFUEL (OR ITS LICENSORS OR SUPPLIERS) BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO CHATFUEL IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (C) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. To the fullest extent allowed by applicable law, You agree to indemnify and hold Chatfuel, its affiliates, officers, agents, employees, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms. In the event of such a claim, suit, or action ("Claim"), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

Assignment. You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Chatfuel's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Choice of Law; Arbitration. These Terms are governed by and will be construed under the laws of the State of California, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in San Francisco County, California, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, San Francisco County, California, or the Northern District of California. **Any arbitration under these Terms will take place on an individual basis: class arbitrations and class actions are not permitted. YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS, YOU AND CHATFUEL ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.**

Miscellaneous. You will be responsible for paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services, provided that the Chatfuel may, in its sole discretion, do any of the foregoing on your behalf or for itself as it sees fit. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Chatfuel agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Chatfuel, and that it supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. You hereby acknowledge and agree that you are not an employee, agent, partner, or joint venture of Chatfuel, and you do not have any authority of any kind to bind Chatfuel in any respect whatsoever. You and Chatfuel agree there are no third party beneficiaries intended under these Terms.

Data Processing Addendum Agreement to the Chatfuel Terms of Use

Regarding the Processing of Personal Data of EU Customers

(hereinafter referred to as "**Chatfuel DPA**")
by and between

1. 200 LABS, INC., d/b/a Chatfuel, 490 Post Street, Ste. 526, San Francisco, CA 94102, USA

- hereinafter referred to as "**Chatfuel**" -

and

2. Chatfuel's customers being subject to the rules under the European General Data Protection Regulation or the Standard Contractual Clauses for Processors pursuant to European Commission Decision of 5 February 2010.

- hereinafter referred to as "**Customer**" -

- Chatfuel and Customer hereinafter referred to as "**Parties**" and each as "**Party**" -

PREAMBLE

Chatfuel performs cloud based analytics services for Customer ("**Services**") as agreed between the Parties in the Chatfuel Terms of Use between Customer and Chatfuel entered into ("**Chatfuel Terms of Use**"). In the course of providing the Services, Chatfuel will process personal data for which, pursuant to EU data privacy laws, Customer or Customer's Customers located in the European Union and/or European Economic Area are responsible ("**Customer's Customers**") as provided under Art. 4 no 7 GDPR ("**Customer's personal data**") or where Customer's are for contractual reasons obliged to subject the data processing to data processing principles adequate to the one within the EU. Customer's Customers are companies that render services to their end-customers and who engage Chatfuel as sub-processor.

This Chatfuel DPA regulates the data protection obligations of the Parties when processing Customer's personal data is done under the Chatfuel Terms of Use and will reasonably ensure that such processing will only be rendered on behalf of and under the Instructions of Customer or Customer's customers and in accordance with the EU Standard Contractual Clauses for Processors pursuant to European Commission Decision of 5 February 2010 ("**SCC**") and Art. 28 et seq. of the General Data Protection Regulation ("**GDPR**").

1. DEFINITIONS

- In addition to the definition in Clause 1 SCC, "**Instruction**" means any documented instruction, submitted by Customer to Chatfuel, directing Chatfuel to perform a specific action with regard to personal data, including but not limited to the rectification, erasure or restriction of personal data.

Instructions shall initially be specified in the Chatfuel Terms of Use and may, from time to time thereafter, be amended, supplemented or replaced by Customer by separate written or text form Instructions provided that such instructions still fall within the scope of the Services. Instructions issued for the purpose of complying with statutory claims under the GDPR such as rectification, erasure or restriction of personal data fall within the scope of the Services.

- Terms used but not defined in this Section, including but not limited to “personal data”, “personal data breach”, “processing”, “controller”, “processor” and “data subject”, will have the same meaning as set forth in Art. 4 GDPR.
- **“Applicable Law”** means all laws, rules and regulations applicable to either party’s performance under this Data Processing Agreement, including but not limited to those applicable to the processing of personal data. This means in particular the GDPR and all national laws validly amending the applicable rules for the processing of personal data.

2. SUBJECT, DURATION, PURPOSE, AND SPECIFICATION OF PROCESSING

- 2.1. Chatfuel will, in the course of providing Services due under the Chatfuel Terms of Use, process Customer’s personal data which shall be subject to the following provisions contained in this Chatfuel DPA.
- 2.2. When performing the Services, Chatfuel will act either as processor or sub-processor. Chatfuel’s function as processor or sub-processor will be determined by the function of Chatfuel’s Customer. If the Customer is the data controller, then Chatfuel shall be the processor. If the Customer is processor on behalf of its Customer’s Customers, then Chatfuel shall be the sub-processor and Customer and any of Customer’s Customers shall be entitled to issue Instructions under this Chatfuel DPA.
- 2.3. The subject matter, duration, nature and purpose of the processing are described in in the Chatfuel Terms of Use, the appendices of the SCC and Sect. 9 of this Chatfuel DPA.
- 2.4. The categories of data and data subjects which may be concerned by the processing are listed in Exhibit, Appendix 1.
- 2.5. This Chatfuel DPA amends the Chatfuel Terms of Use with respect to any processing of personal data by Chatfuel as a processor for and as provided by Customer or Customer’s Customers as amended from time to time by written agreement between both Parties.
- 2.6. Customer enters into this Chatfuel DPA on its own behalf and on behalf of each of the Customer’s Customers and confirms of being authorized to do so. Alternatively, EU Customer’s Customers can co-sign this Chatfuel DPA. This Chatfuel DPA is by way of reference an integral part of any agreement entered into between Chatfuel and Chatfuel’s Customers

3. STANDARD CONTRACTUAL CLAUSES

Any processing operation as described in Sect. 2. shall also be subject to the SCC as contained in Exhibit which shall prevail over any conflicting clauses in the Chatfuel Terms of Use or the Chatfuel DPA. The

Parties agree that the SCC shall be directly binding between Chatfuel as Data Importer (as defined therein), Customer and each of each Customer's Customers, each acting as Data Exporter (as defined therein) in relation to the personal data provided by Customer or the respective Customer's Customer.

4. CHATFUEL'S OBLIGATIONS

- 4.1. In addition to Clause 5 (a) SCC, Chatfuel shall in the course of providing Services, including with regard to transfers of personal data to a third country, process Customer's personal data only on behalf of and under the documented Instructions of Customer unless required to do so otherwise under EU or Member State law; in such a case, Chatfuel shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- 4.2. Chatfuel shall take all steps reasonably necessary to ensure that any natural person acting under its authority who has access to personal data does not process such personal data except on Instructions from the Customer, unless Chatfuel, he or she is otherwise required to do so by EU or Member State law.
- 4.3. Chatfuel ensures that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and that the obligation will remain after termination of this Chatfuel DPA.
- 4.4. Technical and Organizational Data Security Measures
 - 4.4.1. In addition to Clause 5 (c) SCC, the measures specified in Exhibit, Appendix 2 are subject to technical advancements and development.
 - 4.4.2. 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, Chatfuel shall implement and maintain appropriate technical and organizational measures to ensure a level of security appropriate to the risk, as required by Art. 32 GDPR. This may include (as appropriate)
 - the pseudonymization and encryption of personal data;
 - the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; and
 - the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
 - 4.4.3. When assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed.
 - 4.4.4. If Chatfuel significantly modifies measures specified in Exhibit, Appendix 2, such modifications have to meet the obligations pursuant to Sect. 4.4.2 and 4.4.3. Chatfuel shall make available to Customer a description of such measures which enables Customer to assess compliance with Art. 32 GDPR and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the

Customer as permitted by Clause 5 (f) SCC. Chatfuel and Customer shall agree on such significant modifications by accepting the modified Exhibit, Appendix 2. Customer shall not refuse to accept any modification that meets the requirements pursuant to Sect. 4.4.2 and 4.4.3 of this Chatfuel DPA.

- 4.4.5. Chatfuel shall implement a data protection management procedure according to Art. 32 para 1 lit. d) GDPR, for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures to appropriately ensure the security of the processing. Chatfuel will further, by way of regular self-audits, reasonably ensure that the processing of Customer's personal data conforms with the provisions as agreed with Customer or to Customer's Instructions.
- 4.5. Chatfuel shall, while taking into account the nature of the processing, assist Customer through appropriate technical and organizational measures, with the fulfilment of Customer's obligations to respond to requests for exercising rights of data subjects in accordance with Applicable Law, in particular Art. 15 through 18 and 21 GDPR.
- 4.6. Taking into account the nature of the processing and the information available to Chatfuel, Chatfuel shall assist Customer with ensuring compliance with the obligations pursuant to Art. 33 through 36 GDPR (Data Security Breach Notification, Data Protection Impact Assessment, Consultation with Data Protection Supervisory Authorities).
- 4.7. Documentation and Audit Rights
 - 4.7.1. Chatfuel may, in its discretion provide data protection compliance certifications issued by a commonly accepted certification issuer which has been audited by a data security expert, by a publically certified auditing company or by another customer of Chatfuel.
 - 4.7.2. If Customer has justifiable reason to believe that Chatfuel is not complying with the terms and conditions under this agreement, in particular with the obligation to implement and maintain the agreed technical and organizational data security measures, and only once per year, Customer is entitled to audit Chatfuel. This audit right can be exercised by (i) requesting additional information, (ii) accessing the databases which process Customer's personal data or (iii) by inspecting Chatfuel's working premises whereby in each case no access to personal data of other customers or Chatfuel's confidential information will be granted. Alternatively, Customer may also engage third party auditors to perform such tasks on its behalf. The costs associated with such audits and/or for providing additional information shall be borne by Customer unless such audit reveals Chatfuel's material breach with this Chatfuel DPA.
 - 4.7.3. If Customer intends to conduct an audit at Chatfuel's working premises, Customer shall give reasonable notice to Chatfuel and agree with Chatfuel on the time and duration of the audit. In the case of a special legitimate interest, such audit can also be conducted without prior notice. Both Parties shall memorialize the results of the audit in writing.
- 4.8. Notification Duties
 - 4.8.1. In addition to Clause 5 (d) SCC, Chatfuel shall inform Customer without undue delay in text form (e.g. letter, fax or e-mail) of the events listed in Clause 5 (d) SCC and the following events:

- Requests from third parties including from a data protection supervisory authority regarding Customer's personal data;
- Threats to Customer's personal data in possession of Chatfuel by garnishment, confiscation, insolvency and settlement proceedings or other incidents or measures by third parties. In such case, Chatfuel shall immediately inform the respective responsible person/entity that Customer holds the sovereignty and ownership of the personal data.

4.8.2. For the purpose of complying with Clause 5 (d) SCC and for enabling Customer to comply with its own data breach notification obligations pursuant to Art. 33 para 2 GDPR, Chatfuel shall notify Customer without undue delay after becoming aware of a personal data breach. Such notice will, at a minimum, include the following information:

- a description of the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- information pursuant to Sect. 4.10;
- description of the likely consequences of the personal data breach; and
- description of the measures taken or proposed to be taken by the Customer to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

4.8.3. Chatfuel shall inform Customer immediately if, from its point of view, an Instruction of Customer may lead to a violation of the GDPR or other Union or Member State data protection provisions. Until the Customer either confirms or alternates the Instruction, Chatfuel may refuse to comply.

4.9. Rectification, Erasure (Deletion), Restriction

4.9.1. If legally required and Customer is unable to perform the applicable task itself or if provided so in the services description contained in the Chatfuel Terms of Use, Chatfuel shall rectify, erase (delete) or restrict (block) Customer's personal data upon Customer's request. Any deletion of Customer's personal data pursuant to this Sect. 4.9 shall be executed in such a manner that restoring or recovering such data is rendered impossible.

4.9.2. At Customer's request, Chatfuel shall conduct a data protection-compliant destruction of data media and other material if so provided by Customer. Alternatively, at the request of Customer, Chatfuel shall provide the data media and other material to Customer or store it on Customer's behalf.

4.9.3. Unless Union or Member State law requires a retention of the personal data, Chatfuel shall, upon completion of the Services, at the choice of the Customer, either delete or return all Customer's personal data in its possession to Customer.

4.9.4. Without prejudice to the generality of clause 5(d) of the SCC, if a data subject addresses Chatfuel with claims for rectification, erasure or restriction, Chatfuel shall refer the data subject to Customer.

4.10. Chatfuel will inform Customer of the name and the official contact details of its data protection officer if Chatfuel is, by Applicable Law, required to appoint a data protection officer. If Chatfuel is

not required to appoint a data protection officer, Chatfuel shall name a person responsible for dealing with questions relating to applicable data protection law and data security in the context of performing this Chatfuel DPA.

- 4.11. In the case claims based on Art. 82 GDPR are raised against Customer, Chatfuel shall reasonably support Customer with its defense to the extent the claim arises in connection with the processing of personal data by Chatfuel in connection with performing the Services to the Customer.
- 4.12. Chatfuel will make available to Customer all information necessary to demonstrate compliance with the obligations laid down in Chatfuel DPA and Art. 28 GDPR.
- 4.13. Chatfuel will on request make available to a supervisory authority a record of its processing activities based on Art. 30 GDPR unless the exception of Art. 30 para 5 GDPR applies.

5. CUSTOMER'S OBLIGATIONS

- 5.1. In addition to Clause 4 (b) SCC, Customer shall provide all Instructions pursuant to this Chatfuel DPA to Chatfuel in written or electronic form.
- 5.2. Customer may issue Instructions at any time as to the type, scope and procedures of the processing to the extent this is so provided in the Chatfuel Terms of Use or necessary for complying with statutorily granted requests of data subjects. Verbal Instructions shall be confirmed in written form immediately thereafter. Customer shall notify Chatfuel in writing of the names of the persons who are entitled to issue Instructions to Chatfuel. Any consequential costs incurred resulting from Customer's failure to comply with the preceding sentence shall be borne by Customer. In any event, the managing directors and personnel/human resource management of Customer are entitled to issue Instructions.
- 5.3. Customer shall inform Chatfuel immediately if processing by Chatfuel might lead to a violation of data protection regulations.
- 5.4. In the case claims based on Art. 82 GDPR are raised against Chatfuel, Customer shall reasonably support Chatfuel with its defense to the extent the claim arises in connection with the processing of personal data by Chatfuel in connection with performing the Services to the Customer.
- 5.5. Customer shall name a person responsible for dealing with questions relating to applicable data protection law and data security in the context of performing this Chatfuel DPA.

6. SUBPROCESSING

- 6.1. In addition to the provisions contained in Clause 11 SCC, any subprocessor is obliged, before initiating the processing, to commit itself in writing, for the benefit of Customer and Customer's Customers to comply with the same data protection obligations as the ones under this Chatfuel DPA or legal Act within the meaning of Art. 28 para 3, 4 and 6 GDPR vis-à-vis Customer (the sub-processing agreement must provide at least the same level of data protection as required under this Chatfuel DPA). Where the subprocessor fails to fulfil its data protection obligations, Chatfuel shall remain fully liable to the Customer for the performance of the subprocessor's obligations.

- 6.2. Where a subprocessor refuses to be bound by the same data protection obligations as the ones under this Chatfuel DPA, Customer may consent thereto whereby such consent shall not be unreasonably withheld.
- 6.3. Chatfuel may provide for a website or provide another notice that lists all subcontractors to access personal data of its Customer as well as the limited or ancillary services they provide. At least 14 days before authorizing any new subcontractor to access personal data, Chatfuel will update its website, notify Customer and grant the opportunity to object to such change. Upon Customer's request, Chatfuel will provide all information necessary to demonstrate that the subprocessor will meet all requirements pursuant to Sect. 6.1 and 6.3. In the case Customer objects to the subprocessing, Chatfuel can choose to either not engage the subprocessor or to terminate the Chatfuel DPA with two (2) months prior written notice.
- 6.4. Subject to Chatfuel complying with the obligations under Clause 11 SCC and Art. 28 para 2 GDPR, Customer herewith agrees to the following subprocessors:
- Microsoft Corporation, One Microsoft Way, Redmond WA 98052-6399, USA, using the cloud based service Microsoft Azure for hosting Data Importer's cloud database and cloud services, the location of the data services is restricted to the USA. Customer confirms that Microsoft provides its services the basis of its own on standardized terms and conditions which are similar but not identical to the ones under this agreement. The terms and conditions of Microsoft are also based on the SCC. Customer can view such terms and conditions at: <https://www.microsoft.com/en-us/licensing/product-licensing/products.aspx>
 - Google, Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA, using the google cloud for hosting Data Importer's cloud database and cloud services. Customer confirms that Google provides its services the basis of its own on standardized terms and conditions which are similar but not identical to the ones under this agreement. The terms and conditions of Google are also based on the SCC. Customer can view such terms and conditions at: <https://cloud.google.com/terms/data-processing-terms>.
 - Yandex Oy, Moreenikatu 6, 04600 Mantsala Finland, and its affiliates for rendering Chatfuel services relating to internet traffic statistics and behavioral analytics.

7. **LIABILITY**

- 7.1. Customer and Chatfuel shall be each liable for damages of concerned data subjects according to Art. 82 GDPR (external liability):
- 7.1.1. Customer and Chatfuel shall be liable for all the damage caused by processing which infringes the GDPR.
- 7.1.2. Chatfuel's liability under Sect. 7.1.1 shall be limited to the damage caused by processing where it has not complied with obligations of the GDPR specifically directed to Chatfuel or where it has acted outside or contrary to lawful Instructions of the Customer.
- 7.1.3. Customer and Chatfuel shall be exempt from liability under Sect. 7.1.1 and 7.1.2 if they prove to not be in any way responsible for the event giving rise to the damage.

- 7.1.4. Where more than one Customer and Chatfuel, or both, the Customer and Chatfuel, are involved in the same processing and under Sect. 7.1.1 and 7.1.2 are responsible for any damage caused by processing, each Customer or Chatfuel shall be held liable for the entire damage.
- 7.1.5. Sect. 7.1.1, 7.1.2, 7.1.3 and 7.1.4 shall apply only, where more beneficial for data subjects as compared to Clause 3 and 6 SCC. In any other case, Clauses 3 and 6 SCC shall prevail.
- 7.1.6. Customer and Chatfuel shall be entitled to claim back from the other, Chatfuel or Customer, that part of the compensation corresponding to their part of responsibility for the damage.
- 7.2. As regards the internal liability and without any effect as regards the external liability towards data subjects, the Parties agree that notwithstanding anything contained hereunder, when providing the Services, Chatfuel's liability for breach of any terms and conditions under this Chatfuel DPA shall be subject to the liability limitations agreed in the Chatfuel Terms of Use. Further, no EU Customer Affiliate shall become beneficiary of the Chatfuel DPA without being bound by this Chatfuel DPA and without accepting this liability limitation. Customer will indemnify Chatfuel against any losses that exceed the liability limitations in the Chatfuel Terms of Use suffered by Chatfuel in connection with any claims of the Customer's EU Customer Affiliates or data subjects who claim rights based on alleged violation of this Chatfuel DPA including the SCC.

8. COSTS FOR ADDITIONAL SERVICES

If Customer's Instructions lead to a change from or increase of the agreed Services or in the case of Chatfuel's compliance with its obligations pursuant to Sects. 4.6, 4.9 or 4.11 to assist Customer with Customer's own statutory obligations, Chatfuel is entitled to charge reasonable fees for such tasks which are based on the prices agreed for rendering the Services and/or notified to Customer in advance.

9. CONTRACT PERIOD

The rights, benefits and obligations of this Chatfuel DPA shall commence with the initiation of the Services and shall terminate with termination of the agreed Services under the Chatfuel Terms of Use.

10. MODIFICATIONS

Chatfuel may modify or supplement this Chatfuel DPA, with notice to Customer, (i) if required to do so by a supervisory authority or other government or regulatory entity, (ii) if necessary to comply with Applicable Law, (iii) to implement standard contractual clauses laid down by the European Commission or (iv) to adhere to an approved code of conduct or certification mechanism approved or certified pursuant to Articles 40, 42 and 43 of the GDPR. The Customer shall notify Chatfuel if it does not agree to a modification, in which case Chatfuel may terminate the DP Amendment Agreement with two (2) months' prior written notice.

11. WRITTEN FORM

Any side agreements to this Chatfuel DPA as well as changes and amendments of this Chatfuel DPA, including this Sect. 11, shall be in writing (textform being sufficient).

12. **CHOICE OF LAW**

This Chatfuel DPA is governed by, and shall be interpreted in accordance with, the law of the EU Member State in which the Customer or, if the Customer is not controller, the Customer's Customer resides, excluding its conflict of law provisions, to the extent not otherwise provided by Clause 7 SCC.

13. **MISCELLANEOUS**

- 13.1. For the determination of the data protection obligations, entitlement to provide orders and control, responsibilities, liabilities and consequences of objectives, the Chatfuel DPA shall prevail over all other agreements between the Parties.
- 13.2. This Chatfuel DPA may only be amended, supplemented or changed upon the written agreement of the Parties.
- 13.3. In the event a clause under the Chatfuel Terms of Use has been found to violate the GDPR including all other Applicable Laws, the Parties will mutually agree on modifications to the Chatfuel Terms of Use to the extent necessary to ensure data privacy-law compliant processing.

Exhibit- Standard Contractual Clauses for Processors

Standard Contractual Clauses for Processors

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Customer and each Customer's Customer are hereinafter referred to as the "**Data Exporter**" with respect to the personal data provided by that Data Exporter.

Chatfuel as defined in the Chatfuel DPA is hereinafter referred to as the "**Data Importer**".

The Data Exporter(s) and the Data Importer, each a "party" and collectively "the parties" HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Data Exporter to the Data Importer of the personal data specified in **Appendix 1**.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) '*personal data*', '*special categories of data*', '*process/processing*', '*controller*', '*processor*', '*data subject*' and '*supervisory authority*' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) '*the Data Exporter*' means the controller who transfers the personal data;
- (c) '*the Data Importer*' means the processor who agrees to receive from the Data Exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) '*the subprocessor*' means any processor engaged by the Data Importer or by any other subprocessor of the Data Importer who agrees to receive from the Data Importer or from any other subprocessor of the Data Importer personal data exclusively intended for processing activities to be carried out on behalf of the Data Exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) '*the applicable data protection law*' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the Data Exporter is established;
- (f) '*technical and organisational security measures*' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the Data Exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the Data Importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the Data Exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the Data Exporter and the Data Importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the Data Exporter

The Data Exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the Data Exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the Data Importer to process the personal data transferred only on the Data Exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the Data Importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the

transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the Data Importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the Data Exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the Data Importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the Data Importer

The Data Importer agrees and warrants:

- (a) to process the personal data only on behalf of the Data Exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Exporter of its inability to comply, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Data Exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the Data Exporter as soon as it is aware, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the Data Exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

- (e) to deal promptly and properly with all inquiries from the Data Exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the Data Exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the Data Exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Data Exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the Data Exporter;
- (h) that, in the event of subprocessing, it has previously informed the Data Exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the Data Exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor, is entitled to receive compensation from the Data Exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the Data Exporter, arising out of a breach by the Data Importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the Data Exporter has factually disappeared or ceased to exist in law or has become insolvent, the Data Importer agrees that the data subject may issue a claim against the Data Importer as if it were the Data Exporter, unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The Data Importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the Data Exporter or the Data Importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the Data Exporter and the Data Importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the Data Exporter or the Data Importer, unless any successor entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The Data Importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the Data Importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the Data Exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The Data Exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the Data Importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the Data Exporter under the applicable data protection law.
3. The Data Importer shall promptly inform the Data Exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the Data Importer, or any subprocessor, pursuant to paragraph 2. In such a case the Data Exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the Data Exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The Data Importer shall not subcontract any of its processing operations performed on behalf of the Data Exporter under the Clauses without the prior written consent of the Data Exporter. Where the Data

Importer subcontracts its obligations under the Clauses, with the consent of the Data Exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the Data Importer under the Clauses (This requirement may be satisfied by the subprocessor co-signing the contract entered into between the Data Exporter and the Data Importer which is based on the terms and conditions of this Agreement.). Where the subprocessor fails to fulfil its data protection obligations under such written agreement the Data Importer shall remain fully liable to the Data Exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the Data Importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the Data Exporter or the Data Importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Exporter is established.
4. The Data Exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the Data Importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the Data Exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the Data Importer and the subprocessor shall, at the choice of the Data Exporter, return all the personal data transferred and the copies thereof to the Data Exporter or shall destroy all the personal data and certify to the Data Exporter that it has done so, unless legislation imposed upon the Data Importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the Data Importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The Data Importer and the subprocessor warrant that upon request of the Data Exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties. The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data Exporter

EU-based creators of chatbots using Customer's bot-building platform

Data Importer

CHATFUEL is engaged in providing a platform-as-a-service-platform to individuals, companies, and agencies to build, host, and manage chatbots for Facebook Messenger. Chatfuel is a platform that allows its clients' customers to get in contact with the client by communicating with the provided chatbots via Facebook Messenger.

Data subjects

The Data subjects are individual online consumers of Data Exporter.

Categories of data

The personal data transferred concern the following categories of data:

- *Customer's client's bot users' first name, last name, facebook avatar photo, time zone, language settings and gender, as long as those pieces of information are available in the public facebook profiles, as well as any other data contained in the chatbot conversation transcripts.*
- *On request of the Customer to its clients while using the chatbot indefinite categories of data can be concerned, such as location information, phone number, and email address.*

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data:

- *N/A*

Processing operations

The personal data transferred will be subject to the following basic processing activities:

Chatfuel uses personal data to enable bot admins to customize and improve bot experiences based on users' public Facebook profiles and data users share with the bot."

Retention

At all times during the term of Customer's subscription, Customer will have the ability to access and extract Customer personal data stored by Chatfuel. Chatfuel will retain Customer personal data stored in a limited function account for 90 days after expiration or termination of Customer's subscription so that Customer may extract the data. After the 90-day retention period ends, Chatfuel will disable Customer's account and delete the personal data.

The Services may not support retention or extraction of software provided by Customer. Chatfuel has no liability for the deletion of personal data as described in this section.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

Description of the technical and organizational security measures implemented by the Data Importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

Sub-Processors will be bound to adhere to similar but not identical organizational security measures which shall not fall below the level of data security as agreed herein. Any organizational security measures are subject to change as technical standards evolve and such changes can be implemented by Data Importer. If so requested, data importer will provide data exporter with a description of the then current measures.

Access control to premises and facilities:

Only authorized representatives have access to Chatfuel's premises and facilities.

Measures include:

- Chatfuel has physical offices in office buildings located in San Francisco, CA, USA and Moscow, Russia. Keys to the office locations are issued to all employees in accordance with their need to have access. The distribution and usage of keys are managed and monitored by the Office Manager.
- The Moscow building entrance requires a physical key to access the building as well as an additional and separate physical key to access the office.
- The San Francisco office is secured and monitored by [SimpliSafe security system](#) on a 24/7 basis, which includes access to police dispatch. Key points within the San Francisco office building are monitored by security cameras.
- Offices are secured outside of regular business hours.

2. Physical access:

Chatfuel ensures physical access to Personal Data is protected.

Measures include:

- Chatfuel runs its services from professional, third-party production data centers that meet a broad set of international and industry-specific compliance standards, such as ISO 27001, HIPAA, FedRAMP, SOC 1 and SOC 2, as well as country-specific standards like Australia IRAP, UK G-Cloud, and Singapore MTCS. Rigorous third-party audits, such as by the British Standards Institute, verify adherence to the strict security controls these standards mandate.
- Power and telecommunications cabling carrying Personal Data or supporting information services at the production data center are protected from interception, interference and damage.
- Production data centers and their equipment are physically protected against natural disasters, malicious attacks and accidents.
- Equipment at production data centers is protected from power failures and other disruptions caused by failures in supporting utilities, and is correctly maintained.

3. Access control to systems:

Chatfuel's data processing systems are used only by approved, authenticated users.

Measures include:

- Access to Chatfuel internal systems is granted only to Chatfuel Personnel and/or to permitted employees of Chatfuel's subcontractors and access is strictly limited as required for those persons to fulfill their function.
- Access to production servers is secured against unauthorized use through the encrypted data transmission over SSL/SSH.
- All users access Chatfuel systems with a unique identifier (user ID).
- Each computer has a password-protected screensaver.
- Chatfuel has a thorough procedure to deactivate users and their access when a user leaves the company or a function.

4. Access control to data:

Persons entitled to use data processing systems gain access only to the Personal Data that they are authorized to access.

Measures include:

- Chatfuel restricts Personnel access to files and programs on a "need-to-know" basis.
- The production environment is separate from the development and testing environment.
- Chatfuel uses well-configured firewalls for their backend infrastructure.
- Chatfuel Platform contains capabilities to set roles and permissions to let Customers manage authorizations to set that Personal Data is only made available to appropriate users when needed.

5. Data Transmission:

Chatfuel takes steps to prevent Personal Data from being read, copied, altered or deleted by unauthorized parties during transfer.

Measures include:

- All Personal Data that is coming to Chatfuel Platform from Facebook is transmitted in encrypted form over HTTPS protocol.
- Chatfuel Platform supports integrations with third-party services over HTTPS protocol.
- The Customer is responsible for the security of Personal Data once it has been transmitted from Chatfuel to the Customer including when downloaded or accessed by Customer users.

6. Confidentiality and Integrity:

Personal Data remains confidential throughout processing and remains intact, complete and current during processing activities.

Measures include:

- Chatfuel has a central, secured repository of product source code, which is accessible only to authorized Personnel.
- All changes to Chatfuel Platform's source code are being tracked, thoroughly reviewed, and tested in an isolated environment before being accepted.
- All releases to production environment are additionally tested in an isolated staging environment, reviewed and approved before being deployed.

7. Availability:

Personal Data is protected from accidental destruction or loss, and there is timely access, restoration or availability to Personal Data in the event of an incident.

Measures include:

- Chatfuel uses a high level of redundancy at the production data center so that an availability failure of a single system or component is unlikely to impact general availability.
- Chatfuel deploys its infrastructure only on reliable cloud providers whose data centers have multiple power supplies, generators on-site and with battery backup to safeguard power availability to the data center, and multiple access points to the Internet to safeguard connectivity.
- Chatfuel uses commercially reasonable efforts to create frequent backup copies of Personal Data.
- Chatfuel has a system in place to ensure that any failures of backup to operate correctly are flagged and dealt with.
- Chatfuel's infrastructure and services are monitored 24x7x365 for availability and technical issues. Current availability of the Chatfuel Platform can be seen at <http://status.chatfuel.com>.

8. Job Control:

Personal Data processed on a Customer's behalf is processed solely in accordance with the relevant agreement and related instructions of the Customer including in the use of sub-processors.

Measures include:

- Chatfuel acts as data processor with respect to Personal Data and stores and processes Personal Data in order to operate the Chatfuel Platform.
- Chatfuel does not access Customer Personal Data, except to provide services to the Customer which Chatfuel is obligated to perform in support of the Customer experience including for general operation and monitoring of Chatfuel Platform, troubleshooting and maintenance purposes, for security reasons, as required by law, or on request by Customer.
- Chatfuel uses a limited number of sub-processors to help it provide the Service including a small number of third party companies and some individual (natural person) subcontractors. A list of individual (natural person) subcontractors as well as a list of third party companies used as sub-processors is available on request.
- Chatfuel has contracts in place directly or via affiliates with all sub-processors that provide for confidentiality of Personal Data and agreements incorporating the EU Standard Contractual Clauses

(Processors) in place with all sub-processors that process relevant Personal Data outside of the European Economic Area.