



DATA PROCESSING AGREEMENT (“DPA”)

This Data Processing Agreement (“DPA”) forms part of the Zesty Product Agreement (the “**Agreement**”). You acknowledge that you on behalf of your organization (collectively, “**You**”, “**Your**”, “**Client**”, or “**Data Controller**”) have read and understood and agree to comply with this DPA, and are entering into a binding legal agreement with **Zesty Tech Ltd.** as defined below (“**Zesty**”, “**Us**”, “**We**”, “**Our**”, “**Service Provider**” or “**Data Processor**”) to reflect the parties’ agreement with regard to the Processing of Personal Data (as such terms are defined below) of GDPR-protected individuals. Both parties shall be referred to as the “Parties” and each, a “Party”.

WHEREAS, Zesty shall provide the services set forth in the Agreement (collectively, the “**Services**”) for Client, as described in the Agreement; and

WHEREAS, The Services may entail the processing of personal data in accordance with the General Data Protection Regulation (EU) 2016/679 EU and its corresponding implementation laws in the EU Member States (collectively, the “**Data Protection Laws and Regulations**”); and

WHEREAS, In the course of providing the Services pursuant to the Agreement, we may process Personal Data on your behalf, in the capacity of a “Data Processor”; and the Parties wish to set forth the arrangements concerning the processing of Personal Data within the context of the Services and agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the parties, intending to be legally bound, agree as follows:

1. INTERPRETATION AND DEFINITIONS

- 1.1. The headings contained in this DPA are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of this DPA.
- 1.2. References to clauses or sections are references to the clauses or sections of this DPA unless otherwise stated.
- 1.3. Words used in the singular include the plural and vice versa, as the context may require.
- 1.4. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Agreement.
- 1.5. Definitions:
 - (a) “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
 - (b) “**Authorized Affiliate**” means any of Client’s Affiliate(s) which (a) is subject to the Data Protection Laws And Regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United



Kingdom, and (b) is permitted to use the Services pursuant to the Agreement between Client and Zesty, but has not signed its own agreement with Zesty and is not a "Client" as defined under the Agreement.

- (c) **"Controller"** or **"Data Controller"** means the entity which determines the purposes and means of the Processing of Personal Data. For the purposes of this DPA only, and except where indicated otherwise, the term "Data Controller" shall include yourself, the Organization and/or the Organization's Authorized Affiliates.
- (d) **"Zesty"** means Zesty Tech Ltd.
- (e) **"Data Protection Laws and Regulations"** means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their Member States, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.
- (f) **"Data Subject"** means the identified or identifiable person to whom the Personal Data relates.
- (g) **"Member State"** means a country that belongs to the European Union and/or the European Economic Area. "Union" means the European Union.
- (h) **"GDPR"** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (i) **"Personal Data"** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- (j) **"Process(ing)"** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- (k) **"Processor"** or **"Data Processor"** means the entity which Processes Personal Data on behalf of the Controller.
- (l) **"Security Documentation"** means the Security Documentation applicable to the specific Services purchased by Client, as updated from time to time, and accessible at <https://Zesty.co/security-overview>, or as otherwise made reasonably available by Zesty.
- (m) **"Sub-processor"** means any Processor engaged by Zesty and/or Zesty.
- (n) **"Supervisory Authority"** means an independent public authority which is established by an EU Member State pursuant to the GDPR.

2. PROCESSING OF PERSONAL DATA

- 2.1. **Roles of the Parties.** The Parties acknowledge and agree that with regard to the Processing of Personal Data, (i) Client is the Data Controller, (ii) Zesty is the Data Processor and that (iii) Zesty may engage Sub-processors pursuant to the requirements set forth in Section 5 **"Sub-processors"** below.
- 2.2. **Client's Processing of Personal Data.** Client shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Client's instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Client shall have sole responsibility for the means by which Client acquired Personal Data. Without limitation, Client shall comply with any and all transparency-related obligations



(including, without limitation, displaying any and all relevant and required privacy notices or policies) and shall have any and all required legal bases in order to collect, Process and transfer to Zesty the Personal Data and to authorize the Processing by Zesty of the Personal Data which is authorized in this DPA. Client shall defend, hold harmless and indemnify Zesty, its Affiliates and subsidiaries (including without limitation their directors, officers, agents, subcontractors and/or employees) from and against any liability of any kind related to any breach, violation or infringement by Client and/or its authorized users of any Data Protection Laws and Regulations and/or this DPA and/or this Section.

2.3. Zesty's Processing of Personal Data.

2.3.1. Subject to the Agreement, Zesty shall Process Personal Data in accordance with Client's documented instructions for the following purposes: (i) Processing in accordance with the Agreement and this DPA and to provide the Services; (ii) Processing for Client to be able to use the Services; (iii) Processing to comply with other documented reasonable instructions provided by Client (e.g., via email) where such instructions are consistent with the terms of the Agreement; (iv) Processing as required by Union or Member State law to which Zesty is subject; in such a case, Zesty shall inform the Client of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

2.3.2. To the extent that Zesty cannot comply with a request from Client and/or its authorized users (including, without limitation, any instruction, direction, code of conduct, certification, or change of any kind), Zesty (i) shall inform Client, providing relevant details of the problem, (ii) Zesty may, without any kind of liability towards Client, temporarily cease all Processing of the affected Personal Data (other than securely storing those data), and (iii) if the Parties do not agree on a resolution to the issue in question and the costs thereof, each Party may, as its sole remedy, terminate the Agreement and this DPA with respect to the affected Processing, and Client shall pay to Zesty all the amounts owed to Zesty or due before the date of termination. Client will have no further claims against Zesty (including, without limitation, requesting refunds for Services) due to the termination of the Agreement and/or the DPA in the situation described in this paragraph (excluding the obligations relating to the termination of this DPA set forth below).

2.3.3. Zesty will not be liable in the event of any claim brought by a third party, including, without limitation, a Data Subject, arising from any act or omission of Zesty, to the extent that such is a result of Client's instructions.

2.3.4. If Client provides Zesty with instructions, requests, suggestions, comments or feedback (whether orally or in writing) with respect to the Services, Client acknowledges that any and all rights, including intellectual property rights, therein shall belong exclusively to Zesty and that such shall be considered Zesty's intellectual property without restrictions or limitations of any kind, and Client hereby irrevocably and fully transfers and assigns to Zesty any and all intellectual property rights therein and waives any and all moral rights that Client may have in respect thereto.

2.4. **Details of the Processing.** The subject-matter of Processing of Personal Data by Zesty is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, as well as the types of Personal Data Processed and categories of Data Subjects under this DPA are further specified in Schedule 1 (Details of the Processing) to this DPA.



3. RIGHTS OF DATA SUBJECTS

- 3.1. **Data Subject Request.** Zesty shall, to the extent legally permitted, promptly notify Client if Zesty receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, erasure ("right to be forgotten"), restriction of Processing, data portability, right to object, or its right not to be subject to automated individual decision making ("**Data Subject Request**"). Taking into account the nature of the Processing, Zesty shall assist Client by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Client's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Client, in its use of the Services, does not have the ability to address a Data Subject Request, Zesty shall upon Client's request provide commercially reasonable efforts to assist Client in responding to such Data Subject Request, to the extent Zesty is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Client shall be responsible for any costs arising from Zesty's provision of such assistance.

4. ZESTY'S PERSONNEL

- 4.1. **Confidentiality.** Zesty shall ensure that its personnel engaged in the Processing of Personal Data have committed themselves to confidentiality and non-disclosure.
- 4.2. Zesty may disclose and Process the Personal Data (a) as permitted hereunder (b) to the extent required by a court of competent jurisdiction or other Supervisory Authority and/or otherwise as required by applicable Data Protection Laws and Regulations (in such a case, Zesty shall inform the Client of the legal requirement before the disclosure, unless that law prohibits such information on important grounds of public interest), or (c) on a "need-to-know" basis under an obligation of confidentiality to its legal counsel(s), data protection advisor(s) and accountant(s).

5. AUTHORIZATION REGARDING SUB-PROCESSORS

- 5.1. **Appointment of Sub-processors.** Client acknowledges and agrees that Zesty may engage third-party Sub-processors in connection with the provision of the Services.
- 5.2. **List of Current Sub-processors and Notification of New Sub-processors.**
- 5.2.1. Zesty shall make available to Client the current list of Sub-processors used by Zesty via <https://www.Zesty.co/gdpr>. Such Sub-processor list shall include the identities and details of those Subprocessors and their country of location ("**Sub-processor List**"). The Sub-processor List as of the date of execution of this DPA, or as of the date of publication (as applicable), is hereby, or shall be (as applicable), authorized by Client. In any event, the Sub-processor List shall be deemed authorized by Client unless it provides a written reasonable objection for reasons related to the GDPR within ten (10) business days following the publication of the Sub-processor List. Client may reasonably object for reasons related to the GDPR to Zesty's use of an existing Sub-processor by providing a written objection to info@zesty.co. In the event Client reasonably objects to an existing Subprocessor, as permitted in the preceding sentences, Client may, as a sole remedy, terminate the applicable Agreement and this DPA with respect only to those Services which cannot be provided by Zesty without the use of the objected-to Sub-processor by providing written notice to Zesty provided that all amounts due under the Agreement before the termination date with respect to the Processing at issue



shall be duly paid to Zesty. Client will have no further claims against Zesty due to (i) past use of approved Sub-processors prior to the date of objection or (ii) the termination of the Agreement (including, without limitation, requesting refunds) and the DPA in the situation described in this paragraph.

- 5.2.2. Zesty shall provide notification of any new Sub-processor(s) before authorizing such new Sub-processor(s) to Process Personal Data in connection with the provision of the Services.
- 5.3. **Objection Right for New Sub-processors.** Client may reasonably object to Zesty's use of a new Sub-processor for reasons related to the GDPR by notifying Zesty promptly in writing within three (3) business days after receipt of Zesty's notice in accordance with the mechanism set out in Section 5.2 and such written objection shall include the reasons related to the GDPR for objecting to Zesty's use of such new Sub-processor. Failure to object to such new Sub-processor in writing within three (3) business days following Zesty's notice shall be deemed as acceptance of the new Sub-Processor. In the event Client reasonably objects to a new Sub-processor, as permitted in the preceding sentences, Zesty will use reasonable efforts to make available to Client a change in the Services or recommend a commercially reasonable change to Client's use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Client. If Zesty is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, Client may, as a sole remedy, terminate the applicable Agreement and this DPA with respect only to those Services which cannot be provided by Zesty without the use of the objected-to new Sub-processor by providing written notice to Zesty provided that all amounts due under the Agreement before the termination date with respect to the Processing at issue shall be duly paid to Zesty. Until a decision is made regarding the new Sub-processor, Zesty may temporarily suspend the Processing of the affected Personal Data. Client will have no further claims against Zesty due to the termination of the Agreement (including, without limitation, requesting refunds) and/or the DPA in the situation described in this paragraph.
- 5.4. **Agreements with Sub-processors.** Zesty shall respect the conditions referred to in Articles 28.2 and 28.4 of the GDPR when engaging another processor for Processing Personal Data provided by Client. In accordance with Articles 28.7 and 28.8 of the GDPR, if and when the European Commission lays down the standard contractual clauses referred to in such Article, the Parties may revise this DPA in good faith to adjust it to such standard contractual clauses.

6. SECURITY

- 6.1. **Controls for the Protection of Personal Data.** Zesty shall maintain all industry-standard technical and organizational measures required pursuant to Article 32 of the GDPR for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Personal Data), confidentiality and integrity of Personal Data, as set forth in the Security Documentation which are hereby approved by Client. Zesty regularly monitors compliance with these measures. Upon the Client's request, Zesty will assist Client, at Client's cost, in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to Zesty.
- 6.2. **Audits.** Upon Client's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement and this DPA, Zesty shall make available to Client that is not a competitor of Zesty (or Client's independent,



third-party auditor that is not a competitor of Zesty) information about Zesty's compliance with this DPA. At Client's cost and expense, Zesty shall allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller (who is not a direct or indirect competitor of Zesty) provided that the parties shall agree on the scope, timing and conditions of such audits and inspections. Any information provided under this Section and any audits or inspections and the results therefrom, including the documents reflecting the outcome of the audit and/or the inspection, shall only be used by Client to assess compliance with this DPA, and shall not be used for any other purpose or disclosed to any third party without Zesty's prior written approval and, upon Zesty's first request, Client shall return all records or documentation in Client's possession or control provided by Zesty's in the context of the audit and/or the inspection.

7. **PERSONAL DATA INCIDENT MANAGEMENT AND NOTIFICATION**

Zesty maintains security incident management policies and procedures specified in Security Documentation and, to the extent required under applicable Data Protection Laws and Regulations, shall notify Client without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, including Personal Data, transmitted, stored or otherwise Processed by Zesty or its Sub-processors of which Zesty becomes aware (a "**Personal Data Incident**"). Zesty shall make reasonable efforts to identify the cause of such Personal Data Incident and take those steps as Zesty deems necessary and reasonable in order to remediate the cause of such a Personal Data Incident to the extent the remediation is within Zesty's reasonable control. The obligations herein shall not apply to incidents that are caused by Client or Client's users. In any event, Client will be the party responsible for notifying supervisory authorities and/or concerned data subjects (where required by Data Protection Laws and Regulations).

8. **RETURN AND DELETION OF PERSONAL DATA**

Subject to the Agreement, Zesty shall, at the choice of Client, delete or return the Personal Data to Client after the end of the provision of the Services relating to processing, and shall delete existing copies unless applicable law requires storage of the Personal Data. In any event, to the extent required or allowed by applicable law, Zesty may retain one copy of the Personal Data for evidence purposes and/or for the establishment, exercise or defense of legal claims and/or to comply with applicable laws and regulations. If the Client requests the Personal Data to be returned, the Personal Data shall be returned in the format generally available for Zesty's Clients.

9. **AUTHORIZED AFFILIATES**

- 9.1. **Contractual Relationship.** The Parties acknowledge and agree that, by executing the DPA, the Client enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates, thereby establishing a separate DPA between Zesty. Each Authorized Affiliate agrees to be bound by the obligations under this DPA. All access to and use of the Services by Authorized Affiliates must comply with the terms and conditions of the Agreement and this DPA and any violation of the terms and conditions therein by an Authorized Affiliate shall be deemed a violation by Client.
- 9.2. **Communication.** The Client shall remain responsible for coordinating all communication with Zesty under the Agreement and this DPA and shall be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.



10. OTHER PROVISIONS

- 10.1. **GDPR.** With effect from 25 May 2018, the Parties will Process the Personal Data in accordance with the GDPR requirements directly applicable to each Party in the context of the provision and use of the Services.
- 10.2. **Collaboration with Clients' Data Protection Impact Assessments.** With effect from 25 May 2018, upon Client's request, Zesty shall provide Client, at Client's cost, with reasonable cooperation and assistance needed to fulfil Client's obligation under the GDPR to carry out a data protection impact assessment related to Client's use of the Services, to the extent Client does not otherwise have access to the relevant information, and to the extent such information is available to Zesty. Zesty shall provide, at Client's cost, reasonable assistance to Client in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating to Section 10.2 of this DPA, to the extent required under the GDPR.
- 10.3. **Transfer mechanisms for data transfers.**
- (a) **Transfers to countries that offer adequate level of data protection:** Personal Data may be transferred from the EU Member States, the three EEA member countries (Norway, Liechtenstein and Iceland) and the United Kingdom (collectively, "EEA") to countries that offer adequate level of data protection under or pursuant to the adequacy decisions published by the relevant data protection authorities of the EEA, the Union, the Member States or the European Commission ("Adequacy Decisions"), without any further safeguard being necessary.
 - (b) **Transfers to other countries:** If the Processing of Personal Data includes transfers from the EEA to countries which do not offer adequate level of data protection or which have not been subject to an Adequacy Decision ("Other Countries"), the Parties shall comply with Article 46 of the GDPR, including, if necessary, executing the standard data protection clauses adopted by the relevant data protection authorities of the EEA, the Union, the Member States or the European Commission or comply with any of the other mechanisms provided for in the GDPR for transferring Personal Data to such Other Countries.
- 10.4. For clarity, responsibility for compliance with the obligations corresponding to Data Controllers under Data Protection Laws and Regulations shall rest with Client and not with Zesty. Zesty may, at Client's cost, provide reasonable assistance to Client with regards to such obligations.

11. TERMINATION

This DPA shall automatically terminate upon the termination or expiration of the Agreement under which the Services are provided. Sections 2.3.3, 2.3.4 and 12 shall survive the termination or expiration of this DPA for any reason.



13. **RELATIONSHIP WITH AGREEMENT**

In the event of any conflict between the provisions of this DPA and the provisions of the Agreement, the provisions of this DPA shall prevail over the conflicting provisions of the Agreement.

Notwithstanding anything to the contrary in the Agreement and/or in any agreement between the parties: (A) Zesty's (including Zesty's affiliates' and subsidiaries') entire, total and aggregate liability, for any breach of this DPA and/or Data Protection Laws and Regulations, including, if any, any indemnification obligation under the Agreement regarding data protection or privacy, shall be limited to the amounts paid to Zesty under the Agreement. This limitation of liability is cumulative and not per incident; (B) In no event will Zesty and/or Zesty's affiliates or subsidiaries and/or their third-party providers, be liable under, or otherwise in connection with this DPA for: (i) any indirect, exemplary, special, consequential, incidental or punitive damages; (ii) any loss of profits, business, or anticipated savings; (iii) any loss of, or damage to data, reputation, revenue or goodwill; and/or (iv) the cost of procuring any substitute goods or services; and (C) The foregoing exclusions and limitations on liability set forth in this Section shall apply: (i) even if Zesty or Zesty's affiliates or subsidiaries or their third-party providers, have been advised, or should have been aware, of the possibility of losses or damages; (ii) even if any remedy in this DPA fails of its essential purpose; and (iii) regardless of the form, theory or basis of liability (such as, but not limited to, breach of contract or tort).

14. **AMENDMENTS**

This DPA may be amended at any time by a written instrument duly signed by each of the Parties.

15. **LEGAL EFFECT**

This DPA shall only become legally binding between Client and Zesty when the formalities steps set out in the Section "INSTRUCTIONS ON HOW TO EXECUTE THIS DPA" below have been fully completed.



17. SIGNATURE

The Parties represent and warrant that they each have the power to enter into, execute, perform and be bound by this DPA.

You, as the signing person on behalf of Client, represent and warrant that you have, or you were granted, full authority to bind the Organization and, as applicable, its Authorized Affiliates to this DPA. If you cannot, or do not have authority to, bind the Organization and/or its Authorized Affiliates, you shall not supply or provide Personal Data to Zesty.

By signing this DPA, Client enters into this DPA on behalf of itself and, to the extent required or permitted under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent that Zesty processes Personal Data for which such Authorized Affiliates qualify as the/a "data controller".

List of Schedules

- SCHEDULE 1 - DETAILS OF THE PROCESSING

The parties' authorized signatories have duly executed this Agreement:

Zesty Tech Ltd.

Signature: *Maxim Melamedov*

Signature:

Print Name: MAXIM MELAMEDOV

Print Name:

Title: CEO

Title:

1 - DETAILS OF THE PROCESSING

Subject Matter

Zesty will Process Personal Data as necessary to perform the Services pursuant to the Agreement, as further instructed by Client in its use of the Services.

Nature and Purpose of Processing

1. Providing the Service(s) to Client.
2. Setting up profile(s) for users authorized by Clients.
3. For Client to be able to use the Services.
4. For Zesty to comply with documented reasonable instructions provided by Client where such instructions are consistent with the terms of the Agreement.
5. Performing the Agreement, this DPA and/or other contracts executed by the Parties.
6. Providing support and technical maintenance, if agreed in the Agreement.
7. Resolving disputes.
8. Enforcing the Agreement, this DPA and/or defending Zesty's rights.
9. Management of the Agreement, the DPA and/or other contracts executed by the Parties,



including fees payment, account administration, accounting, tax, management, litigation; and

10. Complying with applicable laws and regulations, including for cooperating with local and foreign tax authorities, preventing fraud, money laundering and terrorist financing.
11. All tasks related with any of the above.

Duration of Processing

Subject to any Section of the DPA and/or the Agreement dealing with the duration of the Processing and the consequences of the expiration or termination thereof, Zesty will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

Type of Personal Data

Client may submit Personal Data to the Services, the extent of which is determined and controlled by Client in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First name
- Last name
- Address
- Phone number
- Email address and email communications
- Payment information
- Cloud provider meta data (such as: names, types, locations and IP address, to the extent that it is consider personal data).
- Any other Personal Data or information that the Client decides to provide to the Zesty or the Services.

The Client and the Data Subjects shall provide the Personal data to Zesty by supplying the Personal data to Zesty's Service.

In some limited circumstances Personal Data may also come from others sources, for example, in the case of anti-money laundering research, fraud detection or as required by applicable law. For clarity, Client shall always be deemed the "Data Controller" and Zesty shall always be deemed the "Data Processor" (as such terms are defined in the GDPR).

Categories of Data Subjects

Client may submit Personal Data to the Services, the extent of which is determined and controlled by Client in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Employees, agents, advisors, freelancers of Client (who are natural persons)