

## DATA PROCESSING ADDENDUM

1. This Data Processing Addendum (the "Addendum") forms part of the Terms of Service or other written or electronic agreement ("Agreement") between Marketcircle Inc. ("Marketcircle") and you, the customer ("Customer") in connection with our Daylite product and other services ("Services").
2. In performing the Services, Marketcircle may "Process" (defined in Schedule "A") "Personal Data" (defined in Schedule "A") from or on behalf of the Customer and the parties agree to comply with the following provisions with respect to any Personal Data.
3. To the extent that the terms of the Agreement are in conflict with the terms and conditions of this Addendum, the terms and conditions of this Addendum will govern.
4. This Addendum has been agreed-upon by the following parties as duly noted by their signatures below:

Marketcircle Inc.

Per: Michael Clark

Name: Michael Clark

Title: COO

I have the authority to bind the corporation

[Insert Name of the Customer]

Per: RICO DRESCHER

Name:

Title:

Per: RICO DRESCHER

Name:

Title: I/We have the authority to bind the corporation



## Schedule "A" Supplementary Terms And Conditions

### 1. Definitions

**"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.

**"Applicable Privacy Laws"** means (i) all applicable data protection legislation, including the Personal Information Protection and Electronic Documents Act (Canada) as same will be amended, modified, restated or replaced from time to time; (ii) any applicable court judgments, rulings, findings or orders issued by the Office of the Federal Privacy Commissioner of Canada or its provincial regulatory counterparts and; (iii) those data protection and other laws, policies, agreements and guidelines as applicable to Marketcircle.

**"Controller"** means the entity which determines the purposes and means of the Processing of Personal Data.

**"Data Breach"** means the unauthorized or unlawful breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Personal Data in the custody or control of Marketcircle which is used to store Personal Information, arising from a breach of Marketcircle's security safeguards or otherwise.

**"GDPR"** means the Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

**"Personal Data"** means information about (i) an identified or identifiable individual, (ii) that may identify an individual or (iii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations) that Marketcircle may access, collect, use, disclose, Transfer, process or store in connection with the Services.

**"Process"** means any operation which is performed upon Personal Data, whether or not by automatic means, including but not limited to the access, acquisition, collection, recording,

organization, storage, alteration, retrieval, consultation, use, disclosure, combination, "Transfer" (defined below), blocking, return or destruction of Personal Data. **"Processed"**, or **"Processing"** will be construed accordingly.

**"Processor"** means the entity which Processes Personal Data on behalf of the Controller.

**"Sub-processor"** means any third party retained by Marketcircle to provide Services on behalf of or otherwise fulfill an obligation of Marketcircle under this Addendum or the Agreement.

**"Transfer"** means both (a) the moving of Personal Data from one location or person to another, whether by physical or electronic means and (b) the granting of access to Personal Data by one location or person to another, whether by physical or electronic means. "Transferred", or "Transferring" will be construed accordingly.

### 2. Processing of Personal Data

- a) The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Marketcircle is the Processor and that Marketcircle will engage Sub-processors pursuant to the requirements set forth in Section "Sub-processors" below.
- b) Customer 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, Customer's instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.
- c) Marketcircle shall treat Personal Data as Confidential Information and shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) Processing in accordance with the Agreement; (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

- d) The subject-matter of Processing of Personal Data by Marketcircle is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Schedule B (Details of the Processing) to this Addendum.

### 3. Additional Safeguards Regarding Personal

The Parties agree:

- a) that Personal Data is confidential and will not be disclosed by Marketcircle except for the exercise of the Parties' rights and obligations under this Addendum and the Agreement or at law, unless the Customer provides express consent in writing;
- b) Marketcircle will maintain the security of Personal Data in its custody or under its control in compliance with Applicable Privacy Laws, and will protect it against such risks as unauthorized access, collection, use, modification, copying, disclosure or disposal and similar risks.
- c) Customer acknowledges and agrees that Marketcircle may engage third-party Sub-processors in connection with the provision of the Services. Marketcircle has entered into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this Agreement with respect to the protection of Customer Data to the extent applicable to the nature of the Services provided by such Sub-processor. Marketcircle shall be liable for the acts and omissions of its Sub-processors to the same extent Marketcircle would be liable if performing the services of each Sub-processor directly under the terms of this Addendum, except as otherwise set forth in the Agreement.
- d) Marketcircle will:
- i. not Process or use Personal Data for any purpose other than as strictly required to perform its obligations under this Addendum;
  - ii. have practices and procedures in place which protect the security of Personal Data in its custody or under its control;
  - iii. access Personal Data on a need-to-know basis only;
  - iv. shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Sub-processor who may have access to the Personal Data, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
  - v. maintain the security of its electronic systems containing Personal Data by using regularly updated and patched security measures that are consistent with best practices for the protection of sensitive personal data, and that the security measures used include passwords, strong firewalls, and encryption.
  - vi. not Transfer or disclose such Personal Data to any other third party (including its affiliates) without the prior written consent of the Customer;
  - vii. cancel all rights of a sub-processor or employee of Marketcircle to access Personal Data upon his or her departure from the team providing the Services;
  - viii. ;
  - ix. ensure that all Personal Data collected, received, handled or Processed by it under this Addendum, irrespective of the format in which it is contained, is reasonably protected against loss or theft, as well as unauthorized access, disclosure, copying, use or modification by security safeguards appropriate to its sensitivity, amount, distribution, format and method of storage. Such security safeguards will comply with all Applicable Privacy Laws and will provide at least the same or similar use of its most sensitive Personal Data. Such security safeguards will include, if applicable, physical measures, organizational measures (security clearances, limiting access on a "need-to-know" basis), and technological measures (such as the use of passwords and appropriate encryption);
  - x. maintain appropriate disaster recovery and backup plans and ensure procedures are in place with respect to the Personal Data in its possession;
  - xi. from time to time, review its procedures with respect to security safeguards through risk assessments, benchmarking or other means, to determine whether they are still consistent with Applicable Privacy Laws, appropriate to the risks, and consistent with best practices, and if not, Marketcircle agrees to revise the same as required;

- xii. immediately notify the Customer's representative for the purposes of this Addendum of (a) 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 obligation; (b) any suspected or actual accidental or unauthorized access or disclosure of the Personal Data not expressly contemplated by this Addendum;
  - xiii. immediately notify the Customer (verbally if necessary and thereafter followed up in writing) if Marketcircle becomes aware of any actual or suspected breach of any of the provisions of this Section 3 and immediately take all necessary measures to investigate and mitigate such breach and prevent further breaches;
  - xiv. fully cooperate with, and assist in, any investigation by the Customer or any authority following the approval and direction of the Customer of a complaint that any such Personal Data has been collected, used or disclosed by Marketcircle contrary to this Addendum or to Applicable Privacy Laws; and fully cooperate with the Customer in connection with any investigations or information requests that may be made in connection with Applicable Privacy Laws, including permitting the Customer (or a duly qualified independent auditor or inspection authority selected by the Customer and not reasonably rejected by Marketcircle) at the Customer's cost to examine and audit (collectively, a "**Customer Personal Data Audit**") its data storage facilities for Personal Data with a view to determining the reasons for such security breach and prevent its future occurrence provided that the Customer will (and will ensure that any auditor or inspection authority carrying out a Customer Personal Data Audit will) maintain the confidentiality of all Personal Data as required by Applicable Privacy Laws and all Personal Data of Marketcircle as the Customers required to do under this Agreement;
  - xv. appoint a data protection officer. The appointed person may be reached at [privacy-officer@marketcircle.com](mailto:privacy-officer@marketcircle.com).
- a) Marketcircle maintains security incident management policies and procedures specified in the Breach Documentation. If it knows or suspects that a Data Breach has occurred, Marketcircle will without undue delay notify the Customer and take steps to contain the Data Breach and recover the Personal Data.
  - b) Marketcircle will also comply with all mandatory data breach requirements contained in the Applicable Privacy Laws, including if requested by the Customer, reporting to the Office of the Federal Privacy Commissioner, other provincial privacy regulators and individuals any breach of security safeguards involving Personal Data under its control as soon as feasible after Marketcircle has determined that the breach has occurred if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to an individual. If requested by the Customer, Marketcircle will also notify any other organization, government institution or part of a government institution of the breach as soon as feasible after Marketcircle has determined the breach has occurred if Marketcircle and the Customer believe that the other organization, or the government institution or part concerned may be able to reduce the risk of harm that could result from it or mitigate that harm. The notification to the Office of the Federal Privacy Commissioner and other provincial privacy regulators will contain the prescribed information as required by applicable Canadian privacy laws and the notification to individuals will contain sufficient information to allow the individual to understand the significance to them of the breach and to take steps, if any are possible, to reduce the harm that could result from it or mitigate that harm, as well as any other prescribed information.
  - c) Marketcircle will investigate all Data Breaches and report the results of the investigation to the Customer as soon as feasible after Marketcircle has determined the breach has occurred.
  - d) Where the Customer in its sole discretion considers it appropriate or necessary to participate in or direct any response to a Data Breach, Marketcircle will reasonably cooperate with the Customer at no additional cost to facilitate such participation or comply with such direction, as the case may be.
  - e) Marketcircle will keep and maintain a record of every breach of security safeguards and Data Breaches involving Personal Data under its control.

#### 4. Notification of Data Breach

- f) The obligations in this section shall not apply to incidents that are caused by Customer.

## **5. Retention and Destruction Of Personal Data**

- a) Marketcircle will comply with all applicable legal or regulatory requirements in respect of record-keeping, and the retention and destruction of Personal Data.
- b) Marketcircle will ensure that at the end of such retention periods, the destruction of records and devices containing Personal Data is carried out in a manner that ensures the security, privacy or confidentiality of the Personal Data, including at minimum wiping or physically destroying electronic records and devices in a manner that ensures that the Personal Data cannot be reconstituted.
- c) Nothing in this Addendum prevents Marketcircle from retaining such Personal Data as it is required to retain in order for it to comply with any applicable legal, regulatory, or professional requirements. Marketcircle agrees that it will at all times ensure the security of any Personal Data retained to comply with such requirements, in accordance with the standards provided in this Addendum.

## **6. Security**

- a) 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, Marketcircle will implement and maintain appropriate technical and organizational security measures to reasonably protect Personal Data from Data Breaches and to preserve the security and confidentiality of the Personal Data. Marketcircle will use industry standard encryption technologies to transmit such Personal Data. Marketcircle will also employ industry standard network security techniques including firewalls and authentication protocols. Marketcircle reserves the right, in its sole discretion, to change or modify its Security Measures at any time, so long as such changes or modifications do not lessen such data security or protections and at all times during this Addendum, maintains adequate data security. Customer is responsible for reviewing the information made available by Marketcircle relating to data security and making an independent determination as to whether the

Services meet Customer's requirements and legal obligations under Applicable Privacy Laws.

- b) Notwithstanding the above, Customer agrees that except as provided by this Addendum, Customer is responsible for its secure use of the Services, including securing its account authentication credentials, protecting the security of its data when in transit to and from the Services and taking any appropriate steps to securely encrypt or backup any Customer data uploaded to the Services.
- c) Marketcircle will provide written responses (on a confidential basis) to all reasonable requests for information made by Customer, including responses to information security questionnaires that are necessary to confirm Marketcircle's compliance with this Addendum, provided that Customer will not exercise this right more than once per year.

## **7. Personal Data Following Termination**

- a) If requested by Customer, Marketcircle destroys all the Personal Data in its possession or control which it collected, received or otherwise obtained in the provision of or in connection with the Services under the Agreement within 90 days of the request. If destruction of all or part of such Personal Data is not feasible, Marketcircle agrees: (a) not to use or disclose any of such Personal Data that remains in its possession or control following termination; and (b) to continue to protect all such Personal Data in accordance with this Addendum until it is destroyed pursuant to Marketcircle's information management practices.
- b) Marketcircle will provide written notification to the customer confirming that all Personal Data Processed under the Addendum has been securely destroyed within ten (10) business days of such destruction.
- c) Subject to section 7.d), Customer may in its absolute discretion by written notice to Marketcircle require Marketcircle to (a) return a complete copy of all Personal Data to Customer by secure file transfer in such format as is reasonably notified by Customer to Marketcircle; and (b) delete and procure the deletion of all other copies of Personal Data processed by any Sub-processor. Marketcircle shall comply with any such written request within 90 days of the request.
- d) Notwithstanding the foregoing, Customer acknowledges and agrees that the above requirement will not apply to the extent Mar-

Marketcircle is required by applicable law to retain some or all of the Personal Data it has archived on back-up systems, which Personal Data Marketcircle will securely isolate and protect from any further processing, except to the extent required by applicable law.

## 8. Rights of Data Subjects

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

## 9. Cooperation

- a) Marketcircle shall provide reasonable assistance to Customer with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Personal Data by, and taking into account the nature of the Processing and information available to, the contracted Processors.
- b) Marketcircle will (at Customer's expense) provide reasonable cooperation to assist Customer to respond to any requests from applicable data protection authorities relating to the processing of Personal Data under the Agreement. In the event that any

such request is made directly to Marketcircle, Marketcircle will not respond to such communication directly without Customer's prior authorization, unless legally compelled to do so. If Marketcircle is required to respond to such a request, Marketcircle will promptly notify Customer and provide it with a copy of the request unless legally prohibited from doing so.

- c) If a law enforcement agency sends Marketcircle a demand for Personal Data (for example, through a subpoena or court order), Marketcircle will attempt to redirect the law enforcement agency to request that data directly from Customer. As part of this effort, Marketcircle may provide Customer's basic contact information to the law enforcement agency. If compelled to disclose Personal Data to a law enforcement agency, then Marketcircle will give Customer reasonable notice of the demand to allow Customer to seek a protective order or other appropriate remedy unless Marketcircle is legally prohibited from doing so.

**Schedule “B”**

**Details of Sub-Processors:**

Active Campaign  
Acuity Scheduling  
Atlassian  
Amazon Web Services  
Bambora  
ChartMogul  
DigitalOcean  
Drift  
FastSpring  
FileMail  
Google Analytics  
Google Docs  
Hively  
HockeyApp (Soon to be App Centre)  
iCloud  
Keybase  
MailChimp  
MixPanel  
Olark  
Rackspace  
Recurly  
SpamHero  
SurveyMonkey  
YouCanBookMe  
Zapier  
Zendesk  
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