Data Processing Agreement

GDPR compliance

The Data Processing Agreement is in compliance with GDPR.

This Data Processing Agreement (the "DPA") is entered into by and between NoStress Commerce s.r.o., owner and operator of the Services, a Czech registered company at the Czech Chamber of Commerce with number 28977475 located at Vyšehradská 1349/2, Praha 2, Czech Republic (hereafter referred to as "Koongo", "Processor", "we" or "us") and the customer that electronically accepts or otherwise agrees or opts-in to this DPA ("Customer", or "you"). The DPA is effective at the DPA Effective Date (defined below).

You have entered into one or more agreements with us (each, as amended from time to time, an "Agreement") governing the provision of our online marketing tool, and datafeed management system described at www.koongo.com (the "Service" or "Services"). This DPA will amend the terms of the Agreement to reflect the parties' rights and responsibilities with respect to the processing and security of Customer's data under the Agreement. If you are accepting this DPA in your capacity as an employee, consultant or agent of Customer, you represent that you are an employee, consultant or agent of Customer, and that you have the authority to bind Customer to this DPA.

IF YOU DO NOT AGREE TO THE PRINCIPAL AGREEMENTS OR OTHER POLICIES, GUIDELINES OR INSTRUCTIONS POSTED ON THE SERVICE, DO NOT USE THE SERVICE.

Updated: June 6, 2018

1 Definitions

The following definitions apply to this DPA:

"Model Contract Clauses or MCCs" means the standard data protection clauses for the transfer of personal data to processors established in third countries that do not ensure an adequate level of data protection, as described in Article 46 of the GDPR.

"EEA" means, for the purposes of this DPA, the European Economic Area, United Kingdom and Switzerland.

"Data Protection Legislation" means the GDPR (as defined below), together with any national implementing laws in any Member State of the European Union or, to the extent applicable, in any other country, as amended, repealed, consolidated or replaced from time to time.

"GDPR" means the General Data Protection 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.

"Personal Data" means any personal data (as that term is defined by Data Protection Legislation) contained within the Customer Data.

“Alternative Transfer Solution” means a solution, other than the Model Contract Clauses, that enables the lawful transfer of personal data to a third country in accordance with Article 45 or 46 of the GDPR (for example, the EU-U.S. Privacy Shield).

“Customer Data” means data you submit to, store on, or send to us via the Service.

“Data Incident” means a breach of Koongo’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data on systems that are managed and controlled by Koongo. Data Incidents will not include unsuccessful attempts or activities that do not compromise the security of Customer Data, including, without limitation, pings, port scans, denial of service attacks, network attacks on firewall or networked systems, or unsuccessful login attempts.

“DPA Effective Date” means either (i) May 25, 2018, if the date on which you electronically accept or otherwise agree or opt-in to this DPA is prior to that date; or (ii) the date on which you electronically accept or otherwise agree or opt-in to this DPA, if that date is after May 25, 2018.

“Term” means the period from the DPA Effective Date until the date the Agreement terminates or expires.

“Notification Email Address” means the email address(es) that you designate to receive notifications when you create an account to use the Service. You agree that you are solely responsible for ensuring that your Notification Email Address is current and valid at all times.

“Subprocessor” means a third party that we use to process Customer Data in order to provide parts of the Service and/or related technical support.

“Sensitive Information” means Personal Information revealing a Data Subject’s racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, health data, sex life or sexual orientation.

The terms “data subject”, “processing”, “controller”, “processor” and “supervisory authority” as used in this DPA have the meanings given in the GDPR, and the terms “data importer” and “data exporter” have the meanings given in the Model Contract Clauses.

2 Term

This Data Processing Agreement shall automatically terminate upon the expiry or termination of the Agreement.

3 Data Protection Legislation; Scope and Applicability of this DPA

3.1 Data Protection Legislation

The parties agree and acknowledge that the Data Protection Legislation applies to the processing of Customer Data.

3.2 Scope and Applicability of this DPA

This DPA applies where and only to the extent that Koongo processes Customer Data that originates from the EEA and/or that is otherwise subject to Data Protection Legislation on behalf of Customer as Data Processor in the course of providing Services pursuant to the Agreement.

4 Processing of Customer Data

4.1 Regulatory Compliance and Authorization

4.1.1 Controller and Processor Responsibilities

The parties acknowledge and agree as follows:

- (i) that the details of the processing and the subject matter are described in Article 4.3 and 4.4;
- (ii) that Koongo is a processor of Customer’s Personal Data under Data Protection Legislation;
- (iii) that you are a processor or a controller (as applicable) of the Customer’s Personal Data under Data Protection Legislation; and
- (iv) that each of us will comply with own obligations under applicable Data Protection Legislation with respect to the processing of the Personal Data.

The information obligation under Article 13 and Article 14 of the GDPR in relation to data subjects whose personal data are processed under this Agreement shall be fulfilled by the controller, unless otherwise agreed by the parties.

4.1.2 Authorization by Third Party Controller

In case that you are a processor of the Personal Data under Data Protection Legislation, you warrant to us that your instructions and actions with respect to that Personal Data, including your appointment of Koongo as another processor, have been authorized by the relevant controller.

4.2 Scope of Processing

4.2.1 Personal Data Processing Authorization

Koongo will process Customer Data only in accordance with instructions from you through the settings of the Services. By signing this DPA, you hereby instruct and authorize us to process the Personal Data:

- (i) to operate, maintain and support the infrastructure used to provide the Services, and related technical support;
- (ii) to comply with your instructions and processing instructions in their use, management and administration of the Service or your requests for technical support;
- (iii) as otherwise instructed through settings of the Services;
- (iv) as otherwise permitted or required by the Agreement, including this DPA.

Koongo will only process Personal Data in accordance with the Agreement and mentioned purposes, unless required to do so by applicable law or regulation.

4.2.2 Sensitive Data Processing

You are not allowed to submit, store, or send any sensitive data or special categories of Personal Data (collectively, “Sensitive Information”) to us for processing. You will not authorise nor permit any of your contractors, employees, agents, or data subjects to submit, store, or send any Sensitive Information to us for processing. You acknowledge that the Service is not intended or designed for the Processing of Sensitive Information, that Koongo do not wish to receive or store Sensitive Information, and that our obligations in this DPA will not apply with respect to Sensitive Information. You also agree not to provide any Sensitive Information through the Service.

4.3 Service Data Processing

Subject Matter: Koongo's provision of the Service to the Customer, and related technical support.

Koongo will process Personal Data submitted to, stored on, or sent via the Service for the purpose of providing the Service and related technical support in accordance with this DPA. The Personal Data will include the following categories of data: IP addresses, email addresses, usernames, full names, browser and operating system identifiers, and any other personal data that Customer chooses to send us related during the course of our provision of the Service and technical support. The Personal Data will concern the following categories of data subjects, without limitation: Customer’s employees, contractors, and agents; the personnel of Customer’s customers, suppliers and subcontractors; and any other person who transmits data via the Service.

4.4 Automatic order retrieval service

Subject Matter: Koongo's automatic order retrieval service from marketplaces. Limited to the Customers that activated this feature in the Service

If you have enabled the feature to automatically retrieve order information from your account at selected Marketplaces as (but not limited to) Amazon, Bol.com or Beslist.nl, Koongo will process Personal Data of Customer’s customers by retrieving the Order Data, store it, and send it to the Customer’s online system for the purpose of enabling automatic processing of all orders done in (multiple) Marketplaces. All in accordance with this DPA.

Order Information contains Personal data that is retrieved from your account at one or more Marketplaces and is then stored encrypted on and sent via the Service (encrypted in transit). The Personal data will include the following categories of data: email addresses, full names, gender, address information, contact details (e.g. telephone numbers) and payment method (e.g IBAN).

Personal data submitted, stored encrypted, sent or received via the Service will concern the following categories of data subjects: Customer’s customers, leads, contractors, and agents; the personnel of Customer’s customers, suppliers and subcontractors; and any other person who orders items from Customers through the selected Marketplace.

Marketplace Order Information is stored encrypted by Koongo for 30 days after the order fulfillment. After this period of time, the Order Information is deleted automatically from the Koongo database.

5 Data Deletion

Koongo will enable you to delete Personal Data during the Term which is consistent with the functionality of the Service. If you use the Service to delete any Personal Data in a way that would prevent you from recovering the Personal Data anytime in the future, you agree that this will constitute an instruction to us to delete the Personal Data from Koongo systems in accordance with our standard processes and applicable law. Koongo will implement the instruction provided as soon as possible, but in all cases in accordance with applicable law.

When the Term expires, Koongo will either delete or return to you any Customer Data in our possession or control. This requirement will not be applied to the extent that we are required by applicable law to retain some or all of the Customer Data. In that case Koongo will isolate and protect the Customer Data from further processing except to the extent required by law. You acknowledge that, before the Term expires, you will be responsible for exporting any Customer Data you want to retain after the Term expires.

6 Personal Data Security

6.1 Security Measures

Koongo will take and implement appropriate technical, administrative and organizational measures designed to protect Customer Personal Data against a Data Incident ("Security Measures"). Koongo may update or modify such Security Measures from time to time provided that such updates and modifications do not result in the material degradation of the security of the Services. The Security Measures will include, as appropriate:

- (i) the encryption and/or pseudonymization of Personal Data;
- (Ii) the ability to ensure the ongoing integrity, confidentiality, availability, and resilience of data processing systems and services;
- (iIi) the ability to restore the availability and access to Personal Data in a timely manner, in the event of a Data Incident; and
- (iv) a process for regularly testing, accessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of data processing.

6.2 Security Compliance by our Staff

Koongo will take appropriate steps to ensure compliance with the Security Measures by its employees, contractors and Subprocessors to the extent applicable to their scope of performance. Koongo ensures that persons authorized to process personal data (e.g. employees, contractors and Subprocessors) have a confidentiality agreement regarding to the how the personal data are processed and secured.

6.3 Data Incidents

In the event that Koongo becomes aware of a Data Incident, Koongo will notify you promptly and in any event no later than forty-eight (48) hours after Koongo discovers the Data Incident. In the event of such a Data Incident, Koongo shall provide you with a detailed description of the Data Incident and the type of Personal Information concerned, unless otherwise prohibited by law or otherwise instructed by a law enforcement or supervisory authority. Following such notification, Koongo will take reasonable steps to mitigate the effects of the Data Incident and to minimize any damage resulting from the Data Incident. At your request, Koongo will provide reasonable assistance and cooperation with respect to any notifications that you are legally required to send to affected Data Subjects and regulators. Koongo may charge a reasonable fee for such requested assistance.

6.4 Your Security Responsibilities

Without prejudice to our obligations under Articles 6.1, 6.2 or 6.3, you agree that you are solely responsible for your use of the Service, including making appropriate use of the Service to ensure a level of security appropriate to the risk in relation to Customer Data, securing any account authentication credentials, systems, and devices you use to use the Service, and backing up your Customer Data. You understand and agree that Koongo have no obligation to protect Customer Data that you chose to store or transfer outside of our or our Subprocessors' systems (e.g., offline storage). You are responsible for evaluating whether the Service and our commitments under the Articles 6.1 to 6.5 meet your needs, including with respect to your compliance with any of your security obligations under Data Protection Legislation, as applicable. You understand and agree that the Security Measures that we implement in this DPA provide a level of security appropriate to the risk in respect to the Customer Data.

6.5 Audit Rights

If Data Protection Legislation applies to the processing of Personal Data, Koongo will allow an internationally-recognized independent auditor that you select to conduct audits to verify our compliance with our obligations in this DPA. You must send any requests for audits under this Article to in writing to Koongo's address as stated earlier in this Agreement. Following our receipt of your request, the parties will discuss and agree in advance on the reasonable start date, scope, duration, and security and confidentiality controls applicable to the audit. You will be responsible for any costs associated with the audit. You agree not to exercise your audit rights more than once in any twelve (12) calendar month period, except

- (i) if and when required by a competent data protection authority; or
- (ii) an audit is necessary due to a Data Incident.

Koongo as a processor will provide the controller all the information necessary to demonstrate that the obligations defined in Article 28 of the GDPR have been met.

7 Data Subject Rights and Data export

7.1 Data Access

Koongo will make available to Customer the Customer Personal Data in accordance with the terms of the Agreement in a manner consistent with the functionality of the Services.

7.2 Cooperation; Data Subjects' Rights

Koongo will provide you, at your expense, with all reasonable and timely assistance to enable you to respond to:

- (i) requests from data subjects who wish to exercise any of their rights under Data Protection Legislation; and
- (ii) any other correspondence, inquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Customer Data.

In the case that any such request, correspondence, inquiry or complaint is made directly to us, we will promptly inform you of it, and provide you with as much detail as reasonably possible.

8 Data Transfers

8.1 Data Storage and Processing Facilities.

You agree that Koongo may, subject to Article 8.2, store and process Customer Data, including Personal Data in the European Union. Depending on your location your Customer Data, including Personal Data, may be transferred to - and maintained on - computers located outside of your state, province, country or other governmental jurisdiction where the data protection laws may differ than those from your jurisdiction to computers within the European Union.

8.2 Transfers of Data out of the EEA; Your Responsibilities.

If the storage and/or processing of Personal Data as described in Article 8.1 involves transfers of Personal Data out of the EEA and Data Protection Legislation applies to the transfers of such data (collectively, "Transferred Personal Data"), we will, at our sole discretion, either

- (i) ensure that we (as the data importer) have entered into MCCs, and that the transfers are made in accordance with the MCCs; or
- (ii) ensure that the transfers are made in accordance with an Alternative Transfer Solution.

In the event that you will want to transfer personal data to countries outside the EEA, you are required to inform Koongo to which country and to what subject, and to demonstrate that the protection of such personal data is complaint with GDPR in these cases. Otherwise, Koongo has the right to reject this data transfer, and is not responsible for any damage that might result to you. By signing this agreement, you assure Koongo that if you do not explicitly inform us that you require personal data to be transferred outside of the EEA, it is assumed that the personal data is processed within the EEA.

9 Sub-processors

9.1 Consent to Engagement

You agree and also give the order that Koongo may disclose Customer Data to its subcontractors for purposes of providing the Service ("Sub-Processors"), provided that Koongo

- (i) shall enter into an agreement with its Sub-Processors that imposes on the Sub-Processors obligations regarding the Processing of Customer Data that are at least as protective of Customer Data as those that apply to Koongo in the DPA, including requiring the Sub-Processors to only process Customer Data to the extent required to perform the obligations sub-contracted to them, and
- (ii) shall remain fully liable for all obligations subcontracted to, and all acts and omissions of, the Sub-Processors
- (iii) shall ensure that any person acting on behalf of a processor and having access to personal data will process such personal data only based on instructions from the controller, if this personal data processing is not required directly by the law of the European Union or its Member State.

Koongo will inform you of any intended changes concerning the addition or replacement of Sub-Processors and you will have an opportunity to object to such changes on reasonable grounds within ten (10) business days after being notified of the engagement of the Sub-Processor. If you object to a new Sub-processor, as permitted in the preceding sentence, Koongo will use reasonable efforts to make available to you a change in the Service or recommend a commercially reasonable change to your configuration or use of the Service to avoid Processing of Personal Data by the objected-to new Subprocessor without unreasonably burdening you. If Koongo is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, either party may terminate the component of the Service which cannot be provided by Koongo without the use of the objected-to new Sub-processor by providing written notice to the other party. Koongo will refund you any prepaid fees covering the remainder of the term of your subscription following the effective date of termination with respect to such terminated component of the Service, without imposing a penalty for such termination on you.

9.2 List of Sub-processors

Our current Sub-processors are, but not limited to:

- contractors
- SH.cz s.r.o., Prague, Czech Republic
- Google, California, USA - Google complies with the EU-US Privacy Shield Framework, ensuring adequate protection of personal data within the meaning of the GDPR Regulation.

We will update this list from time to time upon written notice to you, as our Sub-processors change.

10 Miscellaneous

You acknowledge that we are required under Data Protection Legislation

- (i) to collect and maintain records of certain information, including, among other things, the name and contact detail of each processor and/or controller on whose behalf we are acting and, where applicable, of such processor's or controller's local representative and data protection officer; and
- (ii) to make such information available to the supervisory authorities.

Accordingly, you will, when requested, provide this additional information to us, and ensure that the information is kept accurate and up-to-date.