

HOW TO EXECUTE THIS DPA:

To complete this DPA, the following must occur:

- Customer must complete the information in section 11.2 and the signature box and sign the DPA;
- Customer must send the completed and Customer-signed DPA to Shorebird by email at privacy@shorebird.dev;
- Shorebird will provide you (Customer) with a countersigned copy.

DATA PROCESSING AGREEMENT

This Data Processing Agreement (“**DPA**”) is by and between the Customer identified in the signature block (the “**Customer**”), and Code Town, Inc. d/b/a Shorebird, a Delaware company having its principal place of business at 2261 Market Street #5112 San Francisco, CA 94114-1612, (hereinafter “**Shorebird**”). Customer and Shorebird are collectively, “**the Parties**”.

1. Definitions

- 1.1. “**Data Protection Laws**” means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of Personal Data including: (i) the California Consumer Privacy Act (“**CCPA**”); (ii) 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 (“**EU GDPR**”); (iii) the General Data Protection Regulation as applicable as part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (“**UK GDPR**”); (iv) the Swiss Federal Act on Data Protection of 19 June 1992 as revised as of 25 September 2020 (“**Swiss Revised FADP**”); and (v) any national laws or regulations implementing the foregoing, and any amendments or replacements thereto. Notwithstanding the foregoing, with regard to Shorebird, “Data Protection Laws” excludes laws governing Sensitive Information. For the avoidance of doubt, Shorebird is not responsible for compliance with any data protection laws applicable to Customer or Customer’s industry that are not generally applicable to Shorebird.
- 1.2. “**Standard Contractual Clauses**” means in respect of European Data, the standard contractual clauses for the transfer of personal data to third countries adopted by the European Commission under Commission Implementing Decision (EU) 2021/914 including the text from modules two and three of such clauses and no other modules and not including any clauses marked as optional in the clauses except as specified in this Agreement.
- 1.3. “**European Data**” means Personal Data that is subject to the protection of EU GDPR, UK GDPR, and Swiss Revised FADP.
- 1.4. “**Personal Data Breach**” means a confirmed unauthorized access by a third party or confirmed accidental or unlawful destruction, loss or alteration of Personal Data.
- 1.5. “**Sensitive Information**” means credit or debit card numbers; financial account

numbers or wire instructions; government issued identification numbers (such as Social Security numbers, passport numbers), biometric information, personal health information (or other information protected under any applicable health data protection laws), personal information of children protected under any child data protection laws, and any other information or combinations of information that falls within the definition of “special categories of data” under EU GDPR or any other applicable law relating to privacy and data protection.

- 1.6. **“UK Addendum”** means the International Data Transfer Addendum issued by the UK Information Commissioner under section 119A(1) of the Data Protection Act 2018 currently found at <https://ico.org.uk/media/for-organisations/documents/4019539/international-data-transfer-addendum.pdf>, as may be amended, superseded, or replaced.
- 1.7. Other terms used in this DPA that have meanings ascribed to them in the Data Protection Laws, including but not limited to **“Data Subject”**, **“Processing,”** **“Personal Data,”** **“Controller”** and **“Processor,”** shall carry the meanings set forth under the applicable Data Protection Laws.

2. Subject matter of this Data Processing Agreement

- 2.1. Shorebird provides Subscriptions to certain Software and Services to Customer pursuant to the terms of the Shorebird Terms as detailed in <https://shorebird.dev/terms/>, agreed to by Customer between the Parties. This DPA is intended to supplement the terms of the Agreement and any capitalized terms not otherwise defined in this DPA shall have the meaning given to them in the Agreement. Except as modified below, the terms of the Agreement shall remain in full force and effect.
- 2.2. Insofar as Shorebird will be processing Personal Data on behalf of the Customer in the course of the performance of the Agreement with the Customer, the terms of this DPA shall apply. In the event of a conflict between any provisions of the Agreement and the provisions of this DPA, the provisions of this DPA shall govern and control. An overview of the categories of Personal Data, the categories of Data Subjects, and the nature and purposes for which Personal Data are being processed on Customer’s behalf is provided in Annex 1. For the avoidance of doubt, Personal Data that is processed by Shorebird on Shorebird’s behalf (including without limitation, telemetry data and information provided by visitors to <https://shorebird.dev/>) is outside the scope of this DPA, however, a detailed description of all Personal Data processed by Shorebird (whether as Processor or Controller) is detailed in the Privacy Policy at <https://shorebird.dev/privacy/>.

3. Customer as Data Controller and Shorebird as Data Processor

- 3.1. In accordance with Data Protection Laws, Customer shall be the data Controller and Shorebird the data Processor for Personal Data. Shorebird will Process Customer’s Personal Data only to the extent the Processing and use of such Personal Data is set forth in and permitted under the Agreement. The subject matter, nature and purpose and details and duration of the data Processing and the details of the type of Personal Data and categories

of Data Subjects are as determined by the Customer and as permitted under the Agreement.

- 3.2. Shorebird will only Process Personal Data within the scope of Customer's instructions for the applicable Subscriptions, including with regard to transfers of Personal Data to third countries. Should Shorebird reasonably believe that a specific Processing activity beyond the scope of the Customer's instructions is required to comply with a legal obligation to which Shorebird is subject, Shorebird shall be entitled, but not obliged, to suspend execution of the instructions concerned, until Customer confirms such instructions in writing. Notwithstanding the foregoing, Shorebird may Process the Personal Data if it is required under law to which it is subject. In this situation, Shorebird shall notify Customer of such a requirement before Shorebird Processes the data unless the law prohibits this on important grounds of public interest. Such notification will not constitute a general obligation on the part of Shorebird to monitor or interpret the laws applicable to the Customer, and such notification will not constitute legal advice to the Customer.
- 3.3. Shorebird shall Process Personal Data for the purposes set out in Annex 1. Shorebird shall be allowed to exercise its own discretion in the selection and use of such means as it considers necessary to pursue those purposes, provided that all such discretion is compatible with the requirements of this DPA, in particular Customer's written instructions.
- 3.4. Customer warrants that it has all necessary rights to provide the Personal Data to Shorebird for the Processing to be performed in relation to the Service, and that one or more lawful bases set forth in Data Protection Laws support the lawfulness of the Processing. To the extent required by Data Protection Law, Customer is responsible for ensuring that all necessary privacy policies are provided to Data Subjects, and unless another legal basis set forth in Data Protection Laws supports the lawfulness of the processing, that any necessary Data Subject consents to the Processing are obtained, and for ensuring that a record of such consents is maintained. Customer is solely responsible for the instructions it provides to Shorebird with regard to processing such Personal Data. Should such a consent be revoked by a Data Subject, Customer is responsible for communicating the fact of such revocation to Shorebird, and Shorebird remains responsible for implementing Customer's instruction with respect to the Processing of that Personal Data. Customer shall not provide or make available to Shorebird any Personal Data in violation of the Agreement or otherwise inappropriate for the nature of the relevant Subscription.

4. Confidentiality

Without prejudice to any existing contractual arrangements between the Parties, Shorebird shall treat all Personal Data as confidential and it shall inform all its employees, agents and/or approved subprocessors engaged in processing the Personal Data of the confidential nature of the Personal Data. Shorebird shall ensure that all such persons or parties have signed an appropriate confidentiality agreement, are otherwise bound to a duty of confidentiality, or are under an appropriate statutory obligation of confidentiality.

5. Security

- 5.1. 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, Customer and Shorebird shall implement appropriate technical and organizational measures to ensure a level of security of the processing of Personal Data appropriate to the risk. These measures shall include, at a minimum, the security measures agreed upon by the Parties in Annex 2 and greater detail may be found at <https://handbook.shorebird.dev/security>.
- 5.2. Both the Customer and Shorebird shall maintain written security policies that are fully implemented and applicable to the processing of Personal Data. At a minimum, such policies should include assignment of internal responsibility for information security management, devoting adequate personnel resources to information security, carrying out verification checks on permanent staff who will have access to the Personal Data, conducting appropriate background checks, requiring employees, vendors and others with access to Personal Data to enter into written confidentiality agreements, and conducting training to make employees and others with access to the Personal Data aware of information security risks presented by the Processing.

6. Data Transfers

- 6.1. The Parties agree that Shorebird may transfer European Data outside the EEA, the UK, or Switzerland as necessary to provide the Subscriptions. Customer acknowledges that Shorebird's primary processing operations take place in the United States, and that the transfer of European Data to the United States is necessary for the provision of the Subscriptions to Customer. If Shorebird transfers European Data to a jurisdiction for which the European Commission has not issued an adequacy decision, Shorebird will ensure that appropriate safeguards have been implemented for the transfer of European Data in accordance with European Data Protection Laws. Annex 3 provides a list of transfers for which Customer grants its authorization upon the conclusion of this DPA.
- 6.2. By entering into this DPA, the parties are deemed to have signed the Standard Contractual Clauses incorporated herein, including their Annexes as follows:
 - 6.2.1. In relation to European Data that is subject to the EU GDPR (i) Customer is the "data exporter" and Shorebird is the "data importer"; (ii) the Module Two terms apply; (iii) in Clause 7, the optional docking clause does not apply; (iv) in Clause 9, Option 2 (general written authorization) applies and changes to Sub-Processors will be notified in accordance with section 8 (Contracting with Subprocessors) to this DPA; (v) in Clause 11, the optional language is deleted; (vi) in Clause 17 (Option 1) and Clause 18, the Parties agree that the governing law and forum for disputes for the Standard Contractual Clauses will be the Republic of Ireland (without reference to conflicts of law principles); (vii) the Annexes of the Standard Contractual Clauses will be deemed completed with the information set out in the Annexes of this DPA; (viii) the supervisory authority that will act as competent supervisory authority will be determined in accordance with EU GDPR; and (ix) if and to the extent the Standard Contractual Clauses conflict with any provision of this DPA the Standard Contractual Clauses will prevail to the extent of such conflict.

- 6.2.2. In relation to European Data that is subject to the UK GDPR, the Standard Contractual Clauses will apply in accordance with sub-section (a) and the following modifications (i) the Standard Contractual Clauses will be modified and interpreted in accordance with the UK Addendum, which will be incorporated by reference and form an integral part of the Agreement; (ii) Tables 1, 2 and 3 of the UK Addendum will be deemed completed with the information set out in section 11 (Contact Information and Notifications under this DPA) and the Annexes of this DPA, and Table 4 will be deemed completed by selecting “neither party”; and (iii) any conflict between the terms of the Standard Contractual Clauses and the UK Addendum will be resolved in accordance with Section 10 and Section 11 of the UK Addendum.
- 6.2.3. In relation to European Data that is subject to the Swiss Revised FADP, the Standard Contractual Clauses will apply in accordance with sub-section (a) and the following modifications (i) references to “Regulation (EU) 2016/679” will be interpreted as references to the Swiss Revised FADP; (ii) references to “EU”, “Union” and “Member State law” will be interpreted as references to Swiss law; and (iii) references to the “competent supervisory authority” and “competent courts” will be replaced with the “the Swiss Federal Data Protection and Information Commissioner” and the “relevant courts in Switzerland”.
- 6.3. To the extent that Customer or Shorebird are relying on a specific statutory mechanism to normalize international data transfers and that mechanism is subsequently modified, revoked, or held in a court of competent jurisdiction to be invalid, Customer and Shorebird agree to cooperate in good faith to promptly suspend the transfer or to pursue a suitable alternate mechanism that can lawfully support the transfer.

7. Information Obligations and Incident Management

In the case of a Personal Data Breach, Shorebird will notify Customer without undue delay after Shorebird becomes aware of the Personal Data Breach via the email address specified by Customer in Section 11 (Contact Information and Notifications under this DPA) and, as required by Article 33 of the EU GDPR, Shorebird shall supply Customer with information regarding the Personal Data Breach (to the extent that such information is available to Shorebird) to enable Customer to comply with its notification requirements to the supervisory authority (and, if necessary, the relevant data subjects) under Data Protection Laws. Shorebird will promptly commence a forensic investigation of a Personal Data Breach and take appropriate remedial steps to prevent and minimize any possible harm. For the avoidance of doubt, Personal Data Breaches will not include unsuccessful attempts to, or activities that do not, compromise the security of Personal Data including, without limitation, unsuccessful log in attempts, denial of service attacks and other attacks on firewalls or networked systems.

8. Contracting with Subprocessors

- 8.1. Shorebird may subcontract any of its Service-related activities consisting (partly) of the processing of the Personal Data or requiring Personal Data to be processed by the sub-processors listed in Annex 3 without the prior written authorization of Customer.

Shorebird shall ensure that the subprocessor is bound by data protection obligations compatible with those of Shorebird under this DPA, shall supervise compliance thereof, and impose on its subprocessors the obligation to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of EU Data Protection Law. In the event there are transfers of European Data to a sub-processor which is a Shorebird Affiliate located in a third country which does not provide adequate protection for Personal Data, Shorebird and the applicable Shorebird affiliate will have entered into the Standard Contractual Clauses [implemented by the Processor] in order to provide appropriate safeguards for the transfer of such European Data in accordance with the European Data Protection Laws.

- 8.2. At least 14 days prior to authorizing any new sub-processor to access Personal Data, Shorebird will provide written notice to Customer at the address specified in section 11 (Contact Information and Notifications under this DPA). If Customer timely sends Shorebird a written objection notice, setting forth a reasonable basis for objection, the Parties will make a good-faith effort to resolve Customer's objection. In the absence of a resolution, Shorebird will terminate the portion of the Subscriptions which cannot be provided without the subprocessor, and refund Customer of any fees paid to Shorebird under the Agreement for Services not delivered due to such termination.
- 8.3. Where the Standard Contractual Clauses are applicable, the parties agree that the obligation at Clause 9(a) of the Standard Contractual Clauses to seek approval for sub-processors is met by the process outlined above. In any event, where Shorebird's sub-processor fails to fulfill its data protection obligations, Shorebird will remain responsible for such failure.

9. Assistance to Data Controller

- 9.1. Processor will promptly inform Customer of any data subject requests it receives in connection with the Subscriptions licensed by Customer. Customer is responsible for ensuring such requests are handled in accordance with Data Protection Laws. Processor will implement appropriate technical and organizational measures to assist Customer with its obligations in connection with such data subject requests.
- 9.2. Taking into account the nature of processing and the information available to Shorebird, Shorebird shall assist Customer in ensuring compliance with obligations pursuant to Section 5 (Security), as well as other Data Controller obligations under EU Data Protection Law that are relevant to the Data Processing described in Annex 1, including notifications to a supervisory authority or to Data Subjects, the process of undertaking a Data Protection Impact Assessment, and with prior consultations with supervisory authorities.
- 9.3. In the event that Customer instructs Shorebird to provide assistance which goes beyond the standard functionality of the Service, then Shorebird may charge Customer for any costs beyond the agreed upon license fees to the extent it is not commercially reasonable for Shorebird to provide such assistance without charge (considering relevant factors such as volume of requests, complexity of instructions and timescale requested). This shall include, without limitation, costs incurred by Shorebird in executing Customer's instructions relating to the erasure, additional storage and/or retention of Customer's Personal Data, and

compliance with any subject access request received by Customer in accordance with Clause 11.

10. Audit.

10.1. Each party shall be responsible for maintaining its own record of processing activities.

10.2. Up to one time per year, Customer may request on a confidential basis and to the extent required by Data Protection Laws that Shorebird provide information demonstrating Shorebird's compliance with its obligations under this DPA. In the event that Customer, acting reasonably, provides evidence that such information is not sufficient to demonstrate Shorebird's compliance with this DPA, Customer may request to carry out, or have carried out by a third party who has entered into a confidentiality agreement with Shorebird, audits of Shorebird's premises and operations as these relate to the Personal Data processed pursuant to this DPA, at Customer's sole expense. Such audits will be with at least 30 days' notice to Shorebird, unless a shorter time period is required by a supervisory authority of competent jurisdiction. Shorebird shall cooperate with such audits carried out by or on behalf of Customer and shall grant Customer's auditors access to information relating to the Processing of the Personal Data as may be reasonably required by Customer to ascertain Shorebird's compliance with this DPA. Customer shall use its best efforts (and ensure that each of its mandated auditors uses its best efforts) to avoid causing any destruction, damage, injury or disruption to Shorebird's premises, equipment, personnel, data, and business (including any interference with the confidentiality or security of the data of Shorebird's other customers or the availability of Shorebird's services to such other customers). Customer must submit a detailed proposed audit plan providing for the confidential treatment of all information exchanged in connection with the audit and any reports regarding the results or findings thereof. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. Shorebird will review the proposed audit plan and provide Customer with any concerns or questions (for example, any request for information that could compromise Shorebird's security, privacy, employment or other relevant policies).

10.3. Customer may request that Shorebird provide information demonstrating Shorebird's subprocessors' compliance with obligations under this DPA. Where Customer, acting reasonably, provides evidence that such information is not sufficient to demonstrate a subprocessor's compliance with this DPA, Customer may request that Shorebird use commercially reasonable efforts to audit such subprocessor or provide confirmation that such an audit has occurred (or, where available, obtain or assist Customer in obtaining a third-party audit report concerning the subprocessor's operations) to ensure compliance with its obligations imposed by Shorebird in conformity with this Agreement.

11. Contact Information and Notifications under this DPA

11.1. For Shorebird, the Data Importer and Processor:

Compliance Department
2261 Market Street #5112
San Francisco, CA 94114-1612

privacy@shorebird.dev

11.2. For the Customer, the Data Exporter and Controller: **(please fill in below)**

Customer Legal Name: _____

Customer Address: _____

Customer Email: _____

12. Term and Termination, Return or Destruction of Personal Data

12.1. This DPA shall come into effect on the effective date of the Agreement and terminate with the Agreement.

12.2. Upon termination of this DPA, upon Customer’s written request, or upon fulfillment of all purposes agreed in the context of the Subscriptions whereby no further processing is required, Shorebird will, at Customer’s option, delete or return to Customer all Personal Data processed in accordance with this DPA after the end of the applicable Agreement, unless applicable law requires continued storage of Personal Data. If Customer and Shorebird have entered into Standard Contractual Clauses as described in Section 6 (Data Transfers), the Parties agree that the certification of deletion of Personal Data that is described in Clause 8.1(d) and Clause 8.5 of the Standard Contractual Clauses (as applicable) shall be provided by Company to Customer only upon Customer’s request.

12.3. No amendment, change or suspension of this DPA shall be valid unless agreed upon in writing between Customer and the relevant Processor and unless this DPA is expressly referred to.

13. CCPA Terms

13.1. The Parties acknowledge and agree that Shorebird is a service provider for the purposes of the CCPA (to the extent it applies) and is receiving personal information from Customer in order to provide the Subscriptions pursuant to the Agreement, which constitutes a business purpose. Shorebird shall not sell any such Personal Information. Shorebird shall not retain, use or disclose any Personal Information provided by Customer pursuant to the Agreement except as necessary for the specific purpose of providing the Subscriptions for Customer pursuant to the Agreement, or otherwise as set forth in the Agreement or as permitted by the CCPA. The terms “personal information,” “service provider,” “sale,” and “sell” are as defined in Section 1798.140 of the CCPA.

SIGNATURES:

(Please fill in Customer Legal Name) (“Customer”)		Code Town, Inc (Shorebird)	
By:		By:	

Name:			Name:	
Title:			Title:	
Date:			Date:	

Annex 1: Overview

<p>Types of Personal Data that will be processed in the scope of this DPA:</p>	<p>Customer may submit Personal Data in the course of using the Software and Services, which may include Personal Data relating to the following categories of Data Subjects:</p> <ul style="list-style-type: none"> • Contact information regarding Authorized Users of the Software and Services and for communication and invoicing purposes, including names, email addresses, job titles and company name; and • Email address or other unique identifier for user authentication purposes as provided as part of user validation with an OAuth provider like Microsoft or Google. • Commercial information, including records of products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies. • IP addresses for devices where the Customer's app is installed and from which a request is made to our services. (All inbound requests to our services, including IP addresses, are logged by Google Cloud for purposes of providing the service and retained for up to 90 days.) • Correspondence you send to us, such as emails. • We also receive the categories of information described above from other sources, including from users of our Services and third-party services and organizations. Without this information, we are not able to provide you with all the requested services, and any differences in services are related to your information.
<p>Categories of Data Subjects:</p>	<ul style="list-style-type: none"> • End users of the Software and Services
<p>Nature and purpose of the Personal Data Processing:</p>	<ul style="list-style-type: none"> • storage and other processing necessary to provide, maintain and improve the Software and Services provided to Customer; • to provide customer and technical support to Customer; and • disclosures in accordance with the Agreement, as compelled by law.
<p>Duration of the Personal Data Processing:</p>	<p>During the Term of the Agreement.</p>

Annex 2: Security Measures

1. Ensure that the Personal Data can be accessed only by authorized personnel for the purposes set forth in Annex 1 of this DPA.
2. Take all reasonable measures to prevent unauthorized access to the Personal Data through the use of appropriate physical and logical (passwords) entry controls, securing areas for data processing, restricted (e.g. role-based) access to Personal Data, and implementing procedures for monitoring the use of data processing facilities;
3. Use secure password controls designed to manage and control password strength, expiration and usage;
4. Use of network intrusion detection technology, encryption and authentication technology, secure logon procedures and virus protection;
5. Account for all the risks that are presented by processing, for example from accidental or unlawful destruction, loss, or alteration, unauthorized or unlawful storage, processing, access or disclosure of Personal Data;
6. Ensure pseudonymization and/or encryption of Personal Data, where appropriate
7. Maintain the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
8. Maintain the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
9. Implement a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing of Personal Data;
10. Monitor compliance on an ongoing basis and reporting the condition of its information security and compliance to internal senior management;
11. Implement measures to identify vulnerabilities, security threats, viruses and other malicious code with regard to the processing of Personal Data in systems used to provide services to Customer;
12. Provide employee and contractor training to ensure ongoing capabilities to carry out the security measures established in policy.

Annex 3: Subprocessors and International Data Transfers

Subprocessors

To enable Shorebird to provide the Software and Services, Customer agrees that the Sub-Processors listed at <https://shorebird.dev/privacy/> may have access to Personal Data, as this list may be updated pursuant to section 8.2 of the DPA

International Data Transfer Authorization

Shorebird may transfer personal data from the EEA, UK and Switzerland to the US for the purposes of this DPA.