



BOSSII GDPR Data Processing Agreement

rouselawyers.com.au

Level 2, 22 Wandoo Street
Fortitude Valley Qld 4006

Locked Bag 22
Fortitude Valley BC Qld 4006

T 07 3648 9900

F 07 3648 9911

E admin@rouselawyers.com.au

Data Processing Agreement

This Data Processing Agreement ("**Agreement**" or "**DPA**") forms part of the contract for Services under the BOSSII End User Licence Agreement (the "**Principal Agreement**"). This Agreement is an addition to the Principal Agreement and is subject to its terms.

We periodically update this Agreement. If you have an active BOSSII account, you will be informed of any modification by email.

The terms of this Agreement shall follow the terms of the Principal Agreement. Terms not defined in this agreement shall have the meaning set forth in the Principal Agreement.

Background

- A. Your company acts as a Data Controller (the "**Controller**").
- B. Your company wishes to subcontract certain Services (as defined below), which imply the processing of personal data, to BOSSII Ltd, acting as a Data Processor (the "**Processor**").
- C. The parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing and with 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**).
- D. The parties wish to lay down their rights and obligations.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

Unless otherwise defined herein, capitalized terms and expressions used in this DPA shall have the following meaning:

Company Personal Data means any Personal Data Processed by a Contracted Processor on Controller's behalf pursuant to or in connection with the Principal Agreement;

Contracted Processor means a Subprocessor;

Data Protection Laws means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

Data Transfer means:

- (a) a transfer of Company Personal Data from Controller to a Contracted Processor; or
- (b) an onward transfer of Company Personal Data from a Contracted Processor to a subcontracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

EEA means the European Economic Area;

EU Data Protection Laws means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

GDPR means EU General Data Protection Regulation 2016/679;

Privacy Policy means the BOSSII Privacy Policy located at www.bossii.com.

Services means restaurant and point-of-sale management software. The Service is described more in detail in Schedule 1.

Subprocessor means any person appointed by or on behalf of Processor to process Personal Data on behalf of Controller in connection with the Agreement.

1.2 Interpretation

In this Agreement:

(a) The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly;

(b) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(c) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;

(d) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(e) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

(f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

(g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

(h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;

(i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) references to payments to any party to this Agreement include payments to another person upon the direction of such party;

(k) all payments to be made under this Agreement will be made by unendorsed bank cheque, through a third-party payment provider (such as Stripe) or by other immediately available funds;

(l) the word "includes" in any form is not a word of limitation;

2. Processing

2.1 Application

This Agreement shall apply to all data processed by the Processor on behalf of the Controller which is expressly covered by the EU Data Protection Laws and GDPR.

2.2 General Obligations

Each party will ensure that in the performance of its obligations under this Agreement it will at all times comply with all applicable Data Protection Laws and any other applicable privacy laws and regulations.

2.3 Data Specification

- (a) In order to allow the Processor to fully comply with its obligations, the Controller must provide the Processor with a document setting out the:
 - (i) subject matter and duration of any processing to be undertaken by the Processor;
 - (ii) the nature and purpose of the processing; and
 - (iii) the type of Personal Data and the categories of Data Subject relevant to this Agreement;as soon as possible after providing any Company Personal Data.
- (b) The Processor may approve the document, or suggest amendments. It will not be bound to conduct the Processing until agreed in writing.
- (c) Unless stipulated in this Agreement or agreed elsewhere in writing, the Controller, not the Processor, shall be responsible for all other data Processing in relation to the Personal Data which is not expressly stipulated as the responsibility of the Processor.

2.4 Processing of Company Personal Data

- (a) Processor will use its reasonable commercial endeavours to:
 - (i) comply with all applicable Data Protection Laws in the Processing of Company Personal Data; and
 - (ii) not process Company Personal Data other than on Controller's documented instructions.
- (b) Controller instructs Processor to process Company Personal Data to provide the Services and related technical support.
- (c) The Controller acknowledges and agrees to the processing by the Processor of all of the Controller's transactional and sales data, which may include 'Personal Data' (as defined by applicable Data Protection Laws) for all purposes connected with this Agreement.

2.5 Processor Personnel

Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as necessary for the purposes of the Principal Agreement, and to comply with applicable laws in the context of that individual's duties to the Contracted Processor, and taking measures to ensure that, where possible, all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

2.6 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, Processor shall in relation to the Company Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- (b) In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.
- (c) The Controller acknowledges that any data transmitted over the internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form.
- (d) The Processor cannot guarantee the recovery of Company Personal Data or other data where this is deleted by the Controller (or the Processor at the Controller's request).

2.7 Subprocessing

The Controller hereby agrees that the Processor may appoint any of its sub-contractors as sub-processors without requiring further consent. Such sub-contractors are deemed to be approved under this clause and the Controller may request a list of such sub-processors from time to time.

3. Data Rights, Breaches and Impact Assessments

3.1 Assistance

- (a) Taking into account the nature of the Processing, Processor shall assist Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Controller obligations, as reasonably understood by Controller, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
- (b) Processor shall:
 - (i) notify Controller if it receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and
 - (ii) ensure that it does not respond to that request except on the documented instructions of Controller or as required by applicable laws to which the Processor is subject, in which case Processor shall to the extent permitted by applicable laws inform Controller of that legal requirement before the Contracted Processor responds to the request.

3.2 Personal Data Breach

- (a) Processor will notify Controller without undue delay upon Processor becoming aware of a Personal Data Breach affecting Company Personal Data, providing Controller with sufficient information to allow Controller to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- (b) Processor shall co-operate with Controller and take reasonable commercial steps as are directed by Controller to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

3.3 Data Protection Impact Assessment and Prior Consultation

Processor shall provide reasonable assistance to Controller with any data protection impact assessments, and prior consultations with supervising authorities or other competent data privacy authorities, which Controller 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 Company Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

4. Transfer, Deletion and Audit

4.1 Data Transfer

If personal data processed under this Agreement is transferred from a country within the EEA to a country outside the EEA, the parties will take commercially reasonable measures to ensure that the personal data are adequately protected. To achieve this, the Processor may take a number of steps, including (but not limited to):

- (a) Processing within a country that has been deemed to provide an adequate level of protection for Personal Data by the European Commission;
- (b) Processing the data within Australia under the terms of the Privacy Policy;
- (c) Processing under the terms of a form of contract approved by the European Commission which gives Personal Data the same protection it has in the EU; or
- (d) taking other measures so that a similar degree of protection is afforded to such Company Personal Data, as within the EU, and such Processing is lawful.

4.2 Deletion or return of Company Personal Data

- (a) The Processor shall, within 10 business days of a request from the Controller after termination of this Agreement (the "Request Deadline Date"), delete and procure the deletion of all copies of those Company Personal Data.
- (b) Processor shall provide written certification to Controller that it has fully complied with this section within 10 business days of the Request Deadline Date.

4.3 Audit rights

- (a) Subject to this section 4.3, Processor shall make available to Controller on request all information necessary to demonstrate compliance with this Agreement.
- (b) Information and audit rights of Controller only arise under section 4.3(a) to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

5. Controller Obligations

5.1 Acknowledgement

The Controller acknowledges and agrees that it will be the Controller under this Agreement and that it will be responsible for adequately addressing the use of cookies and data protection obligations in its end-customer terms and policies.

5.2 Indemnity

The Processor does not have any control over the Controller's data protection notices, policies and terms & conditions. The Controller will indemnify and keep the Processor and its affiliates indemnified against all losses, costs, and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by the Processor arising out of or in connection with any claim in respect of:

- (a) a breach of this Agreement or the Principal Agreement;
- (b) the Controller's failure to comply with its obligations under this Agreement, particularly under clause 2;
- (c) any liability arising whatsoever in respect of the cookies on, or the capture of Personal Data through, the Controller's website(s); and
- (d) the consent of Data Subjects for the exportation of any Personal Data outside of the EEA by the Processor;

or for any other claim, liability or expense which the Processor does not claim sole and exclusive responsibility for under this Agreement.

6. General Terms

6.1 Confidentiality

Each party must keep any information it receives about the other party and its business in connection with this Agreement (**Confidential Information**) confidential and must not use or disclose that Confidential Information without the prior written consent of the other party except to the extent that:

- (a) disclosure is required by law;
- (b) the relevant information is already in the public domain.

6.2 Notices

All notices and communications given under this Agreement must be in writing and will be sent by email. Controller shall be notified by email sent to the address related to its use of the Service under the Principal Agreement. Processor shall be notified by email sent to the address: admin@bossii.com.

6.3 Governing Law and Jurisdiction

- (a) This Agreement is governed by Cypriot law.
- (b) Any dispute arising in connection with this Agreement, which the parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of Cyprus.

6.4 Inconsistency

Where there is any inconsistency between this Agreement and the Privacy Policy of the company, the Privacy Policy shall prevail to the extent of the inconsistency.

Schedule 1 Service Description

The Service offered by BOSSII Ltd ("BOSSII"):

BOSSII is a Hospitality Management Point of Sale software package designed to apply simple business principles consistently throughout any hospitality business no matter what size the venue.

The software manages primarily the sales capture of the business but also features many other activities and tasks required to run a hospitality business.

With the use of the tools that BOSSII has at its disposal an owner or manager can run their venue with a more in-depth perspective and a greater knowledge of the areas that need correcting.

These tools include opportunities for customer and employee retention, wage cost management, inventory management, forecasting and marketing management to name a few. These tools applied consistently can lead to unparalleled levels of success for the management of Hospitality Professionals venues.

Schedule 2 Data Processing and Security

The data processing performed by the Processor on behalf of the Controller relates to the service of Point of Sale Restaurant Software. The data processing details and procedure can be found in the Privacy Policy.