Shake Technologies, Inc. Data Processing Agreement (DPA)

Last updated: 13 September 2024

This Data Processing Agreement ("DPA") is an integral part of Shake Technologies, Inc. ("Shake") Terms of Service. It governs the processing of Personal Data by Shake on behalf of its Users (the "Controller") in accordance with applicable data protection laws, including the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA).

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1. Definitions

1.1 **Data Protection Law**: All applicable international, national, federal, state, provincial, and local laws, rules, regulations, directives, and governmental requirements related to the privacy, confidentiality, or security of the processing of Personal Data. This includes, but is not limited to, the General Data Protection Regulation (GDPR) (EU) 2016/679, the California Consumer Privacy Act (CCPA), and other equivalent or similar laws.

1.2 **Personal Data**: Any information relating to an identified or identifiable natural person ("Data Subject") processed by Shake on behalf of the Controller in the context of providing Shake's services. This can include but is not limited to names, email addresses, device identifiers, crash data, and other user information.

1.3 **Processing**: Any operation or set of operations performed on Personal Data, including, but not limited to, collection, recording, organization, storage, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination, alignment, combination, blocking, erasure, or destruction.

1.4 **Controller**: The User, who determines the purposes and means of processing Personal Data.

1.5 **Processor**: Shake Technologies, Inc., which processes Personal Data on behalf of the Controller.

1.6 **Sub-processor**: Any third party that Shake engages to process Personal Data on its behalf.

1.7 **Data Subject**: The individual whose Personal Data is being processed.

1.8 **Security Incident**: A breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access to Personal Data transmitted, stored, or otherwise processed.

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2. Roles and Responsibilities

2.1 **Controller's Obligations**: The Controller is responsible for ensuring compliance with Data Protection Law in its use of Shake's services. This includes obtaining necessary consents from Data Subjects where required and ensuring that the processing of Personal Data is limited to the purposes authorized by the Data Subject. The Controller also determines the scope, legal basis, and manner in which Personal Data is processed by Shake.

2.2 **Processor's Obligations**: Shake acts as the data processor and will process Personal Data solely on behalf of and in accordance with the documented instructions of the Controller, as outlined in this DPA. Shake will not process Personal Data for any other purpose, unless required by applicable law.

2.3 **Sub-processors**: Shake may engage Sub-processors to assist with processing Personal Data. Shake will ensure that all Sub-processors are bound by the same data protection obligations imposed on Shake in this DPA. The Controller will be notified of any intended changes regarding the addition or replacement of Sub-processors, allowing the Controller the opportunity to object on reasonable data protection grounds.

2.4 **Limitation of Processing**: Shake shall ensure that any individual or entity authorized to process Personal Data is subject to strict confidentiality obligations, and that access to Personal Data is limited to those individuals who need access to fulfill Shake's obligations under this DPA.

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3. Processing of Personal Data

3.1 **Purpose of Processing**: The Controller instructs Shake to process Personal Data for the following purposes:

- Bug and crash reporting,
- Feedback collection and analysis,
- Software performance optimization,
- Ensuring the security, stability, and reliability of Shake's services, and
- Compliance with legal and regulatory obligations.

3.2 **Categories of Personal Data Processed**:

- **User Identification Data**: Including usernames, email addresses, and other identifiers.
- **Device Information**: Including device model, operating system version, and hardware identifiers.
- **Application Data**: Including app version, logs, stack traces, and crash reports.
- **Communication Data**: Including feedback, comments, and other communications provided by the User.

3.3 **Shake's Use of Personal Data**: Shake will process Personal Data solely for the purpose of providing its services, improving the functionality of the platform, and complying with legal requirements. Shake will not sell or use Personal Data for any other purposes unless explicitly authorized by the Controller or required by law.

3.4 **User Instructions**: Shake will process Personal Data only based on the Controller's documented instructions unless required to do otherwise by law. In such cases, Shake will inform the Controller of the legal requirement before processing unless prohibited from doing so.

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4. Data Security Measures

4.1 **Technical and Organizational Measures**: Shake will implement appropriate technical and organizational security measures to protect Personal Data from unauthorized access, disclosure, alteration, or destruction. These measures may include, but are not limited to:

- Encryption of Personal Data in transit and at rest,
- Regular security audits and risk assessments,
- Access control mechanisms, such as multi-factor authentication and role-based access, to restrict access to Personal Data,
- Data minimization practices, and
- Regular testing, assessment, and evaluation of the effectiveness of security measures.

4.2 **Incident Response**: In the event of a Security Incident, Shake will notify the Controller without undue delay and, in any event, within 72 hours after becoming aware of the incident. The notification will include sufficient details to enable the Controller to meet its obligations under applicable Data Protection Laws.

4.3 **Mitigation and Recovery**: Shake will take necessary steps to mitigate the effects of the Security Incident and to prevent future incidents. Shake will assist the Controller in fulfilling its legal obligations regarding notification to authorities and affected Data Subjects.

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5. Data Subject Rights

5.1 **Assistance with Requests**: Shake will assist the Controller in responding to Data Subject requests to exercise their rights under applicable Data Protection Laws, including:

- Access to their Personal Data,
- Rectification of inaccurate or incomplete data,
- Erasure of their Personal Data,
- Restriction of processing,
- Data portability, and
- Objection to the processing of their Personal Data.

5.2 **Direct Requests**: If Shake receives a request directly from a Data Subject regarding their Personal Data, Shake will promptly notify the Controller and will not respond to the request unless authorized to do so by the Controller, except where required by law.

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6. Use of Sub-processors

6.1 **Approval of Sub-processors**: Shake may engage Sub-processors to process Personal Data on its behalf. Shake will ensure that Sub-processors are bound by the same data protection obligations as outlined in this DPA.

6.2 **Changes in Sub-processors**: Shake will notify the Controller of any changes regarding the appointment of new Sub-processors, providing the Controller with the opportunity to object within 10 days of receiving such notification.

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7. International Data Transfers

7.1 **Transfers Outside the EEA**: Shake may transfer Personal Data outside the European Economic Area (EEA) or to international organizations only in accordance with GDPR requirements. Where such transfers occur, Shake will implement appropriate safeguards such as Standard Contractual Clauses or ensure that the recipient country has been deemed to provide an adequate level of protection.

7.2 **Legal Mechanisms for Transfer**: Shake will ensure that any transfer of Personal Data complies with applicable laws and that any third parties receiving Personal Data maintain the same level of protection required under the GDPR or other applicable laws.

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8. Data Retention and Deletion

8.1 **Retention Policy**: Shake will retain Personal Data only for as long as is necessary to fulfil the purposes outlined in this DPA, or as required by applicable laws.

8.2 **Data Deletion Upon Termination**: Upon termination of the Controller's account, or upon request by the Controller, Shake will securely delete or anonymize all Personal Data processed on behalf of the Controller, unless retention is required by applicable laws.

8.3 **Backup Retention**: Personal Data retained in backup systems will be securely stored and deleted in accordance with Shake's backup retention policies, ensuring compliance with applicable data protection laws.

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9. Liability and Indemnification

9.1 **Limitation of Liability**: Shake's liability under this DPA is limited to the total fees paid by the Controller in the 12 months preceding the incident. This limitation applies to any and all claims related to the processing of Personal Data under this DPA.

9.2 **Exclusion of Indirect Damages**: Shake shall not be liable for indirect, incidental, or consequential damages, including loss of profits, business interruption, or loss of data, except in cases of gross negligence or willful misconduct.

9.3 **Indemnification**: Each party agrees to indemnify and hold the other party harmless from any claims, damages, or losses arising from a breach of this DPA, provided such claims, damages, or losses are directly attributable to the indemnifying party.

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10. Governing Law and Jurisdiction

10.1 **Governing Law**: This DPA is governed by and construed in accordance with the laws of Croatia.

10.2 **Jurisdiction**: Any disputes arising out of or in connection with this DPA shall be subject to the exclusive jurisdiction of the courts of Zagreb, Croatia.

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11. Contact Information

For any questions regarding this DPA or data protection practices, please contact Shake Technologies at friends@shakebugs.com.