

# BILLTRUST DATA PROCESSING ADDENDUM

---

## Controller to Processor

This Billtrust Data Processing Addendum (this “Addendum”) is entered into by and between Factor Systems, Inc. d/b/a Billtrust (“Billtrust”), a corporation formed under the laws of Delaware, with offices located at 1009 Lenox Drive, Suite 101, Lawrenceville, New Jersey 08648, USA, and \_\_\_\_\_, a \_\_\_\_\_ formed under the laws of \_\_\_\_\_, with offices located at \_\_\_\_\_ (the “Customer”) (each, a “Party” and, collectively, the “Parties”) as of the date on which the Customer signs it (the “Addendum Date”). The Parties originally entered into the Billtrust Subscription Agreement (the “Service Agreement”).

WHEREAS, the Parties entered into the Service Agreement and have retained the power to alter, amend, revoke, or terminate the Service Agreement, as provided in the Service Agreement;

WHEREAS, the Parties now wish to amend the Service Agreement to provide that Customer Personal Data (as defined below) transferred between the Parties is Processed (as defined below) in compliance with applicable data protection principles and requirements; and

WHEREAS, the Parties agree that in the event of any conflict between the Service Agreement (including its annexes and appendices) and this Addendum, the provisions of this Addendum shall control;

NOW, THEREFORE, in consideration of the mutual agreements set forth in this Addendum and for other good and valuable consideration, the receipt and sufficiency of which the Parties both acknowledge, the Parties agree as follows:

### **1. Definitions.**

- 1.1. The definitions used in this Addendum shall have the meanings set forth or referenced in this Addendum. Capitalized definitions, not otherwise defined herein, shall have the meaning given to them in the Service Agreement. Except as modified or supplemented below, the definitions of the Service Agreement, as well as all the other terms and conditions of the Service Agreement, shall remain in full force and effect.
- 1.2. For the purpose of interpreting this Addendum, the following terms shall have the meanings set out below:

- (a) "Customer" means the party that has entered into this Addendum with Billtrust, as indicated in the opening paragraph of this Addendum, including all affiliates of that entity that are also bound by the Service Agreement, if any;
- (b) "Customer Personal Data" means any Personal Data Processed by Billtrust or a Subprocessor on behalf of the Customer pursuant to or in connection with the Service Agreement;
- (c) "Contracted Processor" means Billtrust, a Subprocessor, or both collectively;
- (d) "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;
- (e) "GDPR" means 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);
- (f) "Restricted Transfer" means any transfer of Customer Personal Data that would be prohibited by EU Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of EU Data Protection Laws) in the absence of the execution of the Standard Contractual Clauses or another lawful data transfer mechanism, as set out in Section 12 below;
- (g) "Services" means the services and other activities to be supplied to or carried out by or on behalf of Billtrust for the Customer pursuant to the Service Agreement; and
- (h) "Subprocessor" means any person (including any third party but excluding an employee of Billtrust or an employee of any of its sub-contractors) appointed by or on behalf of Billtrust to Process Customer Personal Data on behalf of the Customer in connection with the Service Agreement.

1.3. The terms "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing", "Processor", "Rights of the Data Subject(s)", and "Supervisory Authority", whether capitalized or not, shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

## **2. Applicability.**

2.1. This Addendum will not apply to the Processing of Customer Personal Data, where such Processing is not regulated by EU Data Protection Laws. The Parties to this Addendum hereby agree that the terms and conditions set out herein shall be

added as an addendum to the Service Agreement. Except where the context requires otherwise, references in this Addendum to the Service Agreement are to the Service Agreement as amended or supplemented by, and including, this Addendum.

2.2. The Terms of this Addendum shall take effect on the later of the Addendum Date, or May 25, 2018 (the “Effective Date”) and shall continue concurrently for the term of the Service Agreement.

### **3. Processing of Customer Personal Data.**

3.1. In the context of this Addendum, the Customer acts as a Personal Data Controller and Billtrust acts as a Personal Data Processor with regard to the Processing of Customer Personal Data.

3.2. Billtrust warrants that it will:

(a) comply with all EU Data Protection Laws in the Processing (as further elaborated in Appendix 3 to the Standard Contractual Clauses introduced below) of Customer Personal Data;

(b) not Process Customer Personal Data other than on the Customer’s relevant documented instructions, including with regard to transfers of Customer Personal Data to a Third Country or an international organization, unless such Processing is required by EU Data Protection Laws to which the relevant Contracted Processor is subject, in which case Billtrust shall, to the extent permitted by EU Data Protection Laws, inform the Customer of that legal requirement before the respective act of Processing of those Personal Data; and

(c) only conduct transfers of Customer Personal Data, where such transfer would otherwise be prohibited by EU Data Protection Laws due to there being no applicable lawful exemption or derogation, in compliance with all applicable conditions, as laid down in the EU Data Protection Laws.

3.3. The Customer warrants that it will promptly update, when necessary, via phone call or by submitting a support case, all information, as provided in Exhibit A, and keep all such information complete and up to date.

3.4. The Customer instructs Billtrust (and authorizes Billtrust to instruct each Subprocessor) to Process Customer Personal Data, and in particular, transfer Customer Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the Service Agreement and this Addendum. In the event that in Billtrust’s opinion a Processing instruction given by

the Customer may infringe EU Data Protection Laws, Billtrust shall immediately inform the Customer.

#### **4. Billtrust Personnel.**

4.1. Billtrust shall take reasonable steps to provide for the reliability of any employee, agent, or contractor of any Contracted Processor who may have access to the Customer Personal Data, so that in each case that access is strictly limited to those individuals who need to know or access the relevant Customer Personal Data, as strictly necessary for the purposes of the Service Agreement, and to comply with EU Data Protection Laws in the context of that individual's duties to the Contracted Processor, requiring that all such individuals are subject to formal confidentiality undertakings or professional or statutory obligations of confidentiality.

#### **5. Security of Processing.**

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 to the rights and freedoms of natural persons, Billtrust shall, with regard to Customer Personal Data, implement and maintain appropriate technical and organizational security measures to provide a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR, as well as assist the Customer with regard to ensuring compliance with the obligations pursuant to Article 32 of the GDPR borne directly by the Customer.

5.2. In assessing the appropriate level of security, Billtrust shall take account, in particular, of the risks that are presented by the nature of such Processing activities, and particularly those related to possible Personal Data Breaches.

5.3. In order to comply with these security obligations, Billtrust has implemented the measures reflected in Exhibit A to the Service Agreement.

#### **6. Subprocessing.**

6.1. The Customer authorizes Billtrust to appoint (and permit each Subprocessor appointed in accordance with this Section 6 to appoint) Subprocessors in accordance with this Section 6 and any possible further restrictions, as set out in the Service Agreement and this Addendum.

6.2. Billtrust may continue to use those Subprocessors already engaged by Billtrust as of the Addendum Date, subject to Billtrust meeting the obligations set out in Section 6.4. The list of Billtrust Subprocessors, current as of the Addendum Date, is located in Exhibit B.

6.3. Billtrust shall give the Customer prior notice of the appointment of any new Subprocessor, by way of sending an e-mail to the Client. If, within 14 days of receipt

of each such notice, the Customer notifies Billtrust in writing via email to [ComplianceDept@billtrust.com](mailto:ComplianceDept@billtrust.com) of any objections (on reasonable grounds) to the proposed appointment, Billtrust shall not appoint (or disclose any Customer Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address the objections raised by the Customer and, in turn, the Customer has been provided with a reasonable written explanation of the steps taken to account for any such objections. If the Customer, nevertheless, objects to the proposed appointment, it shall be entitled to terminate the Service Agreement as a remedy.

6.4. With respect to each Subprocessor, Billtrust shall:

- (a) before the Subprocessor first Processes Customer Personal Data (or, where relevant, in accordance with Section 6.2), carry out adequate due diligence to determine that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by this Addendum, the Service Agreement, and EU Data Protection Laws; and
- (b) provide that the arrangement between: on the one hand, (i) Billtrust, or (ii) the relevant intermediate Subprocessor; and on the other hand, the respective prospective Subprocessor, is governed by a written contract, including terms which offer at least the same level of protection for Customer Personal Data as those set out in this Addendum, and that such terms meet the requirements of Article 28(3) of the GDPR.

## **7. Rights of the Data Subjects.**

7.1. Taking into account the nature of the Processing, Billtrust shall assist the Customer by implementing appropriate technical and organizational security measures, insofar as this is possible, for the fulfilment of the Customer's obligations, as reasonably understood by the Customer, to respond to requests to exercise Rights of the Data Subjects under the EU Data Protection Laws.

7.2. With regard to Rights of the Data Subjects within the scope of this Section 7, Billtrust shall:

- (a) promptly notify the Customer if any Contracted Processor receives a request from a Data Subject under any EU Data Protection Laws in respect of Customer Personal Data; and
- (b) require that the Contracted Processor does not respond to that request, except on the documented instructions of the Customer, or as required by EU Data Protection Laws to which the Contracted Processor is subject, in which case Billtrust shall, to the extent permitted by EU Data Protection Laws, inform the Customer of that legal requirement before the Contracted Processor responds to the request.

## **8. Personal Data Breach.**

- 8.1. Billtrust shall notify the Customer without undue delay upon Billtrust or any Subprocessor becoming aware of a Personal Data Breach affecting Customer Personal Data, providing the Customer with sufficient information to allow the Customer to meet any obligations pursuant to the EU Data Protection Laws to report to the Supervisory Authorities or any other competent authorities, and/or inform the Data Subjects of the Personal Data Breach.
- 8.2. Billtrust shall co-operate with the Customer and take all reasonable commercial steps to assist the Customer in the investigation, mitigation, and remediation of each such Personal Data Breach.
- 8.3. Billtrust's notification of or response to a Personal Data Breach under this Section 8 will not be construed as an acknowledgement by Billtrust of any fault or liability with respect to the Personal Data Breach.

## **9. Data Protection Impact Assessment and Prior Consultation.**

- 9.1. Billtrust shall provide the Customer with relevant documentation, with regard to any data protection impact assessments, and prior consultations with Supervisory Authorities or other competent data privacy authorities, when the Customer reasonably considers that such data protection impact assessments or prior consultations are required pursuant to Article 35 or 36 of the GDPR, or pursuant to the equivalent provisions of any other EU Data Protection Laws, but, in each such case, solely with regard to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, the respective Contracted Processors.

## **10. Deletion or Return of Customer Personal Data.**

- 10.1. Billtrust shall provide the Customer with the means, consistent with the way the Services are provided, to request the deletion of Customer Personal Data within the term of this Addendum and the Service Agreement, unless EU Data Protection Laws require or allow storage of any such Customer Personal Data.
- 10.2. Billtrust shall promptly following the date of cessation of Services involving the Processing of Customer Personal Data, at the choice of the Customer, delete or return all Customer Personal Data to the Customer, as well as delete existing copies, unless EU Data Protection Laws require or allow storage of any such Customer Personal Data.

## **11. Confirmation of Compliance.**

- 11.1. Where the Customer is entitled to and desires to review Billtrust's compliance with the EU Data Protection Laws, the Customer may request, and Billtrust will provide (subject to obligations of confidentiality) relevant documentation as further set forth in Exhibit A to the Service Agreement. If the Customer, after having reviewed

any such documentation, still reasonably deems that it requires additional information, Billtrust shall further reasonably assist and make available to the Customer, upon a written request and subject to obligations of confidentiality, all other information (excluding legal advice) and/or documentation necessary to demonstrate compliance with this Addendum, and the obligations pursuant to Articles 32 to 36 of the GDPR in particular, and shall allow for and contribute to audits, including remote inspections of the Services, by the Customer or an auditor mandated by the Customer with regard to the Processing of the Customer Personal Data by the Contracted Processors. Billtrust shall provide the assistance described in this Section 11, insofar as in Billtrust's reasonable opinion such audits, and the specific requests of the Customer, do not interfere with Billtrust's business operations or cause Billtrust to breach any legal or contractual obligation to which it is subject.

11.2. The Customer agrees to pay Billtrust, upon receipt of invoice, a reasonable fee based on the time spent, as well as to account for the materials expended, in relation to the Customer exercising its rights under this Section 11.

## **12. Restricted Transfers.**

12.1. The Customer (as "data exporter") and Billtrust (as "data importer") hereby enter into, as of the Effective Date, the Standard Contractual Clauses (the text of which is available at <https://www.billtrust.com/gdpr/>), which are incorporated by this reference and constitute an integral part of this Addendum. The Parties are deemed to have accepted and executed the Standard Contractual Clauses in their entirety, including the appendices.

12.2. With regard to any Restricted Transfer from the Customer to Billtrust within the scope of this Addendum, one of the following transfer mechanisms shall apply, in the following order of precedence:

- (a) Billtrust's EU-U.S. and Privacy Shield Framework self-certifications (if any);
- (b) the Standard Contractual Clauses (insofar the prospective Restricted Transfer would be considered lawful under this mechanism); or
- (c) any other lawful basis, as laid down in EU Data Protection Laws, as the case may be.

12.3. In cases where the Standard Contractual Clauses apply, and there is a conflict between the terms of the Addendum and the terms of the Standard Contractual Clauses, the terms of the Standard Contractual Clauses shall control.

## **13. General Terms.**

13.1. All clauses of the Service Agreement, that are not explicitly amended or supplemented by the clauses of this Addendum, and as long as this does not

contradict with compulsory requirements of EU Data Protection Laws under this Addendum, remain in full force and effect and shall apply.

- 13.2. Billtrust may amend the terms of this Addendum, insofar as the revised Addendum continues to comply with the relevant requirements of the EU Data Protection Laws, upon notice to the Customer by e-mail to the primary contact on the account. Any such amendments will automatically become effective within 10 days as of Billtrust's transmission of each such notice.
- 13.3. Should any provision of this Addendum be found invalid or unenforceable pursuant to any applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Addendum will continue in effect.
- 13.4. If Billtrust makes a determination that it can no longer meet its obligations in accordance with this Addendum, it shall promptly notify the Customer of that determination, and cease the Processing or take other reasonable and appropriate steps to remediate.

**[ REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK ]**

**[ SIGNATURE PAGE TO THE BILLTRUST DATA PROCESSING ADDENDUM FOLLOWS ]**

**CUSTOMER**

**BILLTRUST**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

[ SIGNATURE PAGE TO THE BILLTRUST DATA PROCESSING ADDENDUM ]

# Exhibit A

---

1.1. The identity and contact information of the Data Protection Officer of the Customer, if applicable, is:

(a) Name: \_\_\_\_\_

(b) E-mail: \_\_\_\_\_

(c) Postal address: \_\_\_\_\_

1.2. The identity and contact information of the EU representative of the Customer, if applicable, is:

(a) Name: \_\_\_\_\_

(b) E-mail: \_\_\_\_\_

(c) Postal address: \_\_\_\_\_

# Exhibit B

---

## List of Subprocessors

Below is a list of the Subprocessors of Billtrust, current as at the Addendum Date of the Addendum, pursuant to Article 6.2 of the Addendum:

1. AWS, Inc. (Amazon Web Services) – U.S.A.;
2. Authorize.net- U.S.A.;
3. Babelway SA – U.S.A.;
4. BluePay Processing, LLC – U.S.A.;
5. BMS Technologies (Bend Mailing Services) – U.S.A.;
6. Broadridge Customer Communications, LLC – U.S.A.;
7. CardConnect, LLC – U.S.A.;
8. Cforia Software- U.S.A.;
9. Concord EFS.net- U.S.A.;
10. CyberSource Corporation- U.S.A.;
11. Datapipe (Rackspace company) – U.S.A.;
12. 3Delta Systems- U.S.A.;
13. Elavon Merchant Services- U.S.A.;
14. Express Lien, Inc. (Zlien) – U.S.A.
15. Flexential Colorado Corp. (formerly ViaWest, Inc.) – U.S.A.;
16. Fiserv, Inc. – U.S.A.;
17. International Direct Response Services (IDRS) – Canada;

18. iPay Technologies, LLC- U.S.A;
19. Laser Printers & Mailing Services, LLC- U.S.A.;
20. MasterCard Remote Payment Processing Services- U.S.A.;
21. Microsoft Corporation (Microsoft Azure) – U.S.A.;
22. PAYMENTECH, LLC- U.S.A.;
23. Plug'nPay – U.S.A.;
24. Retarus (Cloud Fax Services) – U.S.A.;
25. Sungard (FIS) – U.S.A.;
26. Taylor-Demers Mail Processing Inc. – Canada;
27. TC Deliver – U.S.A.;
28. Vantiv, LLC – U.S.A.;
29. West Interactive Corporation – U.S.A.;
30. Zayo Group, LLC (Latisys) – U.S.A.;