Effective Date: September 9, 2022

DATA PROCESSING ADDENDUM

This Data Processing Addendum ("**DPA**") amends and supplements the Flickr Terms of Use ("**Agreement**") entered into between you, the user, together with any company or other business entity you are representing, if any (collectively, "**Photographer**"), and Awes.me, Inc., the owner and operator of the Flickr platform and services ("**Flickr**") and is hereby incorporated by reference into the Agreement. All capitalized terms not otherwise defined in this DPA will have the meaning given to them in the Agreement. If there is any inconsistency or conflict between this DPA and the rest of the Agreement as it relates to data protection, this DPA will govern.

DEFINITIONS.

"**Data Protection Legislation**" means all applicable laws and other legal requirements applicable to the processing of personal data, including, as applicable: (a) the GDPR; (b) the GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 and the UK Data Protection Act 2018 (the "**UK GDPR**") (c) the Federal Data Protection Act of 19 June 1992 (Switzerland); (d) the California Consumer Privacy Act, as amended by the California Privacy Rights Act and any binding regulations promulgated thereunder ("**CCPA**"); and (e) any other data protection law and any guidance or statutory codes of practice issued by any relevant regulatory or government authority, in each case, as amended from time to time and any successor legislation to the same.

"**GDPR**" means the General Data Protection Regulation (EU) 2016/679 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, and any amendment or replacement to it.

"**Standard Contractual Clauses**" means (a) with respect to restricted transfers (as such term is defined under Applicable Privacy Law) which are subject to the EU GDPR and other Applicable Privacy Laws pursuant to which the same have been adopted, as set out in the European Commission's Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to GDPR, as may be amended or replaced by the European Commission from time to time, and (b) with respect to restricted transfers subject to the UK GDPR, the International Data Transfer Addendum to the EU Commission Standard Contractual of 21 March 2022, as may be amended or replaced by the UK Information Commissioner's Office from time to time (the "*UK SCCs*").

The terms "**controller**," "**data subject**," "**personal data,**" "**personal data breach**," "**processing**," "**processor**," and "**supervisory authority**" as used in this DPA will have the meanings ascribed to them in the GDPR, regardless of whether the GDPR applies.

SCOPE; ROLE OF THE PARTIES.

This DPA applies only to personal data. Flickr and Photographer agree that to the extent Photographer views itself to be a controller of personal data, Flickr serves as the processor and the data importer with regards to the processing and transfer of such personal data; and Photographer serves as the controller and the data exporter with regards to the processing and transfer of such personal data.

STANDARD CONTRACTUAL CLAUSES.

The Standard Contractual Clauses apply to the processing of personal data in connection with the Agreement. The Standard Contractual Clauses are intended to satisfy Article 28 of the GDPR, which requires an agreement between a controller and processor, and other applicable Data Protection Legislation, which also may require an agreement that addresses the parties' obligations with regarding to the processing of personal data. The personal data subject to processing by Flickr, along with the

purposes and duration for which processing will occur are addressed in Annex II.

The Standard Contractual Clauses also apply to restricted transfers of personal data in connection with the Agreement to countries which do not ensure an adequate level of data protection within the meaning of applicable Data Protection Legislation. The Controller-to-Processor Standard Contractual Clauses shall apply to such transfers. For Clause 7, the docking clause shall apply. For Clause 11, the optional redress language shall apply. For Clause 13, the supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C to this DPA, shall act as competent supervisory authority For clauses 17 and 18 of the Standard Contractual Clauses, the governing law and forum/jurisdiction shall be Germany. Part 1 (Tables) of the UK SCCs shall be deemed to be pre-populated with the relevant sections of Annexes I through III of this DPA. For the purposes of Table 4 in Part 1 (Tables) of the UK SCCs, the parties select the "neither party" option.

SUPPLEMENTAL TERMS.

<u>Engagement of Sub-Processors</u>. Pursuant to Clause 9 of the Standard Contractual Clauses, and as otherwise required by Data Protection Legislation, Photographer hereby authorizes Flickr's engagement of the sub-processors in Annex III ("**Authorized Sub-Processor**"). Flickr will not engage any sub-processors other than the Authorized Sub-Processor without Photographer's general authorization. Flickr will obtain such general authorization in accordance with the procedure set forth in Clause 9 of the Standard Contractual Clauses, provided that a 30-day notice period shall apply.
Flickr may provide such notice through an industry-standard mechanism, provided Flickr first informs Photographer of such mechanism directly in writing. If Photographer objects in writing to a proposed sub-processor, Photographer's sole and exclusive remedy will be to terminate the affected product under the Agreement and receive a pro-rated refund of any prepaid fees for such product, with the pro-rated period commencing on the date the applicable sub-processor is engaged. General authorization will be inferred by the lack of a written objection from Photographer by the end of the 30-day notice period.

<u>Audit</u>. Without limiting the obligations contained in Clause 8.9 of the Standard Contractual Clauses and as otherwise required by Data Protection Legislation, Flickr shall permit Photographer and/or its authorized agents, at Photographer's cost, to audit its written records and systems to the extent reasonably required in order to confirm that Flickr is complying with its obligations under this DPA, provided always that any such audit does not involve the review of any third-party data and that the records and information accessed in connection with such audit are treated as Flickr's confidential and proprietary information. Photographer shall bear its own costs in relation to such audit.

<u>Data Subject Rights, Assistance, Accuracy and Data Deletion</u>. Without limiting the obligations contained in Clauses 8.4, 8.5, 10 and 16(d) of the Standard Contractual Clauses, the parties agree that the following clarifications apply to such Clauses: (i) Flickr may, without prior authorization from Photographer, respond to a direct request from a data subject in circumstances where the scope of the request is unclear to seek to verify whether the request relates to Photographer; (ii) before requesting Flickr's assistance in responding to requests from data subjects, Photographer shall use all reasonable efforts to first action such request through its independent use and administration of the Services; (iii) given the nature of the processing and purpose for which the Services are used, Flickr shall not be responsible for monitoring the accuracy and relevance of personal data; and (iv) deletion and return of personal data shall be the responsibility of Photographer through its independent use and administration of the Services, and upon expiration or termination of the Agreement, Photographer shall delete and/or export all personal data from the Services in accordance with the terms in the Agreement.

<u>Security</u>. Flickr shall at least implement the technical and organizational measures specified in Annex II to ensure the security of personal data.

<u>Personal Data Breach Notification</u>. Flickr's obligations relating to notification of personal data

breaches shall align with Clauses 8.6(c) of the Standard Contractual Clauses.

Additional Processing Terms. If not already prohibited by other obligations in this DPA, Flickr will not "sell" (as defined in the CCPA), retain, use or disclose personal data for any purposes other than specified in this DPA or the Agreement. Flickr shall not combine personal data it receives from, or on behalf of, Photographer with personal data that it receives from, or on behalf of, another entity, or collects from its own interaction with an individual, provided that Flickr may combine personal data to the extent such processing is provided for in the Agreement.

GOVERNING LAW.

Without prejudice to Clauses 17 and 18 of the Standard Contractual Clauses: (a) this DPA shall be governed by the laws of the country or territory stipulated for this purpose in the Agreement; and (b) the parties submit to the choice of jurisdiction set forth in the Agreement with respect to any disputes or claims arising under this DPA. For the avoidance of doubt, the Standard Contractual Clauses (including without limitation, Clauses 13, 17 and 18 of the same) do not apply if the processing of personal data in connection with the Agreement is not subject to GDPR.

MISCELLANEOUS.

All provisions of the Agreement remain in effect as supplemented by this DPA. Flickr agrees that it shall notify Photographer within five (5) days of becoming aware of Flickr's inability to meet its privacy and security obligations under this DPA. In case of conflict or inconsistency between the Agreement, the body of this DPA, the Standard Contractual Clauses, the following order of precedence governs: (a) the Standard Contractual Clauses; (b) the body of this DPA; then (c) the Agreement.
Notwithstanding the foregoing, remedies under this DPA are limited to the remedies set forth in the Agreement. For the avoidance of doubt, Flickr's liability for breach of its obligations in this DPA is subject to the limitation of liability provisions in the Agreement. This DPA (which includes the Addendums, Appendices and Annexes attached hereto), together with the Agreement, constitutes the entire agreement between the parties and supersedes any other prior or contemporaneous agreements or terms and conditions, written or oral, concerning its subject matter. If any provision of this DPA is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed, and the remainder of terms will remain in full effect. This DPA shall not be binding unless and until fully signed and delivered by both parties. The parties may sign and deliver this DPA electronically.

ANNEX I

A. LIST OF PARTIES

1. Photographer Name:

Photographer Address:

If applicable, contact person's name, position and contact details within Photographer's organization:

Activities relevant to the data transferred under these Clauses: See ANNEX II

Signature and date:

2. Name: Awes.me, Inc. d/b/a Awesome (f/k/a SmugMug, Inc.)

Address: 548 Market St PMB 32047 San Francisco, California 94104-5401 USA

Contact person's name, position and contact details: Smrithi Mohan, DPO, smrithi@smugmug.com

 Activities relevant to the data transferred under these Clauses: See ANNEX II

Signature and date:

B. DESCRIPTION OF TRANSFER

Processing 1:

Date of Creation/Last Change

09.06.2022

Nature of Processing

Processing of images and videos that Photographer uploads to or creates in the Services or Products of Flickr or the processing of any labels, tags, comments, descriptions or categorizations that Photographer adds to those images and videos in the Services or Products.

Purpose(s) of the data transfer and further Processing

Provision of the Services as described in the main Agreement.

Categories of Data Subjects whose personal data is transferred

Data Subject of Photographer personal data (such as persons depicted on photos uploaded by a Photographer) or other individuals who have engaged in one or more transactions with Photographer.

Categories of Personal Data transferred

Name; date of birth; email address; physical address; country of residence; title / position; payment details; phone number; username / user ID; IP address; MAC address (or other device identifiers automatically assigned to your device when you access the internet)

Sensitive Data transferred (if applicable) and applied restrictions or safeguards

N/A

Retention Period

As long as is necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period. For example, photos and videos that are marked for deletion or that are in an account that gets closed, are de-published almost immediately and are permanently removed from backup copies 30 days later.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Sub-processors shall process personal data on instructions from Flickr as needed to deliver the Services during the relevant Agreement term.
As per Column 2 and 3 of this chart, applicable Sub-processors will process personal data as necessary to perform the Services pursuant to the Agreement. Subject to Column 7 of this chart, applicable Sub-processors will process personal data for as long as necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

Identities of the Sub-processors used for the provision of the Services and their specific processing activities are addressed in Annex III.

Specific additional Technical and Organizational Measures

No additional Technical and Organizational Measures.

Frequency of the transfer:

In all cases, data is transferred on a continuous basis.

Data protection agreement

Module 2

Parties to the Processing activity and their roles

Data exporter; data importer

<u>Processing 2:</u>

Date of Creation/Last Change

09.06.2022

Nature of Processing

Storage of personal data

Purpose(s) of the data transfer and further Processing

Data analytics and business purposes

Categories of Data Subjects whose personal data is transferred

Photographer and data subject of the Photographer (such as persons depicted on photos uploaded by a Photographer).

Categories of Personal Data transferred

Name; date of birth; email address; physical address; country of residence; title / position; payment details; phone number; username / user ID; IP address; photos, images and related metadata; content of communications and files the Photographer inputs, uploads, or creates; content of Photographer`s activity such as likes, comments, etc.; content of and information provided through customer support communication.

Sensitive Data transferred (if applicable) and applied restrictions or safeguards

N/A

Retention Period

As long as is necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Sub-processors shall process personal data on instructions from Flickr as needed to deliver the Services during the relevant Agreement term.
As per Column 2 and 3 of this chart, applicable Sub-processors will process personal data as necessary to perform the Services pursuant to the Agreement. Subject to Column 7 of this chart, applicable Sub-processors will process personal data for as long as necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

Identities of the Sub-processors used for the provision of the Services and their specific processing activities are addressed in Annex III.

Specific additional Technical and Organizational Measures

No additional Technical and Organizational Measures.

Frequency of the transfer:

In all cases, data is transferred on a continuous basis.

Data protection agreement

Module 2

Parties to the Processing activity and their roles

Data exporter; data importer; sub-processor

Processing 3:

Date of Creation/Last Change

09.06.2022

Nature of Processing

Duplicating data for Operations and Engineering purposes

Purpose(s) of the data transfer and further Processing

Delivering the service as described in the Agreement.

Categories of Data Subjects whose personal data is transferred

Photographer and data subject of the Photographer (such as persons depicted on photos uploaded by a Photographer).

Categories of Personal Data transferred

Photo metadata; data that is needed to serve images.

Sensitive Data transferred (if applicable) and applied restrictions or safeguards

N/A

Retention Period

As long as is necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Sub-processors shall process personal data on instructions from Flickr as needed to deliver the Services during the relevant Agreement term.
As per Column 2 and 3 of this chart, applicable Sub-processors will process personal data as necessary to perform the Services pursuant to the Agreement. Subject to Column 7 of this chart, applicable Sub-processors will process personal data for as long as necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

Identities of the Sub-processors used for the provision of the Services and their specific processing activities are addressed in Annex III.

Specific additional Technical and Organizational Measures

No additional Technical and Organizational Measures.

Frequency of the transfer:

In all cases, data is transferred on a continuous basis.

Data protection agreement

Module 2

Parties to the Processing activity and their roles

Data exporter; data importer; sub-processor

Processing 4:

Date of Creation/Last Change

09.06.2022

Nature of Processing

Accessing and visualizing data

Purpose(s) of the data transfer and further Processing

Delivering customer service, marketing services, data science, business development and for security purposes.

Categories of Data Subjects whose personal data is transferred

Photographer and data subject of the Photographer (such as persons depicted on photos uploaded by a Photographer)

Categories of Personal Data transferred

Photos, images and related metadata

Sensitive Data transferred (if applicable) and applied restrictions or safeguards

N/A

Retention Period

As long as is necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Sub-processors shall process personal data on instructions from Flickr as needed to deliver the Services during the relevant Agreement term.
As per Column 2 and 3 of this chart, applicable Sub-processors will process personal data as necessary to perform the Services pursuant to the Agreement. Subject to Column 7 of this chart, applicable Sub-processors will process personal data for as long as necessary for the use of the Services or - insofar as legal retention periods exist beyond this - for the duration of the legally prescribed retention period.

Identities of the Sub-processors used for the provision of the Services and their specific processing activities are addressed in Annex III.

Specific additional Technical and Organizational Measures

No additional Technical and Organizational Measures.

Frequency of the transfer:

In all cases, data is transferred on a continuous basis.

Data protection agreement

Module 2

Parties to the Processing activity and their roles

Data exporter; data importer; sub-processor

C. COMPETENT SUPERVISORY AUTHORITY

The competent supervisory authority depends on the registered office of the respective Data Exporter(s).

ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Description of the technical and organizational measures implemented by the data importer(s):

Secure firewall

Anti-virus software

Authentication via password entry or biometric scans

Logging of access to applications and processes such as data destruction

Database security controls restrict access

Users are issued their own logins; passwords must adhere to constraints in length, complexity, aging and history

Automatic time-out of user terminal if left idle, identification and password required to reopen

Automatic turn-off of the user ID when several erroneous passwords are entered, log file of events (monitoring of break-in-attempts)

Staff policies in respect of each staff access rights to Personal Data (if any), informing staff about their obligations and the consequences of any violations of such obligations, to ensure that staff will only access Personal Data and resources required to perform their job duties and training of staff on applicable privacy duties and liabilities

All access to data content is logged, monitored, and tracked

Use of state-of-the-art encryption technologies

Technical and organizational measures taken by sub-processors:

Locking systems with code locks

Chip cards for locked areas

Regulations on card-keys

Restriction on card-keys

Access barriers secured with biometric features

Data protection compliant video surveillance

Locking external interfaces

Locking of device housings on servers

Security locks

Data protection compliant destruction of data carriers (files, drives etc.)

ANNEX III – LIST OF SUB-PROCESSORS

The controller has authorized the use of the following sub-processors: [Attached]

Effective Date: September 9, 2022

DATA PROCESSING ADDENDUM

ANNEX III – LIST OF SUB-PROCESSORS

The controller has authorized the use of the following sub-processors:

Name: **Amazon Web Services**

Address: AWS Compliance, 410 Terry Avenue North, Seattle, WA 98109-5210, USA

Contact details: https://pages.awscloud.com/compliance-contact-us.html

Description of processing: New user sign-up and identity management, data center hosting and applicable infrastructure, database query interface, database management

Name: **Adobe Analytics**

Address: Adobe Systems Software Ireland Limited 4-6 Riverwalk, City West Business Campus Dublin 24 Ireland

Contact details: dpo@adobe.com

Description of processing: User data analytics torecord user actions performed on service and create reports

Name: **Braintree (PayPal)**

Address: PayPal, 2211 North First Street, San Jose,. CA 95131, United States

Contact details: www.braintreepayments.com

Description of processing: Payment processor

Name: **CloudApp**

Address: 548 Market Street, Suite 35577, San Francisco, CA 94104, United States

Contact details: compliance@getcloudapp.com

Description of processing: User session recording and screen capture tool

Name: **Digital River**

Address: Digital River, Inc. 10380 Bren Road West Minnetonka, MN 55343

Contact details: privacy@digitalriver.com

Description of processing: Payment processor

Name: **Elasticsearch**

Address: Elasticsearch B.V., Keizersgracht 281, 1016 ED Amsterdam, The Netherlands

Contact details: privacy@elastic.co

Description of processing: Data analytics and search functionality

Name: **Evernote**

Address: Evernote Corporation, 2400 Broadway, Suite 210, Redwood City, California 94063, United States

Contact details: privacy@evernote.com

Description of processing: Internal organization tool

Name: **Focus Vision**

Address: FocusVision Worldwide Inc., 5 Hanover Square, Suite 502, New York, NY 10004

Contact details: dataprotectionofficer@confirmit.com, +1 212 660 1800

Description of processing: User experience research and survey tool

Name: **Front**

Address: Front App, Inc., 1455 Market Street, Floor 19, San Francisco, CA 94103, United States

Contact details: privacy@frontapp.com

Description of processing: Email workflow and analytics

Name: **GSuite (Google)**

Address: 1600 Amphitheatre Parkway in Mountain View, California, USA

Contact details: Privacy Help Center: 855-548-2777, https://support.google.com/policies/contact/general_privacy_form

Description of processing: Internal communication and business tools

Name: **HighTail**

Address: OpenText Data Protection Officer, Prof. E.M. Meijerslaan 1, 1183 AV Amstelveen, The Netherlands

Contact details: DPO@opentext.com

Description of processing: Digital authentication and file sharing

Name: **Intercom**

Address: 55 2nd Street, 4th Floor, San Francisco, CA 94105

Contact details: https://preferences.intercom.com/privacy

Description of processing: User communication service

Name: **Iterable**

Address: 71 Stevenson St, #300, San Francisco, CA, 94105, United States

Contact details: compliance@iterable.com

Description of processing: Email and marketing communications

Name: **Jira (Atlassian)**

Address: Atlassian Pty Ltd, % Atlassian, Inc., 350 Bush St, Floor 13, San Francisco, CA 94104, United States

Contact details: privacy@atlassian.com

Description of processing: User technical support management

Name: **Lookback**

Address: Lookback Group, Inc., 470 Ramona St, Palo Alto, CA 94301, United States

Contact details: dpo@lookback.io

Description of processing: User survey and usability testing

Name: **Print Labs (BayPhoto's; EzPrints; WHCC; Loxley)**

Address: Bay Photo Lab, 920 Disc Dr, Scotts Valley, CA 95066, United States; EZPrints, 265 Mitchell Road, #1347, Norcross, GA 30071, United States; Loxley Colour, 1 Drum Mains Park, Cumbernauld, Glasgow G68 9LD, UK

Contact details: smugmug@bayphoto.com; support@certifiedcustomercare.com; customerservice@whcc.com; smugmug@loxleycolour.com

Description of processing: Processing of customer contact details (first name, last name, email, shipping address (City, State, Zip Code, Country Code. phone number, shipping method) for purposes of printing photos

Name: **Salesforce**

Address: salesforce.com inc., Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, CA 94105, United States

Contact details: https://www.salesforce.com/form/contact/contact-privacy.jsp

Description of processing: User database management

Name: **Sift**

Address: 525 Market Street, 6th Floor, San Francisco, CA 94105, United States

Contact details: support@sift.com

Description of processing: Risk management and fraud detection service

Name: **Slack**

Address: Slack Technologies, LLC, 500 Howard St, San Francisco, CA 94105, United States

Contact details: privacy@sack.com

Description of processing: Internal messaging and communication platform

Name: **Snowplow**

Address: Snowplow Analytics Limited, 17 Bevis Marks, Floor 6, London, EC3A 7LN, United Kingdom

Contact details: info@snowplow.io

Description of processing: Data analytics

Name: **Splunk**

Address: Splunk Inc., 270 Brannan Street, San Francisco, CA 94107, United States

Contact details: dpo@splunk.com

Description of processing: Real-time data monitoring

Name: **Stripe**

Address: 354 Oyster Point blvd, South San Francisco, CA 94080, United States

Contact details: privacy@stripe.com

Description of processing: Payment processor: Payment processing

Name: **ZenDesk**

Address: 989 Market St., San Francisco, CA, 94103, United States

Contact details: privacy@zendesk.com

Description of processing: Cloud-based customer support services

Name: **Zoom**

Address: 55 Almaden Blvd, San Jose, CA 95113, United States

Contact details: privacy@zoom.us

Description of processing: Internal video conferencing