

# GREY GLOBAL GROUP LLC

## PURCHASE ORDER TERMS AND CONDITIONS

### GENERAL TERMS AND CONDITIONS

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- Ownership/License: Purchaser is acting as agent for the client named on the Order (the “Client”) in accordance with the principle of sequential liability and therefore Purchaser will only be liable for payment obligations to Supplier to the extent Purchaser has been paid by Client for any amount payable to Supplier under this Agreement. For amounts not paid to Purchaser by Client, Supplier will seek payment solely from Client. Supplier is acting as an independent contractor, and all materials created under the Order, including without limitation all artwork, layouts, photographs, scripts, ideas, concepts, characters, specifications, graphics, films, programs, software and other property or materials furnished hereunder (the “Materials”), are specially commissioned for but are not limited to, inclusion in advertising and/or commercial materials for Client. Subject solely to the limitations specifically set forth on the Order (if any), all Materials shall be deemed to be works for hire for Client under the U.S. Copyright Act, and will be and remain the absolute and exclusive property of Client, its successors and assigns, in perpetuity. Supplier further agrees to execute and cause others who in any way contribute to the creation of the Materials to execute all further documents that, in the judgment of Client and/or Purchaser, are required or useful to establish, protect or enforce the rights herein granted or confirmed. To the extent necessary to vest full ownership of the Materials with Client, Supplier hereby irrevocably sells, transfers, and assigns all rights, title and interest, including the copyright in and to the Materials to Client, and its successors and assigns, without limitation. Such rights include, but are not limited to: (a) the right to use, publish, display or reproduce the Materials in advertising or for the purposes of trade or for any other purpose whatsoever; (b) the right to alter, retouch, or crop or simulate the Materials in any way; (c) the right to secure copyright in the Materials anywhere throughout the world; (d) the right to license, exploit, sell, assign, or otherwise dispose of the Materials or any of the said rights included therein for any purpose which Purchaser, Client and their assigns and licensees may see fit; and (e) any and all subsidiary rights in the Materials including characters or parts which are contained in the Materials. Without limiting the generality of the foregoing, Supplier hereby waives any and all claims of „moral rights“ and other rights of any kind or nature that it has related to the Materials and hereby conveys to Client any such rights of Supplier as may exist without reservation or limitation. Supplier agrees that Purchaser shall have the right, without prior approval, to use the Materials following their publication to promote Purchaser’s services, including without limitation use on Purchaser’s website.
- Representations and Warranties: Unless otherwise specified on the Order, Supplier hereby represents and warrants: (a) that all assignments, releases, permissions, clearances, consents and waivers (collectively, “Releases”) have been obtained, in writing, from any and all persons or companies whose name, likeness, voice, prop, costume, property or other attribute is contained in the Materials provided in connection with this Order and may be used throughout the world and in perpetuity, without limitation, and Supplier shall furnish Purchaser with a copy of such signed Releases; (b) that it has the full and unencumbered right and authority to license, sell or assign the rights herein conveyed (as applicable), or in the case of Materials under the work for hire provisions of the U.S. Copyright Act to confirm the Client’s authorship thereof under such statute, and the same may be used or reproduced for advertising or trade purposes, or for any other purpose whatsoever, without violating any laws or the rights of any third parties; (c) that it has not made and shall not make any disposition of any copyright or other interest in any of the Materials, whether in assignment or encumbrance, and confirms that all copyright and other rights stated herein are subject to the full and exclusive enjoyment by Client; (d) the prices specified in the Order are no less favorable than those which Supplier would be willing to offer to or accept from any other party for the services to be rendered or the goods to be sold and such prices comply in all aspects with the laws, rules and regulations relating thereto; (e) all goods and services provided hereunder will be provided in a professional manner with due care, in compliance with all laws, rules and regulations, and in accordance with all specifications; and (f) Supplier will comply with the WPP Code of Business Conduct in connection with the goods and/or services Supplier is providing hereunder, which can be found at <http://vendorterms.townhouseww.com>.
- Collection of Data By Supplier. Supplier acknowledges that to the extent it is collecting any PII (as defined in Exhibit 1 A below) or Personal Data (as defined in Exhibit B) under this Agreement, it shall get prior written approval from

Purchaser in each instance. Collection and use of PII and/or Personal Data and other applicable information as specified in Exhibit A and Exhibit B as well as the provision of services and/or Materials hereunder shall be subject to the terms of Exhibit A. If the provision of services and/or Materials hereunder involves the processing of Personal Data (as defined in Exhibit B below), then Supplier will comply, and will require that its personnel and subcontractors comply, with Exhibit B. In the event of any conflict or inconsistency between the relevant requirements of Exhibit A and Exhibit B, the most-stringent requirement will control.

4. Cancellation: Purchaser may cancel this Order at any time prior to its acceptance of the Materials or work covered by this Order, upon written notice to Supplier. In such event, unless such termination is based on Supplier's breach, Purchaser shall be liable to pay Supplier, in lieu of the price specified in this Order, any verified direct costs incurred by Supplier in the performance of its obligations hereunder prior to such cancellation, provided, however, that the total amount of such costs shall not exceed the price specified on the Order for those Materials that have been completed, in whole or in substantial part, by Supplier. It is agreed that time is of the essence and that Purchaser may, at its election, cancel this order or any part thereof without further obligation if this Order is not fulfilled within the time specified or, if no time is specified, within a reasonable time.
5. Early Delivery: Supplier's signature on the Order confirms Supplier's agreement to the terms herein. Notwithstanding the foregoing, if delivery is made prior to Supplier's signing this Order, Supplier's delivery of the Materials will constitute its unqualified acceptance of all the terms of this Order, including the transfer of copyright to Client.
6. Acceptance: The Materials supplied hereunder must comply with Purchaser's specifications and are subject to Purchaser's approval. Purchaser's payment for the Materials shall not constitute its acceptance thereof and the Materials shall be received subject to inspection, approval and privilege of return at Supplier's expense if not in compliance with the specifications hereof. In the event of such return, without limiting any other remedies available to Purchaser, Purchaser shall be entitled to a refund of all amounts paid. Defects are not waived by Purchaser's failure to notify Supplier of such defects upon receipt of the Materials.
7. Assignment: This Order or any sums payable hereunder may not be assigned by Supplier without the prior written consent of Purchaser.
8. Taxes: Supplier agrees that prices quoted and shown on this Order include any and all applicable Federal, state and local taxes. Liability for any other sales and use or similar taxes and any penalties and interest charges due on these taxes shall be Supplier's sole responsibility. In the event Purchaser is required to pay such amounts for whatever reason, Supplier agrees to immediately reimburse Purchaser therefore.
9. Property: Any and all property of Purchaser or Client, in the possession or control of Supplier, shall be and remain the property of Purchaser or Client (as applicable), and Supplier shall be responsible for any loss or damage occurring to such property while such is in Supplier's possession or control.
10. Books and Records: Supplier agrees to keep such books and records as shall readily disclose the basis for any charges ordinary or extraordinary billed to Purchaser under this Order and all other records pertaining to the services provided hereunder, and shall make them available for examination and audit by Purchaser and/or Client or an outside auditor chosen by and paid for by Purchaser and/or Client for a period of three years after receipt by Supplier of final payment under this Order. For such period of three years, Purchaser and/or Client shall have the right to audit (i) the books and records relating to all such charges, and (ii) any other materials related to Supplier's compliance with the terms and conditions of this Order, and Supplier, upon request of Purchaser or Client, shall make all such books and records available for such examination. If, upon such audit, Client or Purchaser shall determine that Supplier's charges exceed the amounts properly chargeable to Purchaser or Client as the case may be, Supplier shall without limiting Purchaser's other available rights or remedies promptly refund to Purchaser or Client, as appropriate, the amount of such overcharges.
11. Confidentiality: Supplier covenants and agrees that it will not, at any time, disseminate, reveal or otherwise make available to any person, or use for its own purposes, any information of a proprietary or confidential nature concerning Purchaser or Client obtained by it regarding, but not limited to, trade secrets and confidential information, advertising matters, ideas, plans, techniques and accounts, products, business, customers or methods of operation, except as otherwise required in the performance of its obligations hereunder. Supplier expressly agrees that the existence and negotiation of this Order shall be considered Purchaser's and Client's confidential information subject to the restrictions contained in this provision. Prior to using the Materials for self-promotional purposes, Supplier must obtain written approval from Purchaser. Supplier further agrees to execute Purchaser's and/or Client's standard confidentiality<sup>2</sup>

agreement upon request by Purchaser.

12. Indemnification: Supplier agrees to indemnify and hold harmless Purchaser, Client, and their respective subsidiaries, affiliates, parents, partners, officers, directors, employees, agents, assigns and licensees from and against any damages, claims, losses or expenses (including reasonable attorney's fees and expenses) any of them may incur or be liable for arising out of or resulting from: (a) any breach or alleged breach by Supplier of any representation or warranty made by Supplier hereunder; (b) the performance of this Order by Supplier (including but not limited to Supplier's employees, agents, subcontractors and designees); and (c) the use or reproduction in any manner whatsoever, including advertising or trade purposes, of the Materials.
13. Limitation Of Liability: IN NO EVENT SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR MORE THAN THE TOTAL AMOUNT ACTUALLY DUE AND PAYABLE TO SUPPLIER AS SPECIFIED IN THE ORDER. UNDER NO CIRCUMSTANCES SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER PURCHASER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
14. Insurance: Supplier shall carry and maintain commercially reasonable amounts of ordinary and necessary business insurance including comprehensive general liability and errors and omissions (a limit of at least One Million Dollars per occurrence in each case) and the statutory requirements for worker's compensation, and upon request, shall provide Purchaser with certificates of insurance that list Purchaser as additional insured.
15. Payments: Delivery charges must be fully prepaid by Supplier unless other terms are specified herein. Payments shall be made by Purchaser, at such time as Purchaser is in receipt of satisfactory materials, Releases and invoices, as herein above described. Any and all additional costs incurred due to changes in this Order specifications/overages must be submitted in writing and approved by Purchaser along with estimate/explanation and Purchaser is not responsible for any unapproved additional costs. All vendors that Supplier hires will bill Supplier directly (as opposed to Purchaser or Client) except as otherwise expressly agreed by Purchaser in writing.
16. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Supplier shall, in filling this Order, comply with the Equal Employment Opportunity and Affirmative Action Clauses as set forth by the Department of Labor, 41 C.F.R. Sections 601, 60-4, 60-250 and 60-741 (and as further modified, amended or superseded), the provisions of which are incorporated herein by this reference insofar as they are required by such regulations and unless exempted by applicable statutes, rules, regulations or orders. If this Order is a subcontract under any government contract or subcontract, Supplier will execute a separate certificate of EEO compliance.
17. Gifts And Conflicts Of Interest: Supplier shall not make or offer a gratuity or gift of any kind to Purchaser employees or their families. Supplier shall not engage in any activity with Purchaser employees, competitors, or affiliates that could be perceived as creating a conflict of interest situation unless, after full disclosure of all relevant facts, Purchaser agrees that no conflict in fact is present.
18. Miscellaneous: The terms and conditions set forth herein constitute the entire agreement between the parties with respect to the Materials or work to be performed pursuant to this Order and said terms and conditions may not be modified or amended, except by an agreement in writing that specifically references these terms and conditions and that has been signed by Purchaser's authorized representative. Notwithstanding Purchaser's payment hereunder, any other documents originating with Supplier shall not satisfy the requirements of the preceding sentence. It is a condition of this Agreement that Supplier does not attempt to impose its own terms and conditions on Purchaser, and any attempt by Supplier to unilaterally amend the Order or to impose additional obligations on Purchaser shall be deemed null and void and to be a material breach hereof. No waiver by Purchaser shall be valid unless in writing and signed by Purchaser. This Order shall be construed pursuant to the laws of the State of New York regardless of its conflict of laws provisions. The parties hereto agree that the state and federal courts sitting in New York, New York shall be the exclusive forum and situs for the resolution of any and all disputes, controversies or matters arising herefrom or related hereto.
19. Severability. If any provision of this Order is held to be invalid, illegal or unenforceable for any reason whatsoever,<sup>3</sup>

then notwithstanding such invalidity, illegality or unenforceability, such provision shall be enforced to the maximum extent permitted by law and the remaining terms and provisions of this Order shall remain in full force and effect in the same manner as if the invalid, illegal or unenforceable provision had not been contained herein.

20. Software/Hardware - In addition to the Terms and Conditions which are hereby incorporated by this reference, if the Order requires software or hardware to be provided, then the following shall also be applicable to Supplier: Notwithstanding any other provision herein, to the extent any of Supplier's or any third party's software applications, databases, computer programs (including source code and object code for any such programming), executable code or computer hardware (collectively, "Software/Hardware") are incorporated into the Materials or are otherwise provided hereunder, Supplier agrees to identify any pre-existing Software/Hardware and further agrees that unless otherwise specified in the Order, Supplier grants to Purchaser a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser) all or any portion of the pre-existing Software/Hardware incorporated into the Materials or otherwise delivered to Purchaser in connection with the this Agreement. For clarity, it is understood that, subject to Supplier's rights in all pre-existing Software/Hardware, Purchaser shall own all original Software/Hardware created hereunder and such original Software/Hardware shall be deemed part of the Materials. Supplier represents and warrants that: (a) the Software/Hardware, and the ideas they express, are original and do not violate or infringe the rights of any other party and that it has the unencumbered right and authority to grant all licenses herein granted; (b) that all Software/Hardware provided under this Order will perform in accordance with specifications; (c) that the provision of the Software/Hardware (and Customer's exercise of its license to use the same) will not in any way constitute an infringement or other violation of any copyright, patent, trademark, trade secret or other proprietary or personal rights of any third party or any applicable law or regulation; and (d) that the Software/Hardware shall be free of any virus, Trojan horse, timebomb or other harmful or disabling code.

## ART AND PHOTOGRAPHY TERMS AND CONDITIONS

*In place of the [Terms and Conditions](#) stated above, if the Order requires photography, artwork, models or beauty stylist services to be provided, then the following terms and conditions shall instead be applicable to Supplier:*

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1. Ownership/License: Purchaser is acting as agent for the client named on the Order (the "Client"). Supplier is acting as an independent contractor, and all materials created under the Order, including without limitation all artwork, layouts, photographs, ideas, concepts, characters, specifications, graphics, films, and other property or materials furnished hereunder (the "Materials"), are specially commissioned for but are not limited to, inclusion in advertising and/or commercial materials for Client. Subject solely to the limitations specifically set forth on the Order (if any), Supplier hereby irrevocably sells, transfers, and assigns all rights, title and interest, including the copyright in and to the Materials to Client, and its successors and assigns, without limitation. Such rights include, but are not limited to: (a) the right to use, publish, display or reproduce the Materials in advertising or for the purposes of trade or for any other purpose whatsoever; (b) the right to alter, retouch, or crop or simulate the Materials in any way; (c) the right to secure copyright in the Materials anywhere throughout the world; (d) the right to license, exploit, sell, assign, or otherwise dispose of the Materials or any of the said rights included therein for any purpose which Purchaser, Client and their assigns and licensees may see fit; and (e) any and all subsidiary rights in the Materials including characters or parts which are contained in the Materials. Without limiting the generality of the foregoing, Supplier hereby waives any and all claims of „moral rights“ and other rights of any kind or nature that it has related to the Materials and hereby conveys to Client any such rights of Supplier as may exist without reservation or limitation. Supplier agrees that Purchaser shall have the right, without prior approval, to use the Materials following their publication to promote Purchaser's services, including without limitation, use on Purchaser's website.
2. Warranty: Unless otherwise specified on the Order, Supplier hereby represents and warrants: (a) that all assignments, releases, permissions, clearances, consents and waivers (collectively, "Releases") have been obtained, in writing, from any and all persons or companies whose name, likeness, voice, prop, costume, property or other attribute is contained in the Materials provided in connection with this Order and may be used throughout the world and in perpetuity, without limitation, and Supplier shall furnish Purchaser with a copy of such signed Releases; (b) that it has the full and 5 unencumbered right and authority to license, sell or assign the rights herein conveyed (as applicable), and the same

may be used or reproduced for advertising or trade purposes, or for any other purpose whatsoever, without violating any laws or the rights of any third parties; (c) all goods and services provided hereunder will be provided in a professional manner with due care, in compliance with all laws, rules and regulations, and in accordance with all specifications; and (d) Supplier will comply with the WPP Code of Business Conduct in connection with the goods and/or services Supplier is providing hereunder, which can be found at <http://vendorterms.townhouse23.com/codeofconduct.pdf>

3. Cancellation: Purchaser may cancel this Order at any time prior to its acceptance of the Materials or work covered by this Order, upon written notice to Supplier. In such event, unless such termination is based on Supplier's breach, Purchaser shall be liable to pay Supplier, in lieu of the price specified in this Order, any verified direct costs incurred by Supplier in the performance of its obligations hereunder prior to such cancellation, provided, however, that the total amount of such costs shall not exceed the price specified on the Order for those Materials that have been completed, in whole or in substantial part, by Supplier. It is agreed that time is of the essence and that Purchaser may, at its election, cancel this order or any part thereof without further obligation if this Order is not fulfilled within the time specified or, if no time is specified, within a reasonable time.
4. Early Delivery: Supplier's signature on the Order confirms Supplier's agreement to the terms herein. Notwithstanding the foregoing, if delivery is made prior to Supplier's signing this Order, Supplier's delivery of the Materials will constitute its unqualified acceptance of all the terms of this Order, including the transfer of copyright to Client.
5. Acceptance: The Materials supplied hereunder must comply with Purchaser's specifications and are subject to Purchaser's approval. Purchaser's payment for the Materials shall not constitute its acceptance thereof and the Materials shall be received subject to inspection, approval and privilege of return at Supplier's expense if not in compliance with the specifications hereof. In the event of such return, without limiting any other remedies available to Purchaser, Purchaser shall be entitled to a refund of all amounts paid. Defects are not waived by Purchaser's failure to notify Supplier of such defects upon receipt of the Materials.
6. Assignment: This Order or any sums payable hereunder may not be assigned by Supplier without the prior written consent of Purchaser.
7. Taxes: Supplier agrees that prices quoted and shown on this Order include any and all applicable Federal, state and local taxes.
8. Property: Any and all property of Purchaser or Client, in the possession or control of Supplier, shall be and remain the property of Purchaser or Client (as applicable), and Supplier shall be responsible for any loss or damage occurring to such property while such is in Supplier's possession or control.
9. Books and Records: Supplier agrees to keep such books and records as shall readily disclose the basis for any charges ordinary or extraordinary billed to Purchaser under this Order, and shall make them available for examination and audit by Purchaser and/or Client or an outside auditor chosen by and paid for by Purchaser and/or Client for a period of three years after receipt by Supplier of final payment under this Order. For such period of three years, Purchaser and/or Client shall have the right to audit (i) the books and records relating to all such charges, and (ii) any other materials related to Supplier's compliance with the terms and conditions of this Order, and Supplier, upon request of Purchaser or Client, shall make all such books and records available for such examination. If, upon such audit, Client or Purchaser shall determine that Supplier's charges exceed the amounts properly chargeable to Purchaser or Client as the case may be, Supplier shall without limiting Purchaser's other available rights or remedies promptly refund to Purchaser or Client, as appropriate, the amount of such overcharges.
10. Confidentiality: Supplier covenants and agrees that it will not, at any time, disseminate, reveal or otherwise make available to any person, or use for its own purposes, any information of a proprietary or confidential nature concerning Purchaser or Client obtained by it regarding, but not limited to, trade secrets and confidential information, advertising matters, ideas, plans, techniques and accounts, products, business, customers or methods of operation, except as otherwise required in the performance of its obligations hereunder. Supplier expressly agrees that the existence and negotiation of this Order shall be considered Purchaser's and Client's confidential information subject to the restrictions contained in this provision. Prior to using the Materials for self-promotional purposes, Supplier must obtain written approval from Purchaser. Supplier further agrees to execute Purchaser's and/or Client's standard confidentiality agreement upon request by Purchaser.
11. Indemnification: Supplier agrees to indemnify and hold harmless Purchaser, Client, and their respective subsidiaries, affiliates, parents, partners, officers, directors, employees, agents, assigns and licensees from and against any damages, claims, losses or expenses (including reasonable attorney's fees and expenses) any of them may incur or be liable for arising out of or resulting from: (a) any breach or alleged breach by Supplier of any representation or warranty made by

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Supplier hereunder; (b) the performance of this Order by Supplier (including but not limited to Supplier's employees, agents, subcontractors and designees); and (c) the use or reproduction in any manner whatsoever, including advertising or trade purposes, of the Materials.

12. Limitation Of Liability: IN NO EVENT SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR MORE THAN THE TOTAL AMOUNT ACTUALLY DUE AND PAYABLE TO SUPPLIER AS SPECIFIED IN THE ORDER. UNDER NO CIRCUMSTANCES SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER PURCHASER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
13. Payments: Delivery charges must be fully prepaid by Supplier unless other terms are specified herein. Payments shall be made by Purchaser, at such time as Purchaser is in receipt of satisfactory materials, Releases and invoices, as herein above described.
14. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Supplier shall, in filling this Order, comply with the Equal Employment Opportunity and Affirmative Action Clauses as set forth by the Department of Labor, 41 C.F.R. Sections 601, 60-4, 60-250 and 60-741 (and as further modified, amended or superceded), the provisions of which are incorporated herein by this reference insofar as they are required by such regulations and unless exempted by applicable statutes, rules, regulations or orders. If this Order is a subcontract under any government contract or subcontract, Supplier will execute a separate certificate of EEO compliance.
15. Gifts And Conflicts Of Interest: Supplier shall not make or offer a gratuity or gift of any kind to Purchaser employees or their families. Supplier shall not engage in any activity with Purchaser employees, competitors, or affiliates that could be perceived as creating a conflict of interest situation unless, after full disclosure of all relevant facts, Purchaser agrees that no conflict in fact is present.
16. Miscellaneous: The terms and conditions set forth herein constitute the entire agreement between the parties with respect to the Materials or work to be performed pursuant to this Order and said terms and conditions may not be modified or amended, except by an agreement in writing that specifically references these terms and conditions and that has been signed by Purchaser's authorized representative. Notwithstanding Purchaser's payment hereunder, any other documents originating with Supplier shall not satisfy the requirements of the preceding sentence. It is a condition of this Agreement that Supplier does not attempt to impose its own terms and conditions on Purchaser, and any attempt by Supplier to unilaterally amend the Order or to impose additional obligations on Purchaser shall be deemed null and void and to be a material breach hereof. No waiver by Purchaser shall be valid unless in writing and signed by Purchaser. This Order shall be construed pursuant to the laws of the State of New York regardless of its conflict of laws provisions. The parties hereto agree that the state and federal courts sitting in New York, New York shall be the exclusive forum and situs for the resolution of any and all disputes, controversies or matters arising herefrom or related hereto.
17. Severability. If any provision of this Order is held to be invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability, such provision shall be enforced to the maximum extent permitted by law and the remaining terms and provisions of this Order shall remain in full force and effect in the same manner as if the invalid, illegal or unenforceable provision had not been contained herein.

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## STANDARD TERMS AND CONDITIONS FOR PRODUCTION OF DIGITAL CONTENT

1. Quality: The material produced hereunder shall be subject to Purchaser's approval and acceptance. Producer agrees that the Digital Content shall be of first class physical and aesthetic quality, technically correct and of a quality at least equal

to current standards for Digital Content created for the Internet and will conform with all technical requirements. The quality and timely delivery of the completed Digital Content is of the essence of this agreement. Producer will bear any costs resulting from its failure to satisfactorily perform its obligations hereunder.

2. Changes And Variations: If at any time, Purchaser desires to make any changes in or variations from the script(s) or storyboard(s) or specifications of the Digital Content or from any material or work in progress and such changes result in additional costs to Producer, Producer agrees to notify Purchaser's authorized representative in writing of the amount of such additional costs before any such additional costs are incurred and to proceed only after receiving written authorization from such representative. Reimbursement for such additional costs shall be payable at the same time as the final payment provided for in Paragraph B of this Agreement.

3. Purchaser: Purchaser is acting on behalf of its Client as agent for a disclosed principal with respect to all matters arising under this agreement. Purchaser will make payment of all appropriate sums paid to it by its Client (and Producer shall look to Purchaser solely to the extent Purchaser was paid by Client). Notwithstanding anything to the contrary contained in any order, acknowledgment or other documents submitted by Producer, if there is a failure to make any payment hereunder which results from Client's failure to pay Purchaser, Producer will look solely to the Client and not to Purchaser for such payment.

4. Acceptance Testing: Upon the delivery to Purchaser of any Digital Content or deliverable(s), Purchaser shall have thirty (30) days from the receipt to review for performance. Producer will review Purchaser's objections, if any, and shall have ten (10) days from the receipt of such objections to correct the deficiencies. Upon correction of the deficiencies, Purchaser shall then proceed to re-test and reevaluate the Digital Content or deliverable. Any failure by Producer to correct a material deficiency shall be deemed a material breach of this Agreement, entitling Purchaser to any and all available remedies, including, but not limited to, a refund of the fees paid to Producer under this Agreement, the cost of cover, and termination of this Agreement. No Digital Content or deliverable shall be deemed to be accepted until Purchaser delivers a written notice of its final acceptance to Producer.

5. Ownership: (a) Subject to subparagraph (b) and Section 5, full and unrestricted ownership of the Digital Content and all other results and proceeds of Producer's services, including without limitation any software, computer programming, code, designs, graphics, text, audio files, video files, know-how, ideas and information, modifications, inventions or improvements associated with the Digital Content shall vest and remain in Client at all times and for all purposes whatsoever, immediately upon creation, and without limiting the foregoing Purchaser and Client shall have the sole right to use, distribute, reproduce, alter, modify, exhibit, exploit and copyright same throughout the world without restriction. Producer will not mortgage, pledge, assign or otherwise encumber any of the above mentioned materials. Producer agrees that Digital Content is a "work made for hire" for Client, as that term is defined under 17 U.S.C. § 101 *et seq.* and shall be owned by Client for all purposes in perpetuity. To the extent all or any portion of the Digital Content is not deemed to be a work made for hire, Producer hereby sells, assigns and transfers all of their right, title, ownership and interest therein, presently known or hereafter ascertained, including, but not limited to, the right to secure any patent rights and the copyright therein (and all renewals thereof) throughout the world, without any restrictions as to use except as expressly set forth herein, to Client and its successors, assignees and/or licensees. For clarity, Client shall exclusively own all data generated through, by, or related to use of the Digital Content. Producer agrees to reasonably cooperate (at Purchaser's expense) in furthering the intent of this section and hereby appoints Purchaser as its attorney-in-fact for carrying out the intent of this section. Producer shall only use its employees to create the Digital Content, unless it receives Purchaser's prior written consent. In the event that Purchaser has authorized Producer to use non-employees to create Digital Content, then Producer shall first secure from each such individual an agreement in writing that assigns all intellectual property rights in such Digital Content to Client in the same manner as set forth in this section and present such agreement to Purchaser. (b) Producer shall retain all intellectual property rights with respect to any intellectual property owned by Producer prior to entering into this Agreement, including any code, designs, know-how, software applications, databases, computer programs and/or other materials that are of general applicability to Producer's business ("Producer Material"); provided, however, that Producer shall not incorporate any Producer Material into the Digital Content without Purchaser's prior written consent.

In the event of Purchaser's consent thereto, Producer shall grant to Purchaser and Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser and/or Client) all or any portion of the Producer Material incorporated into the Digital Content.

6. Licenses And Releases: Producer agrees to supply to Purchaser prior to delivery to Purchaser of the Digital Content: (a) signed Licenses, in a form acceptable to Purchaser, obtained from the persons, firms or corporations who own or control any literary, dramatic and/or musical works furnished by Producer for Digital Content, if any, granting to Purchaser, Client and

their licensees a license to use such works, and warranting that such persons, firms or corporations have the right to grant such licenses; and (b) original copies of signed releases from persons supplied by the Producer who appear in the Digital Content granting Purchaser, Client and their licensees the irrevocable permission and consent of persons to use their names, likenesses, performance and biographical material concerning them in any way, for advertising, marketing, promotional purposes and purposes of trade, in connection with the Digital Content and the uses thereof contemplated hereunder and in connection with the product(s) advertised herein. (c) If Producer is supplying special props/costumes/photographs/artwork ("Special Materials"), Producer represents and warrants to Purchaser and Client that it has full ownership rights to such Special Materials, and the right to grant unrestricted ownership rights in the Special Materials to Client, and the granting of any such rights shall not violate the rights of any third party. Producer hereby transfers and assigns to Client all rights to the Special Materials, including without limitation, any copyrights or trademarks related thereto. (d) Without limiting any other provision herein, to the extent Producer desires to incorporate any third party's software applications, databases, computer programs (including source code and object code for any such programming), executable code or computer hardware, including without limitation free and open source software (collectively, "Third Party Software/Hardware") into the Digital Content or are otherwise provided hereunder, Producer agrees to identify any Third Party Software/Hardware in writing in advance and will not incorporate such Third Party Software/Hardware in the Digital Content without Purchaser's prior written consent. In the event of Purchaser's consent thereto, Producer agrees that unless otherwise specified in the Order, Producer grants to Purchaser and Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser and/or Client) all or any portion of the Third Party Software/Hardware incorporated into the Digital Content.

7. Termination Of Production: (a) If for any reason beyond Producer's control, such as strikes, war, acts of God, labor troubles, riots, delay of commercial carrier or restraint of public authority, Producer shall be unable to produce and/or deliver the Digital Content as provided herein, or in the event that Purchaser should desire to cancel the production of the Digital Content or to terminate this Agreement for any reason, except as set forth in subparagraph b below, Purchaser shall pay Producer all out-of-pocket costs and expenses theretofore incurred by Producer in the normal routine of producing said Digital Content. Upon such payment, Producer shall deliver to Purchaser forthwith and Client shall become the sole owner of all exposed negatives and other material produced by Producer prior to the termination, and Purchaser shall be under no obligation to make any further payments to Producer with regard to said Digital Content. (b) If Purchaser cancels this Agreement due to Producer's breach of any of its duties or obligations hereunder, or due to Producer's fault, then Purchaser shall have the option (i) to pay Producer all of its out-of-pocket costs and expenses theretofore incurred by Producer in the normal routine of producing said Digital Content in which event Producer shall deliver to Purchaser forthwith and Client shall become the sole owner of all exposed negatives and other material produced by Producer prior to the termination, and Purchaser shall be under no obligation to make any further payments to Producer with regard to said Digital Content or (ii) Purchaser may elect to make no payment to Producer in which event Producer may retain all films and materials produced by it, but may not use or permit the use: A) of any portions of such materials which show or refer in any manner to Client, its product or service: B) copyrighted music or other literary property owned or licensed by Client or by any third parties: C) talent engaged for the production of Client's Digital Content or D) any property which, if displayed or exhibited in any manner, could violate the rights of any third parties. (c) If at any time prior to delivery of all materials to Purchaser: (i) there shall be filed by or against Producer a petition in bankruptcy, insolvency, reorganization or for the appointment of a receiver or trustee for all or part of Producer's property, or (ii) Producer shall make an assignment for the benefit of creditors, or (iii) Producer in any manner subjects the elements and materials to a lien in favor of any third party; or (iv) Producer becomes insolvent or its financial stability becomes so impaired as to endanger its ability to produce and deliver the Digital Content free and clear of all liens, claims or encumbrances, then; Purchaser shall have the option to terminate this Agreement and complete ownership of all elements and materials shall immediately vest in Client, and producer shall promptly deliver such materials as directed by Purchaser. In such event Purchaser shall reimburse Producer for its out-of-pocket costs and expenses theretofore incurred by Producer in the normal routine of producing said Digital Content.

8. Insurance: Producer agrees that it will at all times maintain insurance policy(ies) from an insurance carrier acceptable to Purchaser sufficient to cover Producer's obligations under this Agreement, including, without limitation, Professional (E&O) liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate; commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; umbrella liability and/or excess liability policy(ies) in an amount not less than \$5,000,000; crime with limits of not less than \$250,000; and workers' compensation providing statutory benefits and employer liability policy with coverage of no less than \$1,000,000 for bodily injury by accident, \$1,000,000 bodily injury by disease, and no less than \$1,000,000 policy limit. Producer shall provide Purchaser and Client with certificates naming Client and Purchaser as additional insureds on all such policy(ies).

9. Independent Contractor: It is understood that Producer's status hereunder is that of an Independent Contractor and that all persons employed by Producer in performing its obligation hereunder shall not be deemed employees of Purchaser or Client, and Producer shall make whatever payments may be due such persons and Producer will comply with all<sup>9</sup> governmental regulations and indemnity and hold harmless Purchaser and Client against any claims and demands resulting from



Producer's failure to comply with the provisions of this paragraph.

10. Delinquency In Producers Payment: Purchaser reserves the right in case of delinquency in Producer's making payments to any of Producer's suppliers, performing work on or furnishing material for the Digital Content to be produced hereunder, to **(a)** pay such suppliers directly, irrespective to any set-offs or counter-claims Producer may have against suppliers, an amount claimed to be equal to the money owed such supplier by Producer for work the supplier has performed or material it has furnished with respect to said Digital Content, and such payment shall be deemed payment to Producer and shall reduce the contract price hereunder, and, at Purchaser's election, have such supplier deliver such Digital Content and all materials relating thereto directly to Purchaser (and Producer hereby expressly authorizes such delivery) or **(b)** terminate this Agreement without any further obligation to Producer and Producer shall immediately return to Purchaser the Digital Content and all materials relating thereto.

11. Publicity Guidelines: Producer agrees not to use the name of Purchaser, Client or the Product(s) or service(s) advertised in the Digital Content, or any part thereof, to any person other than employees of the Producer, Purchaser or Client, without Purchaser's prior consent.

12. Agent For Client: In the making, execution and performance of this Agreement, Purchaser is acting solely as an agent for Client. All rights, benefits, privileges and properties vested in Purchaser are for the benefit of Client and may be exercised either by Purchaser or Client.

13. Equal Employment Opportunity Company: In connection with its performance hereunder, Producer agrees not to discriminate against any employee because of race, religion, color, sex or national origin.

14. Union Agreements: Producer shall comply with all rules, regulations and requirements of any union or guild having jurisdiction over the performers, musicians and technicians participating in the production of the Digital Content. Producer shall be responsible for the timely completion and distribution of proper contracts and Special Reports, including Production Time Reports and Audition Reports. Any fines, penalties or costs resulting from Producer's breach of this paragraph shall be the sole responsibility of the Producer.

15. Warranties: Producer hereby warrants and represents that **(a)** it is free and has full right to enter into this Agreement and to perform all its obligations hereunder and will comply with all its obligations hereunder and will comply with all applicable Federal, State and Local Laws, ordinances and regulations, and with all applicable union agreements; **(b)** Producer is insured in the manner required in Exhibit A attached hereto; **(c)**, the Digital Content may be used as hereinabove provided without violating any laws and without violating or infringing any rights of any third parties, including personnel and suppliers of the Producer, and the Digital Content and all materials, services and rights which will become the property of Client hereunder shall be free and clear of all liens, encumbrances and claims of any nature; **(d)** the Digital Content and any other deliverables shall not contain any virus, Trojan horse, worm or other similar harmful or malicious code; **(e)** Producer shall comply with the terms and conditions of all applicable third party websites and **(f)** it will use reasonable physical and electronic security measures in association with the performance of the services and in handling any Purchaser or Client information appropriate to the nature of such information disclosed to or accessible by Producer in order to protect such information from unauthorized access, destruction, use, modification or disclosure, and it shall promptly notify Purchaser in writing in the event any unauthorized access to information is suspected and permit Purchaser to control any public notifications, with the reasonable assistance of Producer.

16. Indemnity: **(a)** Producer shall indemnify and hold harmless Purchaser, Client and their respective officers, employees and agents ("Indemnities") from and against all claim, damages, losses and expenses, including attorney's fees and disbursements, arising out of, resulting from or relating to the production of the Digital Content to be produced hereunder, including but not limited to (i) the breach by Producer of any of its representations, warranties, duties or covenants contained herein, (ii) violation by Producer of the rights of any third party, (iii) personal injury, including bodily injury, sickness, disease or death, suffered in the course of production, (iv) injury to or destruction of tangible property, including the loss of use resulting therefrom; which claim, damage, loss of expense results in whole or in part from any act or omission of Producer, or any of its Subcontractors or employees. **(b)** In any and all claims against the Indemnities, by any employee of the Producer, any Subcontractor of Producer or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this indemnification provision shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits, payable by or for the Producer or any Subcontractor under Workers Compensation acts, Disability benefits acts or other employee benefit acts.

17. Limit Of Damages: All liability arising under this Agreement, whether under theory of contract, tort (including negligence), or otherwise, shall be limited to direct damages.

Neither party nor their suppliers shall have any liability to the other party or to any third party, for any incidental, punitive, 10

indirect, special or consequential damages, including but not limited to lost profits, loss of data, cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. The aggregate liability of Producer and its suppliers under this Agreement shall not exceed the total Fees paid by Purchaser to Producer hereunder with respect to the Statement of Work at issue. Any action by either party must be brought within one (1) year after the cause of action arose.

18. Assignment Of Contract: This Agreement may not be assigned by either party without the written consent of the other except that Client at any time will have the right to designate any advertising Purchaser or firm in the place and stead of Purchaser, and upon such designation being made, the contract will be read and construed as if the name of the advertising Purchaser or firm so designated by Client were substituted for "Purchaser", wheresoever the same shall appear in this contract.

19. Disputes And Applicable Law: Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be determined and settled by arbitration in New York City, pursuant to the rules then pertaining of the American Arbitration Association, and any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, State or Federal, having jurisdiction. The parties will share equally the administrative costs of such arbitration proceedings. This agreement and all matters or issues collateral thereto shall be governed by the laws of the State of New York applicable to contracts made and performed entirely therein.

20. Tax Liability: Any sales tax, use tax, or other tax payable on production and delivery of the Work to Purchaser (other than sales tax arising from Producer's purchases of materials or supplies in connection with the production) shall be the responsibility of the Purchaser who shall pay, defend and hold harmless Producer from payment of any such taxes.

21. Confidentiality: Producer agrees to hold the terms, elements and material, including Digital Content, produced under this Agreement in strict confidence and shall not use outside of this Agreement or disclose the terms, elements and materials, including Digital Content, to any third party without Purchaser's prior written consent. Producer further agrees to hold in strict confidence all information and materials supplied by the Purchaser or the Client to Producer hereunder.

22. Employment Of Minors: It is acknowledged that in performing the services required of Producer hereunder, the services of performers who are minors may be required. In such event, and when specifically requested by Purchaser, Producer agrees to be the employer of record of such minors, and warrants and represents that it will comply with all applicable laws and regulations concerning such employment and will make full and proper payments to such minors. If there is any loss or damage to Purchaser or its clients due to work stoppage or otherwise arising out of Producer's failure to obtain all necessary permissions or licenses in accordance with the above-referenced applicable laws and regulations, Producer agrees to accept full responsibility for such failure and to indemnify Purchaser and its Client to any losses, damages or expenses in connection therewith.

23. Agreement: This contract constitutes the entire agreement between the parties and may not be changed orally except by a writing signed by both parties. Any failure by Purchaser or Client to exercise any rights granted herein upon the occurrence of any of the contingencies set forth in this Agreement will not constitute a waiver of any such rights upon the recurrence of any such contingency.

## EXHIBIT A

### Privacy and Information Technology Security Controls Supplement

This Privacy and Information Technology Security Controls Supplement (“IT Security Controls Supplement”) shall be deemed an addendum to, and part of, the Master Services Agreement (in which this IT Security Controls Supplement is attached) (the “Agreement”) by and between Purchaser as agent on behalf of the Client (collectively, “Purchaser Entities”), and Supplier (as defined in the attached Agreement. As to any conflicting provisions between the Agreement and this IT Security Controls Supplement, the terms of this IT Security Controls Supplement shall prevail. All capitalized terms not specifically defined herein shall have the same meanings ascribed to them in the Agreement.

#### 1. Definitions.

- a. “Applicable Laws” means any and all applicable federal, state, local and foreign laws, statutes, ordinances, rules, regulations and directives of any applicable jurisdiction and any applicable court order or settlement agreement, including, without limitation, privacy and data security statutes and regulations promulgated and in effect under such statutes and all applicable privacy and data security standards and generally accepted industry standards.
- b. “Approved Information Technology Security Program” has the meaning given to it in Section 3(c) below.
- c. “Purchaser Entities Data” has the meaning given to it in Section 2(a) below.
- d. “Purchaser Entities Security Manager” means the representative designated by Purchaser Entities, which may be updated by Purchaser Entities from time to time during the Term of the Agreement.
- e. “Purchaser Entities Systems” means any Purchaser Entities’ file computing system, database, server, website, application and/or network environment and/or domain, including, without limitation, all development, quality assurance, staging and/or production environments.
- f. “Supplier Personnel” means Supplier’s employees, agents, Subcontractors (as such term is defined under the Agreement) and other representatives.
- g. “Personal Data” has the same meaning as in the EU General Data Protection Regulation 2016/679.
- h. “PII” means personally identifiable information (i) that (when used separately and/or in combination with other information) identifies and/or can be used to identify and/or authenticate an individual; (ii) Personal Data and/or (iii) as otherwise may be defined by Applicable Laws. PII, includes, without limitation, names, addresses, telephone numbers, e-mail addresses and other unique identifiers, employee identification numbers, government-issued identification numbers (including social security number, driver’s license number or state-issued identified number), passwords or PINs, answers to security questions and other personal identifiers, as well as financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number or password, that would permit access to an individual’s financial account.
- i. “Security Breach” means (i) any actual or suspected act or omission that compromises either the security, confidentiality or integrity of Purchaser Entities’ Confidential Information, Purchaser Entities Systems and/or the Approved Information Technology Security Program put in place by Supplier (and/or any Subcontractor) that relate to the protection of the security, confidentiality or integrity of Purchaser Entities’ Confidential Information and Purchaser Entities Systems; (ii) the termination of any Supplier Personnel for cause, where related to such Supplier Personnel’s potential or actual misuse or compromise of Purchaser Entities Confidential Information, Purchaser Entities Systems or Supplier’s systems or networks that directly or indirectly support Purchaser Entities’ Confidential Information and/or Purchaser Entities Systems; (iii) Supplier’s receipt of any request for disclosure or inquiry regarding Purchaser Entities’ Confidential Information and/or Purchaser Entities Systems from a third party; and/or (iv) any law enforcement or administrative investigation or inquiry into suspected misuse or abuse of Purchaser Entities’ Confidential Information, Purchaser Entities Systems and/or Supplier’s systems or network.

## **2. Purchaser Entities Data.**

a. Supplier acknowledges and agrees that (i) any and all information, data and records of, applicable and/or relating to (A) Purchaser Entities and/or its affiliates' use of the Services and/or Deliverables provided under the Agreement and (B) any person, firm or enterprise that accesses and/or uses any Purchaser Entities Systems and/or any other any website, application and/or other platform(s) designated by Purchaser Entities (*e.g.*, end users, customers, affiliates, partners, service providers, *etc.*), and (ii) any and all other information, data and records of, collected, developed, processed, received and/or otherwise accessed by Supplier and/or Supplier Personnel (whether by or through the Purchaser Entities' Systems or otherwise) over the course of its engagement by Purchaser Entities, including, without limitation, any and all PII and Personal Data, included in and/or associated therewith (collectively, "Purchaser Entities Data"), shall be the sole and exclusive property of Purchaser Entities, notwithstanding the fact that it may be collected by or otherwise in the possession of Supplier, Supplier's Subcontractors, and/or any other party. Nothing shall be construed in this Agreement to restrict, impair, share, transfer, assign, license, convey or otherwise alter or deprive Purchaser Entities of any of its rights or proprietary interests therein or, except as otherwise specifically set forth in this Agreement, to grant Supplier any right, license or other interest therein.

b. Supplier agrees to comply (and shall ensure that any and all Supplier Personnel with access to or that obtains Purchaser Entities Data or Purchaser Entities Systems comply) with all Applicable Laws and terms and conditions of the Agreement. Without limiting the generality of the foregoing, Supplier shall not use the Purchaser Entities Data for any purpose other than performing its obligations under this Agreement, and shall limit access to and disclosure of the Purchaser Entities Data solely to Supplier Personnel on a "need to know" basis who are essential to performing its obligations under this Agreement and for purposes directly related to the performance of Supplier's obligations under this Agreement. Further, Supplier shall not sell, license, distribute, make available or otherwise disclose the Purchaser Entities Data or any portion thereof to any third party for any reason, unless specifically permitted by Purchaser Entities in its sole discretion and/or other expressly required by Applicable Laws (in which case Supplier shall provide prompt written advance notice to Purchaser Entities in order to provide Purchaser Entities with the opportunity to object to such required disclosure). Supplier acknowledges and agrees that it shall all times be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of any Purchaser Entities Data under its control or in its possession, including, without limitation, by any Supplier Personnel. The Parties acknowledge and agree that all Purchaser Entities Data shall be deemed the Confidential Information of Purchaser Entities.

c. Notwithstanding anything set forth in the Agreement and/or herein to the contrary, Supplier acknowledges and agrees that it will not place any pixels, cookies, scripts or other code (collectively, "Code") on any Purchaser Entities Systems and/or any other any website, application and/or other platform(s) owned and/or controlled by Purchaser Entities without the prior written consent of Purchaser Entities. In order to obtain such consent, Supplier must provide Purchaser Entities with the Code or a means of identifying such Code, the specific data that such Code will collect or track and how such data is intended to be used (as applicable), how long such Code will persist before expiring, and any other information reasonably requested by Purchaser Entities. Any such consent may be provided or withheld by Purchaser Entities for any reason or no reason as it determines in its sole discretion.

## **3. Information Technology Security Program.**

a. Supplier agrees that its collection, use, storage and disposal of Purchaser Entities' Confidential Information and Purchaser Entities Systems shall at all times comply with all Applicable Laws, and Supplier shall implement and maintain, and contractually require and cause any of its Subcontractors to implement and maintain, a security controls program that complies with all Applicable Laws, accepted industry standards, and the terms and conditions of the Agreement in order to ensure its security and confidentiality, protect against any anticipated or actual threats or hazards to its security or integrity, and prevent unauthorized access, acquisition, destruction, use, modification and/or disclosure thereof. Additionally, Supplier shall have a security and privacy policy that provides guidance to Supplier's Personnel on ensuring the confidentiality and integrity of Purchaser Entities' Confidential Information and Purchaser Entities Systems, as well as Supplier's information and systems maintained or processed by Supplier, which, a minimum, addresses the following key points: (i) instructions regarding the steps to take in the event of a compromise or other anomalous event; (ii) delegation and assignment of responsibilities for security and privacy; (iii) management oversight for the policy and its deployment; (iv) means for managing security and privacy within the enterprise; (v) policies and procedures for data confidentiality and privacy and data protection and access thereto; (v) handling of

Confidential Information; and (vi) planning for incident response in the event of a Security Breach and/or unauthorized disclosure of any Confidential Information.

b. Without limiting any of Supplier's obligations hereunder, Supplier's security program shall include, without limitation, the implementation of administrative, physical and technical safeguards to protect Purchaser Entities' Confidential Information and Purchaser Entities Systems that are no less rigorous than accepted industry practices, specifically the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management ("ISO 27001/27002"), and shall ensure that all such safeguards, including, without limitation, the manner in which PII is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all Applicable Laws, as well as the terms and conditions of the Agreement.

c. Supplier shall provide the Purchaser Entities Security Manager with a security and control mapping chart of Supplier's security controls program to ISO 27001/27002 for review and assessment. Additionally, if the Parties agree additional security requirements are applicable based on the nature of the Services to be provided by Supplier under the Agreement, Supplier shall also provide documentation to the Purchaser Entities Security Manager in connection therewith. The Purchaser Entities Security Manager shall review the documentation provided by Supplier in order to assess whether (as determined by Purchaser Entities in its sole discretion), Supplier's security program meets the requirements set forth herein. In the event that the Purchaser Entities Security Manager reasonably identifies controls gaps in Supplier's supplied documentation or test evidence as it relates to its proposed security program (reserving all other rights and remedies provided hereunder and/or at law or in equity), Supplier agrees to work with Purchaser Entities in good faith to update associated controls in line with industry-recommended solutions consistent with the requirements set forth herein. For purposes of this Agreement, the Supplier security controls program that has been prior approved by the Purchaser Entities Security Manager in writing shall be deemed the "Approved Information Technology Security Program". Any such approvals shall not be unreasonably withheld or delayed.

d. For the avoidance of doubt, Supplier shall maintain the Approved Information Technology Security Program throughout the Term of the Agreement. Further, in the event that Supplier has approved Supplier's use of a Subcontractor to fulfill Supplier's obligations under the Agreement, Supplier shall ensure such approved Subcontractor maintains an Approved Information Technology Security Program. During the Term of the Agreement, Supplier shall at least annually provide documentation and control test evidence to the Purchaser Entities Security Manager, in a form reasonably agreed to by the Purchaser Entities Security Manager, to demonstrate Supplier's continued maintenance of the Approved Information Technology Security Program and fulfillment of its obligations hereunder.

#### **4. Security Breach Procedures and Obligations.**

a. Supplier shall provide Purchaser Entities with the name and contact information for an employee of Supplier who shall serve as Purchaser Entities' primary security contact and shall be available to assist Purchaser Entities 24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach. Supplier shall immediately notify the Purchaser Entities Security Manager of a Security Breach as soon as practicable. Immediately following Supplier's notification to Purchaser Entities of a Security Breach, the Parties shall coordinate with each other to investigate the Security Breach. Supplier agrees to fully cooperate with Purchaser Entities in Purchaser Entities' handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing Purchaser Entities with physical access to the facilities and operations affected; (iii) facilitating interviews with Supplier Personnel involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with Applicable Laws or as otherwise reasonably required by Purchaser Entities.

b. Supplier agrees that it shall not inform any third party of any Security Breach without first obtaining Purchaser Entities' prior written consent. Further, Supplier agrees that Purchaser Entities shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies and/or others as required by Applicable Laws or otherwise in Purchaser Entities' discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected

persons, and the nature and extent of any such remediation. Supplier shall take all commercially reasonable steps to immediately remedy any Security Breach and prevent any further Security Breach at Supplier's expense in accordance with Applicable Laws. Supplier shall reimburse Purchaser Entities for actual costs incurred by Purchaser Entities in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation pursuant to this Section 4.

## **5. IT Security Compliance and Oversight.**

a. At least once per year, Supplier shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations hereunder, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Upon Purchaser Entities' written request, Supplier shall make available to Purchaser Entities for review copies of each such report, which shall include, without limitation, the following: WebTrust, Systrust, Statement on Standards for Attestation Engagements ("SSAE") No. 16 (SOC 1 and SOC 2) audit reports and any reports relating to its ISO/ICE 27001 certification, as well as Supplier's latest Payment Card Industry Compliance Report. Purchaser Entities shall treat such audit reports as Supplier's Confidential Information under the Agreement. Any exceptions noted on the audit reports will be promptly addressed with the development and implementation of a corrective action plan by Supplier's management in coordination with Purchaser Entities in good faith. Supplier agrees that it shall ensure that any and all Subcontractors used by Purchaser Entities under the Agreement shall also comply with the terms of this Section 5(a).

b. Additionally, Supplier grants Purchaser Entities or, upon Purchaser Entities' election, a third party on Purchaser Entities' behalf, permission to perform an assessment, audit, examination or review of all controls in Supplier's physical and/or technical environment (including, without limitation, in connection with Supplier's Approved Information Technology Security Program) in order to confirm Supplier's compliance with this Agreement, as well as any and all Applicable Laws. Supplier shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and application software that processes, stores or transports Purchaser Entities' Confidential Information and/or uses or accesses Purchaser Entities Systems pursuant to the Agreement. Any exceptions or issues noted by Purchaser Entities as a result of the foregoing assessment, audit, examination or review, will be promptly addressed with the development and implementation of a corrective action plan by Supplier's management in coordination with Purchaser Entities in good faith. For the avoidance of doubt, to the extent that any Subcontractor used by Supplier under the Agreement, Supplier shall obtain for Purchaser Entities the rights to assess, audit, examine or review any such Subcontractor as set forth in this Section 5(b).

**6. Disposal of Purchaser Entities' Confidential Information.** At any time during the term of the Agreement at the Purchaser Entities' request or upon the termination or expiration of the Agreement for any reason, Supplier shall, and shall instruct all Supplier Personnel to, promptly return to the Purchaser Entities all copies, whether in written, electronic or other form or media, of Purchaser Entities' Confidential Information in its possession or the possession of such Supplier Personnel, or securely dispose of all such copies, and certify in writing to the Purchaser Entities that such Confidential Information has been returned to Purchaser Entities or disposed of securely.

**7. Remedy for Failure to Comply.** Supplier acknowledges that any breach of any of the terms and conditions set forth in this IT Security Controls Supplement (including, without limitation, Supplier's (and/or any Subcontractor's) failure to maintain the Approved Information Technology Security Program) may cause Purchaser Entities irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, Purchaser Entities is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Purchaser Entities may be entitled to under the Agreement and/or at law or in equity. Additionally, in the event that Supplier (or Supplier's Subcontractor) does not maintain the Approved Information Technology Security Program and/or otherwise breaches any terms and conditions set forth in this IT Security Controls Supplement, Purchaser Entities may immediately suspend any or all of Supplier's (or Subcontractor's) access to Purchaser Entities Systems and Purchaser Entities Confidential Information, and Purchaser Entities will have no payment obligations to Supplier for any Services and Deliverables that are not provided or delivered as a result of the suspension. The remedies set forth in this Section 7 shall not be deemed to be exclusive but shall be in addition to all other rights and remedies available to Purchaser Entities under the Agreement and/or at law or in equity. The Parties expressly acknowledge and agree that Supplier's failure to comply with any of the provisions of this IT Security Controls Supplement

will be deemed a material breach of the Agreement.

**8. Indemnification.** In addition to, and without limiting, Supplier's indemnification obligations under the Agreement, Supplier shall defend, indemnify and hold harmless Purchaser Entities, its affiliates, and their respective parents, directors, officers, employees, agents and assigns, harmless, at its own cost and expense, from and against any and all liabilities, losses, damages, injuries, costs and expenses, including reasonable attorneys' fees and costs, judgments and any amounts paid in any settlement incurred as a result of or in connection with any claim or action arising out of or relating to any actual or alleged failure of Supplier (and/or any of its Subcontractors) to comply with any of its obligations under this IT Security Controls Supplement.

**9. Changes to this IT Security Controls Supplement.** Notwithstanding anything set forth in the Agreement to the contrary, Supplier agrees that Purchaser Entities may unilaterally modify this IT Security Controls Supplement as necessary from time to time, including, without limitation, as may be necessary to comply with Applicable Laws.

## EXHIBIT B

### DATA PROCESSING ADDENDUM

This Data Processing Addendum shall be deemed an addendum to, and part of, the General Terms and Conditions (to which this Addendum is attached) (the “Agreement”) by and between Purchaser as agent on behalf of the Client (collectively, “Purchaser Entities”), and Supplier (as defined in the Agreement). Except where the context requires otherwise, references in this Addendum to the Agreement are to the Agreement as amended by, and including, this Addendum. Except as modified below, the terms of the Agreement shall remain in full force and effect.

#### 1. Definitions

- 1.1 Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement. In this Addendum, the following terms shall have the meanings set out below:
- 1.1.1 “**Affiliate**” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a party, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;
  - 1.1.2 “**Purchaser Group Member**” means Purchaser or any Purchaser Affiliate;
  - 1.1.3 “**Purchaser Personal Data**” means any Personal Data Processed by a Contracted Processor on behalf of a Purchaser Group Member or its customers pursuant to or in connection with the Agreement;
  - 1.1.4 “**Contracted Processor**” means Supplier or a Subprocessor;
  - 1.1.5 “**Data Protection Laws**” means an applicable law, rule, regulation, declaration, decree, directive, statute, or other enactment, order, mandate or resolution issued or enacted by any government entity (including any domestic or foreign, supra-national, state, county, municipal, local, territorial or other government, which includes to the extent applicable, Directive 95/46/EC, Directive 2002/58/EC, European Commission decisions and guidance) each as transposed into domestic legislation of each Member State or other country and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR, and any industry self-regulatory principles that are applicable in the location or region where the Services are provided or received, related to the Processing of Personal Data or the interception, recording or monitoring of communications;
  - 1.1.6 “**EEA**” means the European Economic Area;
  - 1.1.7 “**GDPR**” means EU General Data Protection Regulation 2016/679;
  - 1.1.8 “**Restricted Transfer**” means: (i) a transfer of Purchaser Personal Data from any Purchaser Group Member to a Contracted Processor; or (ii) an onward transfer of Purchaser Personal Data from a Contracted Processor to another Contracted 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) in the absence of the Standard Contractual Clauses to be established under section 11 below;
  - 1.1.9 “**Services**” means the services to be supplied by or on behalf of Supplier for Purchaser Group Members pursuant to the Agreement;
  - 1.1.10 “**Standard Contractual Clauses**” means the contractual clauses set out in Annex 2, amended as indicated (in square brackets and italics) in that Annex and under section 12.4;
  - 1.1.11 “**Subprocessor**” means any third party (including any Supplier Affiliate) appointed by or on behalf of Supplier or any Supplier Affiliate to Process Personal Data on behalf of any Purchaser Group Member in connection with the Agreement.
- 1.2 The terms, “**Commission**”, “**Controller**”, “**Data Subject**”, “**Member State**”, “**Personal Data**”, “**Processing**” and “**Supervisory Authority**” shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.



1.3 The word “**include**” shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

## **2. Processing of Purchaser Personal Data**

2.1 Supplier and each Supplier Affiliate shall comply with all applicable Data Protection Laws in the Processing of Purchaser Personal Data; and not Process Purchaser Personal Data other than on the relevant Purchaser Group Member’s documented instructions.

2.2 Purchaser instructs Supplier to Process Purchaser Personal Data; and transfer Purchaser Personal Data to any country or territory as reasonably necessary for the provision of the Services and consistent with the Agreement; and

2.3 Annex 1 to this Addendum sets out certain information regarding the Contracted Processors’ Processing of the Purchaser Personal Data as required by Article 28(3) of the GDPR (and, as applicable, equivalent requirements of other Data Protection Laws). Purchaser may make reasonable amendments to Annex 1 by written notice to Supplier from time to time as Purchaser reasonably considers necessary to meet those requirements.

## **3. Supplier and Supplier Affiliate Personnel**

Supplier and each Supplier Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Purchaser Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Purchaser Personal Data, as strictly necessary for the purposes of the Agreement, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## **4. Security**

4.1 Supplier and each Supplier Affiliate shall in relation to the Purchaser Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, pseudonymising and encrypting Purchaser Personal Data as appropriate, and the measures referred to in Article 32(1) of the GDPR.

4.2 In assessing the appropriate level of security, Supplier and each Supplier Affiliate shall take 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 and the risks that are presented by Processing, in particular from a Security Incident.

## **5. Subprocessing**

5.1 Purchaser authorises Supplier to appoint Subprocessors in accordance with this section 5 and any restrictions in the Agreement.

5.2 Supplier may continue to use those Subprocessors already engaged by Supplier or any Supplier Affiliate as at the date of this Addendum, subject to Supplier and each Supplier Affiliate in each case as soon as practicable meeting the obligations set out in section 5.4.

5.3 Supplier shall give Purchaser prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within two (2) weeks of receipt of that notice, Purchaser notifies Supplier in writing of any objections (on reasonable grounds) to the proposed appointment, neither Supplier nor any Supplier Affiliate shall appoint (nor disclose any Purchaser Personal Data to) the proposed Subprocessor except with the prior written consent of Purchaser.

5.4 With respect to each Subprocessor, Supplier or the relevant Supplier Affiliate shall:

5.4.1 before the Subprocessor first Processes Purchaser Personal Data (or, where relevant, in accordance with section 5.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Purchaser Personal Data required by applicable Data Protection Laws and the Agreement;

5.4.2 ensure that the arrangement between on the one hand (a) Supplier, or (b) the relevant Supplier Affiliate; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Purchaser Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;

5.4.3 provide to Purchaser for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Purchaser may request from time to time; and

5.4.4 be liable for the acts and omissions of its Subprocessors to the same extent Supplier or its Affiliates, as applicable, would be liable if performing the services of each Subprocessor directly under the terms of this Addendum.

5.5 Supplier and each Supplier Affiliate shall ensure that each Subprocessor performs the obligations under sections 2.1, 3, 4, 6.1, 7, 8 and 10.1, as they apply to Processing of Purchaser Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of Supplier.

## **6. Requests for Disclosure and Data Subject Rights<sup>1</sup>**

6.1 Supplier shall give notice in writing to Purchaser of any disclosure of Purchaser Entities Data that it or any Supplier Affiliate is required to make by applicable law or regulatory body (including by any Supervisory Authority) promptly after it becomes aware of such a requirement and in any event prior to making any such disclosure (save to the extent expressly prohibited by the Supervisory Authority or applicable law). Such notice to include, at a minimum details of the Purchaser Entities Data involved and the nature and frequency of such disclosure, and shall allow the Purchaser to take action and/or to participate in the disclosure process to ensure that only the Purchaser Entities Data that is strictly required to be disclosed is disclosed.

6.2 Supplier shall notify the Purchaser within two (2) days if a Data Subject makes a request to have access to, amend, or erase that Personal Data or any other complaint, allegation, objection relating to Purchaser's or Supplier's Processing of Personal Data (without responding to that request unless authorised to do so) and provide full co-operation and assistance to the Purchaser by:

6.2.1 providing to Purchaser details of Personal Data held by it and the Processing of Personal Data under this Agreement in relation to the individual within five (5) days of receipt of the request for such Personal Data;

6.2.2 complying with the instructions of a Data Subject request;

6.2.3 promptly correcting, blocking or deleting the applicable Personal Data;

6.2.4 promptly providing to a Data Subject such information regarding the Processing as Purchaser may reasonably request, including, but not limited to, providing privacy notices, consents and waivers, in accordance with Purchaser's instructions and subject to Purchaser's prior written approval.

## **7. Security Incident**

7.1 Supplier shall promptly (within 24 hours of becoming aware) notify Purchaser in writing of: (a) any actual or reasonably suspected breach of security, which when reasonably suspected poses a risk to the security, confidentiality or integrity of Purchaser Personal Data; (b) any actual or reasonably suspected unauthorized access to or acquisition, use, loss, destruction, alteration, compromise or disclosure of any Purchaser Personal Data; or (c) any circumstance pursuant to which Data Protection Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (each, a "**Security Incident**").

7.2 In any notification to Purchaser required under this Section, Supplier shall (at its own expense): (i) provide Purchaser with sufficient information to allow each Purchaser Group Member to meet any obligations to report or inform Data Subjects of the Security Incident under the Data Protection Laws, including by providing to Purchaser a detailed description of the incident, the Purchaser Personal Data accessed, the number and identity of affected individuals, if any, the cause, the measures taken or proposed to be taken to address the Security Incident and such other information as Purchaser may request concerning the Security Incident; (ii) assist Purchaser in investigating, remedying and taking any other action Purchaser deems necessary regarding any Security Incident and any dispute, inquiry or claim that concerns the Security Incident; (iii) take any other prompt actions to remediate and ensure that such Security Incident or potential Security Incident will not recur; and (iv) cooperate with Purchaser and any law enforcement or Supervisory Authority investigating such Security Incident and execute all documents as Purchaser may reasonably request to assist it to comply with its obligations under Data Protection Laws insofar as they relate to any Personal Data and co-operate and comply with the directions or decisions of any competent Supervisory Authority in relation to such data,

and in each case, within such time to assist Purchaser to meet any time limit imposed by the competent Supervisory Authority.

- 7.3 Unless required under applicable law, Supplier shall not notify any Supervisory Authority or law enforcement agency directly of any breach and will not communicate with any Supervisory Authority or law enforcement agency directly about any actual or suspected Security Incident and shall allow Purchaser to manage all such communications. Unless prohibited by applicable law, Supplier shall also notify Purchaser of any third party legal process relating to any Security Incident, including, but not limited to, any legal process initiated by any governmental entity (foreign or domestic).
- 7.4 Without limiting the foregoing, Purchaser shall make the final decision on notifying (including the contents of such notice) Purchaser's client's, employees, service providers, Data Subjects and/or the general public of such Security Incident, and the implementation of the remediation plan. Supplier shall reimburse Purchaser for all Notification Related Costs incurred by Purchaser arising out of or in connection with any Security Incident. "Notification Related Costs" means Purchaser's internal and external costs associated with addressing and responding to the Security Incident, including: (i) preparation and mailing or other transmission of legally required notifications or such other communications Purchaser deems reasonably appropriate; (ii) establishment of a call center or other communications procedures in response to such Security Incident (e.g., Purchaser service FAQs, talking points and training); (iii) public relations and other similar crisis management services; (iv) legal and accounting fees and expenses associated with Purchaser's investigation of and response to such event; (v) costs for commercially reasonable credit reporting services that are associated with legally required notifications or are advisable under the circumstances as determined by Purchaser; and (vi) court costs, reasonable fees and expenses of attorneys, accountants and other experts and all other reasonable fees and expenses of litigation or other proceedings.

## 8. Data Protection Impact Assessment, Consents & Disclosures

- 8.1 Supplier and each Supplier Affiliate shall provide reasonable assistance to each Purchaser Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Purchaser reasonably considers to be required of any Purchaser Group Member 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 Purchaser Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.
- 8.2 ***[Include if Supplier provides Purchaser with Personal Data or gives Purchaser access to third party digital properties from which Personal Data is collected]*** To the extent that Supplier provides Purchaser with any Personal Data, or is an operator of or provides access to digital properties from which Personal Data is made available to Purchaser, Supplier warrants and represents that:
- 8.2.1 Supplier's digital property(ies) and each of the other digital properties and other sources of the data provided or made available by Supplier to Purchaser hereunder and/or otherwise utilized by Supplier in performance of Services to Purchaser hereunder ("**Supplier Data**") (a) contains a privacy policy that clearly and unambiguously discloses, and will clearly and unambiguously disclose throughout the Term hereof, the collection, provision and usage (including, the usage contemplated hereby) of Supplier Data, including without limitation descriptions of data collection for Interest-Based Advertising (as defined below) by Purchaser, in compliance with all Data Protection Laws, (b) provides an easy-to-use mechanism or method that enables a Data Subject to opt out of Interest-Based Advertising through the services provided by Supplier, and (c) to the extent required by Data Protection Laws obtains, with respect to Supplier's services, Data Subject's prior and informed consent to the usage of third-party technology and the collection, provision, and use by Purchaser of data derived therefrom. "**Interest-Based Advertising**" means each of (i) the collection of data across multiple digital properties or other sources for the purpose(s) of profiling and delivering advertising based on preferences or interests known or inferred from the data collected and (ii) the collection of data about a user's activity on or in one digital property or source for the purpose(s) of profiling and delivering advertising based on that data on a different digital property.
- 8.2.2 Unless the applicable Data Subjects have provided affirmative opt-in consent to the provision of sensitive data or special categories of data (in each case as defined by applicable Data Protection Laws, "**Sensitive Data**"), to and use by Purchaser, Supplier will not pass or make available to Purchaser as part of Supplier Data any Sensitive Data.

## **9. Deletion or return of Purchaser Personal Data**

- 9.1 Subject to sections 9.2 and 9.3, Supplier and each Supplier Affiliate shall promptly and in any event within [14 days] of the date of cessation of any Services involving the Processing of Purchaser Personal Data (the “Cessation Date”), delete<sup>2</sup> and procure the deletion of all copies of those Purchaser Personal Data.
- 9.2 Subject to section 9.3, Purchaser may upon written notice to Supplier require Supplier and each Supplier Affiliate to (a) return a complete copy of all Purchaser Personal Data to Purchaser by secure file transfer in such format as is reasonably notified by Purchaser to Supplier; and (b) delete and procure the deletion of all other copies of Purchaser Personal Data Processed by any Contracted Processor. Supplier and each Supplier Affiliate shall comply with any such written request within [14 days] of the Cessation Date.
- 9.3 Supplier shall provide written certification to Purchaser that it and each Supplier Affiliate has fully complied with this section 9 within [14 days] of the Cessation Date.

## **10. Audit rights**

- 10.1 Supplier and each Supplier Affiliate shall make available to each Purchaser Group Member on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Purchaser Group Member or an auditor mandated by any Purchaser Group Member in relation to the Processing of the Purchaser Personal Data by the Contracted Processors.

## **11. Restricted Transfers**

- 11.1 Purchaser (as “data exporter”) and each Contracted Processor, as appropriate, (as “data importer”) hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that Purchaser Group Member to that Contracted Processor.
- 11.2 Supplier represents and warrants that, before the commencement of any Restricted Transfer to a Subprocessor, Supplier’s or the relevant Supplier Affiliate’s entry into the Standard Contractual Clauses under section 11.1, and agreement to variations to those Standard Contractual Clauses made under section 12.4.1, as agent for and on behalf of that Subprocessor will have been duly and effectively authorised (or subsequently ratified) by that Subprocessor.

## **12. General Terms**

### *Governing law and jurisdiction*

- 12.1 Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:
- 12.1.1 the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and
- 12.1.2 this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Agreement.

### *Order of precedence*

- 12.2 Supplier acknowledges and agrees that the terms and conditions of this Addendum shall complement and supplement those set forth in the Agreement. Nothing in this Addendum reduces Supplier’s or any Supplier Affiliate’s obligations under the Agreement in relation to the protection of Personal Data or permits Supplier or any Supplier Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.
- 12.3 Subject to section 12.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

### *Changes in Data Protection Laws*

- 12.4 Purchaser may:
- 12.4.1 by at least 30 (thirty) calendar days' written notice to Supplier from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under section 11.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and
  - 12.4.2 propose any other variations to this Addendum which Purchaser reasonably considers to be necessary to address the requirements of any Data Protection Law.
- 12.5 If Purchaser gives notice under section 12.4.1, Supplier and each Supplier Affiliate shall promptly co-operate (and ensure that any affected Subprocessors promptly co-operate) to ensure that equivalent variations are made to any agreement put in place under section 5.4.3.
- 12.6 If Purchaser gives notice under section 12.4.2, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Purchaser's notice as soon as is reasonably practicable.
- 12.7 Neither Purchaser nor Supplier shall require the consent or approval of any Purchaser Affiliate or Supplier Affiliate to amend this Addendum pursuant to this section 12.5 or otherwise.

*Severance*

- 12.8 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Agreement with effect from the date first set out above.

**[Purchaser]**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date Signed \_\_\_\_\_

**[Supplier]**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date Signed \_\_\_\_\_

## **ANNEX 1: DETAILS OF PROCESSING OF PURCHASER PERSONAL DATA**

This Annex 1 includes certain details of the Processing of Purchaser Personal Data as required by Article 28(3) GDPR.

*Subject matter and duration of the Processing of Purchaser Personal Data*

The subject matter and duration of the Processing of the Purchaser Personal Data are set out in the [MSA] and this Addendum.

*The nature and purpose of the Processing of Purchaser Personal Data*

**[Include description here]**

*The types of Purchaser Personal Data to be Processed*

**[Include list of data types here]**

*The categories of Data Subject to whom the Purchaser Personal Data relates*

**[Include categories of data subjects here]**

*The obligations and rights of Purchaser and Purchaser Affiliates*

The obligations and rights of Purchaser and Purchaser Affiliates are set out in the [MSA] and this Addendum.

## ANNEX 2: STANDARD CONTRACTUAL CLAUSES

*[These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law<sup>3</sup> (otherwise).]*

*[If these Clauses are not governed by the law of a Member State, the terms “Member State” and “State” are replaced, throughout, by the word “jurisdiction”.]*

### Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection *[This opening recital is deleted if these Clauses are not governed by the law of a member state of the EEA.]*

*[The gaps below are populated with details of the relevant Purchaser Group Member:]*

Name of the data exporting organisation:

Address:

Tel.: \_\_\_\_\_; fax: \_\_\_\_\_; e-mail: \_\_\_\_\_

Other information needed to identify the organisation

.....  
(the data **exporter**)

And

*[The gaps below are populated with details of the relevant Contracted Processor:]*

Name of the data importing organisation:

Address:

Tel.: \_\_\_\_\_; fax: \_\_\_\_\_; e-mail: \_\_\_\_\_

Other information needed to identify the organisation:

.....  
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data

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<sup>3</sup> The SCCs are approved by the European Commission and not by any equivalent authority. The reference here is intended to capture possible deemed approval of the same SCCs by an equivalent UK authority after Brexit (or, in theory, an equivalent authority in another departing Member State in the future).

importer of the personal data specified in Appendix 1.

## Background

The data exporter has entered into a data processing addendum (“DPA”) with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer’s execution of, and compliance with, the terms of these Clauses.

### *Clause 1*

#### ***Definitions***

For the purposes of the Clauses:

- (a) *‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; [If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words “except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of “personal data” is expanded to include those data” are added.]*
- (b) *‘the data exporter’ means the controller who transfers the personal data;*
- (c) *‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; [If these Clauses are not governed by the law of a Member State, the words “and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC” are deleted.]*
- (d) *‘the subprocessor’ means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;*
- (e) *‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;*
- (f) *‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised*



disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## *Clause 2*

### ***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## *Clause 3*

### ***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

## *Clause 4*

### ***Obligations of the data exporter***

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC; [*If these Clauses are not governed by the law of a Member State, the words “within the meaning of Directive 95/46/EC” are deleted.*]
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### *Clause 5*

#### ***Obligations of the data importer***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

## *Clause 6*

### ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

#### *Clause 7*

##### ***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### *Clause 8*

##### ***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

## *Clause 9*

### ***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

## *Clause 10*

### ***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

## *Clause 11*

### ***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## *Clause 12*

### ***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer

prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

*[Populated with details of, and deemed signed on behalf of, the data exporter:]*

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

**On behalf of the data importer:**

*[Populated with details of, and deemed signed on behalf of, the data importer:]*

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties  
The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

### **Data exporter**

The data exporter is:

[TO BE COMPLETED]

### **Data importer**

The data importer is:

[TO BE COMPLETED]

### **Data subjects**

The personal data transferred concern the following categories of data subjects:

[TO BE COMPLETED]

### **Categories of data**

The personal data transferred concern the following categories of data:

[TO BE COMPLETED]

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data:

[TO BE COMPLETED]

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities:

[TO BE COMPLETED]

### **DATA EXPORTER**

*[Populated with details of, and deemed to be signed on behalf of, the data exporter:]*

Name:.....

Authorised Signature .....

### **DATA IMPORTER**

*[Populated with details of, and deemed to be signed on behalf of, the data importer:]*

Name:.....

Authorised Signature .....

## **APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):**

**[TO BE COMPLETED]**