

Data Processing Addendum

Between:

- (1) The party defined as “you” in the Agreement (“**Customer**” or “**Controller**”); and
- (2) Spktral Limited, a company incorporated in England and Wales with company number: 12194589 whose registered office is situated at 20-22 Wenlock Road, London, N1 7GU (“**Spktral**” or “**Processor**”),

(together, the “**Parties**” and individually, a “**Party**”).

Background:

- (1) This Addendum forms part of the Processor’s terms of business (and any ancillary or related documentation), as updated from time to time, to which this Addendum is attached under which Services are performed by the Processor (the “**Agreement**”).
- (2) This Addendum sets out the additional terms, requirements and conditions on which the Processor will process Personal Data when providing Services under the Agreement. This Agreement contains the mandatory clauses required by the UK GDPR for contracts between Controllers and Processors.

1. Definitions and Interpretation

- 1.1 In this Addendum, unless the context otherwise requires, the following expressions have the following meanings:

“ Commissioner ”	means the Information Commissioner (as defined in Article 4(A3) UK GDPR and section 114 Data Protection Act 2018;
“ Controller ”	shall have the meanings given to the term “controller” by Article 4(7) of the UK GDPR and section 6 of the Data Protection Act 2018;
“ Data Protection Legislation ”	means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
“ Data Subject ”	means an identified or identifiable living individual to whom Personal Data relates;
“ Personal Data ”	means any information relating to an identified or identifiable living individual; an identified or identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual;
“ Personal Data Breach ”	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored, or otherwise Processed;
“ Processor ”	means a natural or legal person, public authority, agency, or other body which processes Personal Data on behalf of a Controller;

<p>“processing”, “process”, “processed”, “processes”</p>	<p>means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;</p>
<p>“Services”</p>	<p>as defined in the Agreement; and</p>
<p>“Special category data”</p>	<p>shall have the meanings ascribed thereto in the Data Protection Legislation;</p>
<p>“UK GDPR”</p>	<p>means Regulation (EU) 2016/679 General Data Protection Regulation as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.</p>

1.2 In the case of conflict or ambiguity between:

- 1.2.1 any provision contained in the body of this Addendum and any provision contained in the Annex, the provision in the body of this Addendum will prevail; and
- 1.2.2 any of the provisions of this Addendum and the provisions of the Agreement, the provisions of this Addendum will prevail; and

2. **Scope and Application of this Addendum**

- 2.1 The Annex describes the types of Personal Data, category or categories of Data Subject, the nature of the processing to be carried out, the purpose(s) of such processing, and the duration of such processing.
- 2.2 Subject to Clause 2.3, this Addendum is subject to the terms of the Agreement and is incorporated into the Agreement. Definitions and interpretations set out in the Agreement shall apply to the interpretation of this Addendum.
- 2.3 The provisions of this Addendum supersede any other arrangement, understanding, or agreement including, but not limited to, the Agreement made between the Parties at any time relating to the Personal Data.

3. **Provision of the Services and Processing Personal Data**

- 3.1 The Controller shall retain control of the Personal Data and shall, at all times, remain responsible for its compliance obligations under the Data Protection Legislation including, but not limited to, providing any and all required notices and obtaining any and all required consents, and for the written processing instructions given to the Processor.
- 3.2 The Processor shall only provide the Services and process the Personal Data received from the Controller for the purposes of those Services and not for any other purpose;

4. **Data Protection Compliance**

- 4.1 Any instructions given by the Controller to the Processor shall be made in writing and shall at all times be in compliance with the Data Protection Legislation. The Processor shall act only on such written instructions from the Controller unless the Processor is required by law to do otherwise (as per Article 29 of the UK GDPR).
- 4.2 The Processor shall promptly comply with any request from the Controller requiring the Processor to amend, transfer, delete, or otherwise dispose of the Personal Data, or to stop, mitigate, or remedy any unauthorised processing.
- 4.3 The Processor shall transfer all Personal Data to the Controller on the Controller’s request in the formats, at the times, and in compliance with, the Controller’s written instructions.
- 4.4 Both Parties shall comply at all times with the Data Protection Legislation and shall not perform their obligations under this Addendum or any other agreement or arrangement between them in such way as to cause either Party to breach any of its applicable obligations under the Data Protection Legislation.

- 4.5 The Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the Data Protection Legislation in all respects including, but not limited to, its collection, holding, and processing, and that the Controller has in place all necessary and appropriate consents and notices to enable the lawful transfer of the Personal Data to the Processor.
- 4.6 The Processor shall provide all reasonable assistance (at the Controller's cost) to the Controller in complying with its obligations under the Data Protection Legislation with respect to the security of processing, the notification of Personal Data Breaches, the conduct of data protection impact assessments, and in dealings with the Commissioner.
- 4.7 The Processor shall notify the Controller in a timely manner of any changes to the Data Protection Legislation that may adversely affect its performance of the Services or of its obligations under this Addendum.
- 4.8 When processing the Personal Data on behalf of the Controller, the Processor shall:
- 4.8.1 not transfer the Personal Data outside the United Kingdom without the prior written consent of the Controller;
 - 4.8.2 process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Controller or as may be required by law (in which case, the Processor shall inform the Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
 - 4.8.3 implement appropriate technical and organisational measures and take all steps necessary to protect the Personal Data against accidental, unauthorised, or unlawful processing, access, copying, modification, reproduction, display, or distribution of the Personal Data, and against its accidental or unlawful loss, destruction, alteration, disclosure, or damage. The Processor shall inform the Controller in advance of any changes to such measures;
 - 4.8.4 implement measures to ensure a level of security proportionate to the risks involved including, as appropriate:
 - a) the pseudonymisation and encryption of Personal Data;
 - b) the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services;
 - c) the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and
 - d) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - 4.8.5 keep complete and accurate records and information concerning all processing activities carried out on the Personal Data in order to demonstrate its compliance with this Addendum and the Data Protection Legislation;
 - 4.8.6 make available to the Controller any and all such information as is reasonably required and necessary to demonstrate the Processor's compliance with the Data Protection Legislation;
 - 4.8.7 on reasonable prior notice, submit to audits and inspections and provide the Controller with any information reasonably required to assess and verify compliance with the provisions of this Addendum and both Parties' compliance with the requirements of the Data Protection Legislation. The requirement to give notice will not apply if the Controller believes that the Processor is in breach of any of its obligations under this Addendum or under the law; and
 - 4.8.8 inform the Controller immediately if it is asked to do anything that infringes the Data Protection Legislation.

5. **Data Subject Requests, Notices, Complaints, and Personal Data Breaches**

- 5.1 The Processor shall, at the Controller's cost, assist the Controller in complying with its obligations under the Data Protection Legislation. In particular, the provisions of this Clause 5 shall apply to requests by Data Subjects to exercise their rights (including, but not limited to, subject access requests), information or assessment notices served on the Controller by the Commissioner under the Data Protection Legislation, complaints, and Personal Data Breaches.
- 5.2 The Processor shall notify the Controller immediately in writing if it receives:
- 5.2.1 a request from a Data Subject to exercise their rights; or

- 5.2.2 any other complaint, notice, communication, or request relating to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation.
- 5.3 The Processor shall, at the Controller's cost, cooperate fully with the Controller and assist as required in relation to any Data Subject request, or other complaint, notice, communication, or request, including by:
 - 5.3.1 providing the Controller with full details of the complaint, notice, communication, or request;
 - 5.3.2 providing the necessary information and assistance in order to comply with a request from a Data Subject;
 - 5.3.3 providing the Controller with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Controller); and
 - 5.3.4 providing the Controller with any other information requested by the Controller.
- 5.4 The Processor shall not disclose any Personal Data to any Data Subject or to any other third party unless instructed to do so by the Controller in writing, or as required by law.
- 5.5 The Processor shall notify the Controller immediately if it becomes aware of any form of Personal Data Breach, including any unauthorised or unlawful processing, loss of, unintended damage to, or destruction of any of the Personal Data.
- 5.6 If an event of the type described under Clause 5.5 occurs:
 - 5.6.1 Where recovery of the affected Personal Data is possible, the Processor shall recover the same as soon as possible.
 - 5.6.2 The Processor shall, without undue delay also provide the following information to the Controller:
 - a) a description of the nature of the event, including the category or categories of Personal Data affected, the approximate number of Personal Data records and Data Subjects involved;
 - b) the likely consequences of the event; and
 - c) a description of the measures that have been taken or will be taken in response, including those to mitigate potential adverse effects.
 - 5.6.3 The Processor shall provide all reasonable co-ordination, co-operation, and assistance to the Controller in the Controller's investigation and handling of the event.
 - 5.6.4 The Processor shall not inform any third parties of the event without the Controller's express written consent, unless required to do so by law.
 - 5.6.5 The Controller shall have the sole right to determine whether to provide notice of the event to any Data Subjects, the Commissioner, other applicable regulators, law enforcement authorities, or other parties, as required by law or regulation or at the Controller's discretion.
 - 5.6.6 Where the Processor is required to take action and/or provide assistance at its own expense under this Clause 5.6, the requirement for the Processor to cover such expenses shall not apply if the event arose from the Controller's specific written instructions, negligence, wilful default, or breach of this Addendum. In such cases, the Controller shall cover all such reasonable expenses.

6. **Staff**

The Processor shall ensure that all personnel who are to access and/or process any of the Personal Data:

- 6.1 be informed of the confidential nature of the Personal Data and be bound by contractual use restrictions and confidentiality requirements; and
- 6.2 be given appropriate training on the Data Protection Legislation and how their job roles relate to it and are affected by it.

7. **Warranties**

- 7.1 The Controller hereby warrants and represents that the Personal Data and its use with respect to the Agreement and this Addendum shall comply with the Data Protection Legislation in all respects including, but not limited to, its collection, holding, and processing.
- 7.2 The Processor hereby warrants and represents that:

- 7.2.1 the Personal Data shall be processed by the Processor (and by any subcontractors appointed under Clause 9) in compliance with the Data Protection Legislation and any and all other relevant laws, regulations, enactments, orders, standards, and other similar instruments;
- 7.2.2 it has no reason to believe that the Data Protection Legislation in any way prevents it from complying with its obligations under the Agreement; and
- 7.2.3 it will implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or accidental or unlawful loss, destruction, or damage.

8. **Liability**

- 8.1 Nothing in this Addendum shall relieve either Party of, or otherwise affect, the liability of either Party to any Data Subject, or for any other breach of that Party's direct obligations under the Data Protection Legislation. Furthermore, the Processor hereby acknowledges that it shall remain subject to the authority of the Commissioner and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a Processor under the Data Protection Legislation may render it subject to the fines, penalties, and compensation requirements set out in the Data Protection Legislation.
- 8.2 The Processor's aggregate liability to the Controller for any breach of this Addendum shall be limited to those agreed in the Terms of Business between Parties and never more than the Processor's insurance provides.

9. **Subcontractors**

- 9.1 The Processor shall not subcontract any of its obligations or rights under this Agreement without the prior written consent of the Controller.
- 9.2 If the Processor appoints a subcontractor (with the written consent of the Controller), the Processor shall:
 - 9.2.1 enter into a written agreement with the subcontractor which shall impose upon the subcontractor the same obligations as are imposed upon the Processor by this Agreement and which shall permit both the Processor and the Controller to enforce those obligations;
 - 9.2.2 ensure that the subcontractor complies fully with its obligations under that agreement and the Data Protection Legislation;
 - 9.2.3 maintain control over all Personal Data transferred to the subcontractor; and
 - 9.2.4 the agreement between the Processor and the subcontractor shall terminate automatically upon the termination or expiry of this Agreement for any reason.
- 9.3 In the event that a subcontractor fails to meet its obligations under any such agreement, the Processor shall remain fully liable to the Controller for failing to meet its obligations under this Agreement.
- 9.4 The Processor shall be deemed to have control legally over any Personal Data that is in the possession of or practically controlled by its subcontractors.

10. **Deletion of Personal Data**

The Processor shall retain the Personal Data for a period of seven years after the Agreement is terminated, at which point the Personal Data shall be deleted in a manner or form decided by the Processor, acting reasonably. This requirement will not apply to the extent that the Processor is required by applicable law to retain some or all of the Personal Data, or to Personal Data it has archived on back-up systems, which the Processor shall securely isolate and protect from any further processing.

11. **Governing Law and Jurisdiction**

This Addendum (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales. Any dispute, controversy, proceedings or claim between the Parties relating to this Addendum (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

Annex

Subject matter

The Engagement Manager, Invited Users and employee details of the Controller entered by or at the election of the Controller into the Applications.

Duration

For as long as the Processor has a business relationship with the Controller.

Nature and purpose

To enable the functionality of the Applications as set out in the Agreement.

Types of Personal Data processed

The types of Personal Data processed may include:

- a) Full names of the Engagement Manager and Invited Users, and not of the Controller's employees or contractors.
- b) Email and telephone number of Engagement Managers
- c) Email address of Invited Users
- d) A unique identifier for each of the Controller's employees, workers and contractors plus the following personal and special category data:
 - Personal Data:
 - o gender assigned at birth
 - o date of birth
 - o employment start date
 - o employment end date
 - o payroll pay elements (additions, amendments and deductions)
 - o employee grade
 - o job family
 - o social mobility
 - Special category data:
 - o ethnicity
 - o disability
 - o sexual orientation.

Categories of Data Subjects

The categories of data subjects include:

- a) Engagement Managers
- b) Invited Users
- c) The Controller's employees, workers and contractors