

## Indemandly Data Processing Agreement

This Data Processing Agreement (“**Agreement**”) entered into between the customer (“**Customer**”) and Indemandly supplements the Terms of Use as updated from time to time. This Agreement takes effect from 25 May 2018, and applies to the extent that Indemandly Processes as the Customer’s processor any Personal Data that is subject to EU Data Protection Law.

### 1. Definitions

- “**Affiliate**” means any legal entity that is directly or indirectly controlled by or under common control of the Customer or, as the case may be, Indemandly;
- “**Controller-to-Processor SCCs**” means the Standard Contractual Clauses (Processors) in the Annex to the European Commission Decision of February 5, 2010, as may be amended or replaced from time to time by the European Commission;
- “**Data Subject**” has the meaning described in Article 4 (1) of the General Data Protection Regulation (EU) 2016/679;
- “**EU Data Protection Law**” means the laws and regulations applicable to the Processing of Personal Data under this Agreement, of the European Union, the European Economic Area and their member states, and in particular the General Data Protection Regulation (EU) 2016/679;
- “**Indemandly/we/us**” means Tewtor Limited, a company incorporated in Hong Kong, and the word “our” shall be construed accordingly;
- “**Personal Data**” means and include any data or information falling within the definition of “personal data” under Article 4 (1) of the General Data Protection Regulation (EU) 2016/679;
- “**Processing**” or “**to Process**” has the meaning described in Article 4 (2) of the General Data Protection Regulation (EU) 2016/679;
- “**Services**” means the services provided by Indemandly to allow customers to access, use or in any form participate in certain features of Indemandly’s platform under the Terms of Use; and
- “**Supervisory Authority**” means an independent public authority which is established by an EU member state pursuant to Article 51 of the General Data Protection Regulation (EU) 2016/679.

### 2. Customer Affiliates

This Agreement is agreed upon on behalf and for the benefit of the Customer and the Customer Affiliates. Where in this Agreement reference is made to the Customer, this shall also mean any Customer Affiliate. Indemandly is entitled to enforce this Agreement for itself and also on behalf of any of the Customer Affiliates.

Furthermore, Customer Affiliates are entitled to enforce this Agreement as if the Customer Affiliate was a party to this Agreement. As a consequence, the Customer shall also ensure that all such Customer Affiliates shall abide with the obligations of the Customer pursuant to this Agreement, and the Customer shall for any Customer Affiliates’ breaches of any obligations pursuant to this Agreement, be liable as if such breaches were those of the Customer.

### **3. Roles of the Parties**

The parties acknowledge and agree that the Customer is the controller of Personal Data and Indemandly is the processor of Personal Data as referred to in the EU Data Protection Law. The Customer determines the purposes and means of the Processing of Personal Data, and Indemandly only provides a platform to Process Personal Data on behalf of the Customer.

### **4. Nature of Data Processing**

Each party agrees to Process Personal Data received under this Agreement only for the purposes set out in this Agreement. For the avoidance of doubt, the type of Personal Data Processed and the categories of Data Subjects subject to this Agreement are described in Annex I to this Agreement.

### **5. Compliance with Laws**

The Customer and Indemandly agree to comply with all laws and regulations, including EU Data Protection Law.

### **6. Customer Obligations**

The Customer represents, warrants and agrees that with respect to the Personal Data provided pursuant to this Agreement, it will:

- 6.1 comply with Personal Data protection, security and other obligations prescribed by EU Data Protection Law for controllers;
- 6.2 ensure that the provision of Personal Data to Indemandly complies with EU Data Protection Law;
- 6.3 maintain a procedure for the exercise of the rights of the individuals whose Personal Data is collected;
- 6.4 only Process data that has been lawfully and validly collected and ensure that such data is relevant and proportionate to the respective uses;
- 6.5 ensure that after assessment of the requirements of EU Data Protection Law for controllers, the security and confidentiality measures implemented are suitable for protection of the Personal Data against unauthorised, accidental or unlawful access, loss, alteration, disclosure or destruction of Personal Data and against all other unlawful or unauthorised forms of Processing; and
- 6.6 take reasonable steps to ensure compliance with the provisions of this Agreement by its personnel and by any person accessing or using the Personal Data on its behalf.

### **7. Indemandly Obligations**

Indemandly represents, warrants and agrees that with respect to the Personal Data provided pursuant to this Agreement, it will:

- 7.1 Process Personal Data only on the Customer's behalf and in compliance with the Customer's documented instructions (including relating to international data transfers), including instructions in this Agreement and all

- agreements between the Customer and Indemandly, and not for any other purpose unless required to do so by EU or member state law to which Indemandly is subject;
- 7.2 immediately inform the Customer if, in Indemandly's opinion, an instruction from the Customer infringes EU Data Protection Law, or if Indemandly is unable to comply for whatever reason with the Customer's instructions or this Agreement;
  - 7.3 implement and maintain appropriate technical and organisational security measures to protect against unauthorised, accidental or unlawful access, loss, alteration, disclosure or destruction of Personal Data and against all other unlawful or unauthorised forms of Processing, and provide the Customer with reasonable evidence of its privacy and security policies;
  - 7.4 take appropriate steps to ensure that any personnel who has access to Personal Data is informed of the confidential nature of the Personal Data, is aware of and will comply with this Agreement, has received appropriate training on their responsibilities, is subject to a duly enforceable contractual or statutory confidentiality obligation, and will not Process the Personal Data except on instructions from the Customer. Indemandly shall ensure that such confidentiality obligations survive the termination of their engagement;
  - 7.5 take reasonable steps to ensure the reliability of any personnel engaged in the Processing of Personal Data. Indemandly shall ensure that access to Personal Data is limited to those personnel performing Services in accordance with this Agreement and the Terms of Use;
  - 7.6 not engage another processor without prior specific or general written authorisation of the Customer, and in the case of general written authorisation, Indemandly shall inform the Customer of any intended changes concerning the addition or replacement of other processors, thereby giving the Customer the opportunity to object to such changes;
  - 7.7 where Indemandly engages another processor for carrying out specific Processing activities on behalf of the Customer, Indemandly will ensure that the same data protection obligations as set out in this Agreement are imposed on that other processor by way of a contract or other legal act under EU or member state law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the EU Data Protection Law. Indemandly shall remain fully liable to the Customer for the performance of that other processor's obligations where that other processor fails to fulfil its data protection obligations;
  - 7.8 inform the Customer of:
    - a. any legally binding request for disclosure of Personal Data Processed under this Agreement by a law enforcement authority, unless disclosure is prohibited by law, regulation or order;
    - b. any Personal Data breach within the meaning of EU Data Protection Law relating to or affecting the Personal Data which may require a notification to be made to a Supervisory Authority or Data Subject under EU Data Protection Law;
    - c. any non-compliance with this Agreement by Indemandly or its employees;

- d. any notice, inquiry or investigation by a Supervisory Authority, law enforcement agency or regulator with respect to Personal Data, unless disclosure is prohibited by law, regulation or order; and
  - e. any complaint or request (in particular, requests for access to or the rectification, erasure, restriction, blocking or deletion of Personal Data) received directly from Data Subjects. Indemandly will not respond to any such request without the Customer's prior written authorisation.
- 7.9 provide reasonable co-operation and assistance without delay to the Customer in respect of the Customer's obligations under EU Data Protection Law regarding:
- a. the security of Personal Data, including by implementing technical and organisational security measures;
  - b. the investigation of any Personal Data breaches and the notification to the Supervisory Authority and Data Subjects in respect of such a breaches;
  - c. the preparation of data protection impact assessments;
  - d. carrying out consultations with the Supervisory Authority.
- 7.10 taking into account the nature of the Processing, take appropriate technical and organisational measures to assist the Customer in fulfilling the Customer's obligation to respond to Data Subjects' requests to exercise their rights as provided under EU Data Protection Law, including access to or the rectification, erasure, restriction, blocking or deletion of Personal Data;
- 7.11 deal promptly, properly and in good faith with all requests and inquiries relating to its Processing of Personal Data whether such request or inquiry is made by the Customer, a Data Subject, a Supervisory Authority, a law enforcement agency or a regulator. To the extent legally permitted, Indemandly shall not respond to a request or inquiry relating to Personal Data from a Data Subject, a Supervisory Authority, a law enforcement agency or a regulator without the prior written consent of the Customer.
- 7.12 if Indemandly is required by law to Process any Personal Data for a reason other than on the Customer's documented instructions, Indemandly will take reasonable steps to inform the Customer of this requirement in advance of any Processing, unless Indemandly is prohibited by law, regulation or order from informing the Customer of such Processing on important grounds of public interest;
- 7.13 at the choice and direction of the Customer, delete or return all Personal Data Processed under this Agreement to the Customer after the end of the provision of the Services relating to Processing, and delete existing copies, unless EU or member state law requires storage of the Personal Data;
- 7.14 promptly make available to Indemandly all information necessary to demonstrate compliance with the obligations in this Agreement;
- 7.15 if a Supervisory Authority requires an audit of the data processing facilities from which Indemandly Processes Personal Data in order to ascertain or monitor the Customer's compliance with EU Data Protection Law, Indemandly will cooperate with such audit; and
- 7.16 the Customer or an accredited third-party audit firm agreed to by both the Customer and Indemandly may audit Indemandly's compliance with the terms of this Agreement and EU Data Protection Law, including inspections, during regular business hours, with reasonable advance notice to Indemandly and subject to reasonable confidentiality obligations and

procedures. Before the commencement of any such audit, the Customer and Indemandly shall mutually agree upon the scope, timing, and duration of the audit. The Customer shall promptly notify Indemandly with information regarding any non-compliance discovered during the course of an audit.

## **8. Disclosure of Personal Data**

Indemandly shall not disclose, or permit disclosure of, Personal Data to any third party, unless the Customer grants permission in writing or disclosure is required by this Agreement or by law, regulation or order. Prior to any disclosure, Indemandly will inform the Customer of such disclosure, unless prohibited by law, regulation or order.

## **9. Transfer of Data outside the EU**

The Controller-to-Processor SCCs, as set out in Annex II, are hereby incorporated into and form part of this Agreement. For transfers of Personal Data to Indemandly for Processing by Indemandly in a jurisdiction other than a jurisdiction in the EEA, or the European Commission-approved countries providing 'adequate' data protection, Indemandly shall comply with the data importer obligations, and the Customer shall comply with the data exporter obligations, in the Controller-to-Processor SCCs. If data transfers under this section 9 of this Agreement rely on Controller-to-Processor SCCs to enable the lawful transfer of Personal Data, as set out in the preceding sentence, the parties agree that Data Subjects for whom Indemandly Processes Personal Data are third-party beneficiaries under the Controller-to-Processor SCCs. To this end, Indemandly offers to the Customer to sign the Controller-to-Processor SCCs in Annex II.

## **10. Compensation**

To the extent permitted by applicable law, Indemandly has the right to claim compensation for all reasonable costs arising from any written requests from the Customer for activities performed under this Agreement unless such request falls within the obligations of Indemandly pursuant to the Services to be performed.

To the extent permitted by applicable law, Indemandly has the right to claim compensation from the Customer for all costs and fees related to audits under sections 7.15 and 7.16 of this Agreement, including all reasonable costs and fees for any and all time Indemandly expends for any such audits.

To the extent permitted by applicable law, Indemandly has the right to claim compensation for all reasonable costs arising from Indemandly's provision of assistance or compliance with requests and inquiries by a Data Subject, a Supervisory Authority, a law enforcement agency or a regulator under sections 7.9 to 7.11 of this Agreement.

## **11. Limitation of Liability**

If Indemandly Processes Personal Data in breach of the Customer's lawful instructions, this Agreement or EU Data Protection Law, Indemandly shall indemnify

and hold the Customer harmless for any direct or indirect loss, costs or damages, including but not limited to claims by a Data Subject and any financial penalties imposed by Supervisory Authorities or other competent authorities, due to Indemandly's Processing of Personal Data.

If the Customer Processes Personal Data in breach of this Agreement or Data Protection Laws, the Customer shall indemnify and hold Indemandly harmless for any direct or indirect loss, costs or damages, including but not limited to claims by a Data Subject, financial penalties imposed by Supervisory Authorities or other competent authorities, due to the Customer's Processing of Personal Data.

In case of claims by a Data Subject or financial penalties imposed by Supervisory Authorities or other competent authorities, each party shall: (a) notify the other party promptly in writing of any such potential or pending claims or penalties; (b) use reasonable endeavors to reduce or avoid such claims or penalties; (c) allow the other party to comment on any response, settlement, defense or appeal in relation to such claim; and (d) to a reasonable extent provide the other party with information in relation to the same.

Indemandly and all of its Affiliates' aggregate liability arising out of or related to this Agreement and, whether in contract, tort (including negligence), equity or otherwise, shall in no event exceed the total amount of fees actually paid to Indemandly. For the avoidance of doubt, Indemandly's and its Affiliates' total liability for all claims from the Customer and all its Affiliates arising out of or related to this Agreement shall apply in the aggregate for all claims under both the Terms of Use and this Agreement and shall not be understood to apply individually and severally to the Customer and/or to any Customer Affiliate.

## **12. Amendments**

The Parties give consent in advance to amendments to this Agreement that due to changed circumstances are necessary to maintain compliance with EU Data Protection Law or any required changes due to an opinion, order, warning or other decision or action by a Supervisory Authority.

## **13. Conflicts**

In the event of any conflict between the terms of this Agreement and any other terms between the Customer and Indemandly, including but not limited to the Terms of Use, the terms in this Agreement will prevail.

The Terms of Use will remain in full force and effect and will be unchanged except as modified by this Agreement.

## **14. Severability**

In the event that any provision of this Agreement is deemed invalid or unenforceable by any law or regulation of government, or by any decision of a court, arbitrator or regulator of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect and will not in any way be impaired.

**15. Termination**

This Agreement shall be effective from the 25 May 2018 and shall terminate automatically upon expiration or termination of the Terms of Use.

Any obligation arising from this Agreement that by its nature has post-contractual effect shall continue to be in effect after the termination of this Agreement.

**16. Governing Law and Dispute Resolution**

This Agreement shall be governed by, and shall be construed in accordance with, the Governing Law and Dispute Resolution provisions of the Terms of Use.

## **Annex I**

### **Subject-matter of the Processing**

The Processing of Personal Data for the provision of Indemandly's Services, as defined in this Agreement.

### **Duration of the Processing**

Subject to Clause 15 of this Agreement, Indemandly will process data for the duration of the Terms of Use, unless otherwise agreed in writing.

### **Nature and Purpose of the Processing**

The Processing of Personal Data shall be carried out on behalf of and in accordance with the Customer's documented instructions, and for the purpose of providing Indemandly's Services which enable Data Subjects to RSVP to an event organised by the Customer, request the Customer to contact them, or schedule a meeting or booking with the Customer. Personal Data may also be processed where required by law, regulation or order.

### **Types of Personal Data**

Personal Data is the personal data of the Data Subjects in connection with their use of Indemandly's Services for the purpose described above. Such personal data may include first and last name, email address and phone number.

### **Categories of Data Subjects**

Data Subjects are the Customer's end users – natural persons who through Indemandly, RSVP to an event organised by the Customer, request the Customer to contact them, or schedule a meeting or booking with the Customer.



## Annex II

### 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

Name of the data exporting organisation: .....

Address: .....

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

Other information needed to identify the organisation ...

(the data **exporter**)

And

Name of the data importing organisation: Indemandly

Address: ...

Tel. ...; fax ...; e-mail: hello@indemandly.com

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 importer of the personal data specified in Appendix 1.

#### *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 <sup>(1)</sup>;
- (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;
- (d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor 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 sub-processor 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 sub-processor 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;
- (g) to forward any notification received from the data importer or any sub-processor 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 sub-processing 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 sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor 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 <sup>(2)</sup>**

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 sub-processing, 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 sub-processing, it has previously informed the data exporter and obtained its prior written consent;
  - (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
  - (j) to send promptly a copy of any sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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 sub-processor agrees that the data subject may issue a claim against the data sub-processor 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 sub-processor 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 sub-processor, 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 sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, 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*

#### **Sub-processing**

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 sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses<sup>(3)</sup>. Where the sub-processor 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 sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing 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 sub-processing 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 sub-processor 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 sub-processor 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:**

Name (written out in full): .....

Position: .....

Address: .....

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

	Signature ...
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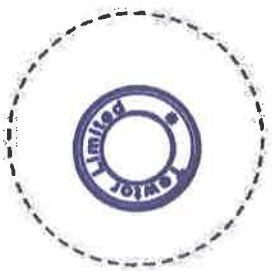
#### **On behalf of the data importer:**

Name (written out in full): ...

Position: ...

Address: ...

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

	Signature ...
-----------------------------------------------------------------------------------	---------------

<sup>(1)</sup> Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

<sup>(2)</sup> Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

<sup>(3)</sup> This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.

## 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 (please specify briefly your activities relevant to the transfer): the data exporter is the legal entity that has executed the Standard Contractual Clauses as a data exporter.

#### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer): the data importer is a provider of a platform that processes personal data upon the instruction of the data exporter.

#### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify): the Customer's end users – natural persons who through Indemandly, RSVP



to an event organised by the Customer, request the Customer to contact them, or schedule a meeting or booking with the Customer.

### **Categories of data**

The personal data transferred concern the following categories of data (please specify): Personal data is the personal data of the data subjects in connection with their use of Indemandly's services for the processing operations described below. Such personal data may include first and last name, email address and phone number

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

The personal data transferred concern the following special categories of data (please specify): None.

### **Processing operations**

The Processing of Personal Data shall be carried out on behalf of and in accordance with the Customer's documented instructions, and for the purpose of providing Indemandly's Services which enable Data Subjects to RSVP to an event organised by the Customer, request the Customer to contact them, or schedule a meeting or booking with the Customer. Personal Data may also be processed where required by law, regulation or order.

DATA EXPORTER

Name: ...

Authorised Signature ...

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) (or document/legislation attached):**

1. When Processing Personal Data on behalf of the data exporter in connection with the Services, Indemandly has implemented and will maintain appropriate technical and organisational security measures for the Processing of such data, including the measures specified in this Section to the extent applicable to Indemandly's Processing of Personal Data. These measures are intended to protect Personal Data against accidental or unauthorised loss, destruction, alteration, disclosure or access, and against all other unlawful forms of processing.

2. Physical Access Control. Indemandly employs measures designed to prevent unauthorised persons from gaining access to data processing systems in which Personal Data is processed, such as the use of secured data center.
3. System Access Control. The following may, among other controls, be applied depending upon the particular Services ordered: authentication via passwords and the logging of access on several levels. For Services: (i) log-ins to Services Environments by Indemandly employees (ii) logical access to data centers is restricted and protected by SSL/VPN.
4. Transmission Control. All messages and files sent through Indemandly are encrypted. Except as otherwise specified for the Services, transfers of data outside the Service environment are also encrypted.
5. Input Control. The Personal Data source is under the control of the data exporter and is managed by secured file transfer (i.e., via web services or entered into the application) from the data exporter. Note that some Services permit data exporter to use unencrypted file transfer protocols. In such cases, data exporter is solely responsible for its decision to use such unencrypted field transfer protocols.
6. Data Backup. Back-ups are taken on a regular basis; back- ups are secured using a combination of technical and physical controls, depending on the particular Service.