

TEMPLATE 2

To be used in conjunction with Client/Agency agreements where Agency will, as a part of the engagement, be receiving Personal Data (defined below) from the Client or its nominee.

AMENDMENT

THIS AMENDMENT (“Amendment”) made on the ● day of ● 201●

BETWEEN:

1. [xxx], a company incorporated in [xxx] under Registration Number [xxx] and whose registered office is at [xxx] (“Agency”); and
2. [xxxx], a company incorporated in [xxx] under Registration Number [xxx] whose registered office is at [xxx] (“Client”).

WHEREAS:

- (A) Agency has been engaged by Client to provide certain professional Services under the Agreement;
- (B) In order to supply all or part of the Services, Agency will be required to obtain and/or Process Personal Data on behalf of Client;
- (C) The parties have agreed that in consideration of Client’s appointment of Agency to supply the Services, Client and Agency shall enter into this Amendment whose terms shall govern Agency’s procurement and/or Processing of Personal Data on behalf of Client.

THE PARTIES AGREE AS FOLLOWS:

1 Definitions and Interpretation

1.1 In this Amendment, unless the context otherwise requires:

“Client Personal Data” shall mean Personal Data:

- (i) supplied to Agency by, or on behalf of Client; and/or
- (ii) obtained by, or created by, Agency on behalf of Client in the course of delivery of Services,

and which in each case is Processed by Agency in the performance of Services;

“Data Controller” shall have the same meaning as defined in the GDPR;

“Data Privacy Laws” shall mean the following as amended, extended, re-enacted or replaced from time to time.

- (i) EC Directive 1995/46/EC on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data;
- (ii) EC Directive 2002/58/EC on Privacy and Electronic Communications;
- (iii) EC Regulation 2016/679 (the “GDPR”) on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (when in force);

- (iv) all local laws or regulations implementing or supplementing the EU legislation mentioned in (i)-(iii) above;
- (v) all codes of practice and guidance issued by national regulators relating to the laws, regulations and EU legislation mentioned in (i)-(iv) above.

“Data Processor” shall have the same meaning as defined in the GDPR;

“Data Subject” shall have the same meaning as defined in the GDPR;

“Effective Date” shall mean 25th May 2018;

“EU Law” means any law in force in the European Union or any law in force in a member state of the European Union including the Data Privacy Laws.

“Losses” means losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses);

“Process, Processing and Processed” shall have the same meaning as defined in the GDPR;

“Personal Data” shall have the same meaning as defined in the GDPR;

“Personal Data Breach” shall have the same meaning as defined in the GDPR;

“Processing Records” shall have the meaning set out in clause 3.3(j);

“Agreement” shall mean any agreement between the parties or their affiliates which concerns the Processing of Client Personal Data;

“Supervisory Authority” shall have the same meaning as defined in the GDPR;

“Services” means the services to be supplied by Agency under the terms of the Agreement;

1.2 Where the context so admits or requires words in this Amendment denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.3 References to the word “including” and related expressions will mean “including, without limitation”.

2 Commencement & Agreement Status

(a) This Amendment shall commence on the Effective Date and shall continue in force until terminated in accordance with its terms.

(b) In the event that the terms of clauses 2, 3 or 4 of this Amendment conflict with the terms of the Agreement, then the terms of clauses 2, 3 or 4 shall prevail to the extent of such conflict and neither shall the terms of the Agreement operate as an amendment to clauses 2, 3 or 4 of this Amendment.

3 Data Protection

3.1 Appointment of Agency as Client’s Data Processor

(a) The parties confirm that where Services comprise of Agency’s Processing of Client Personal Data, Agency shall be the Data Processor and Client shall be the Data Controller with respect to such Processing.

(b) If, as a consequence of Agency’s provision of Services, a party considers that the relationship between them no longer corresponds to the intention of the parties stated

in clause 3.1(a) above then it shall notify the other party and the parties shall discuss and agree in good faith such steps that may be required to confirm the parties' intention.

3.2 General obligations of the parties

- (a) Each party shall comply with the obligations imposed on it by applicable Data Privacy Laws with regard to Client Personal Data Processed by it in connection with Services.
- (b) Each party shall ensure that where Services require the Processing of Client Personal Data, the description of Services includes the following information:
 - (i) The subject matter and duration of the Processing;
 - (ii) The nature and purpose of the Processing;
 - (iii) A description of the type(s) of Client Personal Data Processed; and
 - (iv) A description of the categories of the data subjects comprised within the Client Personal Data referred to in this clause.

3.3 Obligations of Agency

- (a) Agency shall only Process Client Personal Data in accordance with the documented instructions of Client, including transfers of Client Personal Data outside the European Economic Area, unless required to do so by EU Law to which Agency is subject, in which event Agency shall inform Client of such legal requirement unless prohibited from doing so by EU Law on important grounds of public interest.
- (b) Agency shall inform Client if, in Agency's opinion, an instruction given by Client to Agency under clause 3.3(a) infringes the Data Privacy Laws.
- (c) Agency shall ensure that any persons authorised by it to Process Client Personal Data are subject to an obligation of confidentiality.
- (d) Agency shall implement appropriate technical and organisational measures to ensure that Client Personal Data is subject to a level of security appropriate to the risks arising from its Processing by Agency or its sub-processors, taking into account the factors and measures stated in Article 32 of the GDPR.
- (e) Agency shall notify Client without undue delay after becoming aware of a Personal Data Breach.
- (f) Taking into account the nature of the Processing, Agency shall assist Client by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Client's obligation to respond to requests for exercising a Data Subject's rights under the GDPR.
- (g) Taking into account the nature of the Processing and the information available to Agency, Agency shall assist Client with regard to Client's compliance with its obligations under the following Articles of the GDPR:
 - (i) Article 32 (Security of Processing);
 - (ii) Articles 33 and 34 (Notification and communication of a Personal Data breach);
 - (iii) Article 35 (Data protection impact assessment); and
 - (iv) Article 36 (Prior consultation by Client with the Supervisory Authority).
- (h) Upon termination of Services that required the Processing of Client Personal Data (in whole or in part) Agency shall, at the election of Client, deliver up or destroy such Client Personal Data which is in the possession of, or under the control of, Agency unless EU Law requires Agency to store such Client Personal Data.

- (i) Agency shall, at the request of Client, provide Client with all information necessary to demonstrate a party's compliance with its obligations under this Amendment and shall allow for and contribute to audits and inspections conducted by or on behalf of Client.
- (j) Where required to do so by the GDPR, Agency and, where applicable, Agency's representative shall maintain written records of its Processing of Client Personal Data (the "Processing Records") as follows:
 - (i) the name and contact details of:
 - (1) Agency and its sub-processors;
 - (2) Client;
 - (3) where applicable, the representatives of Client, Agency and its sub-processors, and Agency's data protection officer;
 - (ii) the categories of Processing carried out on behalf of Client;
 - (iii) transfers of Client Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, details of the suitable safeguards in place; and
 - (iv) where possible, a general description of the technical and organisational security measures taken by Agency, its sub-processors and Client.
- (k) Agency and its sub-processors and, where applicable, their representatives, shall make the Records available to a Supervisory Authority on request.

3.4 Obligations of Client

- (a) Client shall ensure that:
 - (i) the supply to Agency of Client Personal Data by or on behalf of the Client for the purposes of Processing undertaken by the Agency and its permitted sub-processors where such Processing is authorised by Client shall comply with the Data Privacy Laws; and
 - (ii) the instructions given by Client to Agency by operation of clause 3.3(a) shall comply with the Data Privacy Laws.

3.5 Costs of assistance

Where, by operation of clause 3.3, Agency is obliged to provide assistance to Client, or to third parties at the request of Client (including submission to an audit or inspection and/or the provision of information), such assistance shall be provided at the sole cost and expense of Client, save where such assistance directly arises from Agency's breach of its obligations under this clause 3, in which event the costs of such assistance shall be borne by Agency.

3.6 Agency's appointment of sub-processors

- (a) Notwithstanding any other provision of this Amendment, Agency shall be entitled to sub-contract any part of Services requiring the Processing of Client Personal Data, subject to the following conditions in cases where the sub-contractor is not an affiliate of Agency:
 - (i) Agency shall notify Client in writing of its intention to engage such sub-contractor. Such notice shall give details of the identity of such sub-contractor and the services to be supplied by it; and
 - (ii) Client shall be deemed to have approved the engagement of the sub-contractor if it has not served a notice in writing on Agency objecting (acting

reasonably) to such appointment within seven (7) days of the date that the notice is deemed to be received by Client in accordance with clause 5.

- (b) However, should the Data Controller request the Data Processor to manage the data covered by this Data Protection Agreement through over the top” platforms such as Facebook, Google and Amazon, the above Data Processor obligation might suffer certain exceptions due the fixed terms and conditions proposed by such operators, including the data processor agreement’s content, which are not subject to negotiation. Therefore, under these circumstances, the Controller acknowledges and accepts that the Data Processor cannot ensure the fulfilment of the same obligations herein provided, also towards sub-processors, and, as a consequence, it will be authorized to process the data covered by this Data Processor Agreement according the relevant terms and conditions for the services offered by such platforms.

3.7 Losses

- (a) Where, in accordance with the provisions Article 82 of the GDPR, both parties are responsible for the act, or omission to act, resulting in the payment of Losses by a party, or both parties, then each party shall only be liable for that part of such Losses which is in proportion to its respective responsibility.
- (b) The overall liability of the Agency under this Amendment, or related to it, except for the cases of wilful misconduct or gross negligence, shall not exceed Agency’s fee value as set forth in the Agreement.

4 General

- (a) This Amendment has been negotiated and constitutes the entire agreement and understanding between the parties in respect of the matters set out in this Amendment and supersedes any previous agreement between the parties in relation to such matters.

IN WITNESS WHEREOF this Amendment has been signed and dated the day and year above written.

SIGNED by)

on behalf of [xxx])

SIGNED by)

on behalf of [xxx])