

Data Processing Agreement

Pro-Processor

This Data Processing Agreement has been concluded on this day _____,

BETWEEN;

[●], a private limited liability company, duly incorporated and validly existing under the laws of _____, having its registered office and its principal place of business at [●], at [●] registered with the [●] trade register under number [●] ("Controller"); and

[●], a private limited liability company, duly incorporated and validly existing under the laws, having its registered office and its principal place of business at [●], at [●] registered with the [●] trade register under number [●] ("Processor").

Definitions

In this Agreement:

- Applicable Law** means as applicable and binding on the Data Controller, the Data Processor and/or the Services:
- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of;
 - (b) the common law and laws of equity as applicable to the parties from time to time;
 - (c) any binding court order, judgment or decree; or
 - (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
- Appropriate Safeguards** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
- Data Controller** has the meaning given to that term (or to the term 'controller') in Data Protection Laws;
- Data Processor** has the meaning given to that term (or to the term 'processor') in Data Protection Laws;
- Data Protection Laws** means as applicable and binding on the Data Controller, the Data Processor and/or the Services:
- (a) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
 - (b) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

Data Protection Losses	means all liabilities, including all: <ul style="list-style-type: none">(a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and(b) to the extent permitted by Applicable Law:<ul style="list-style-type: none">(i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;(ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and(iii) the reasonable costs of compliance with investigations by a Supervisory Authority;
Data Subject	has the meaning given to that term in Data Protection Laws;
Data Subject Request	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
GDPR	means the General Data Protection Regulation (EU) 2016/679;
GDPR Date	means from when the GDPR applies on 25 May 2018;
International Organisation	means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;
International Recipient	has the meaning given to that term in clause 6.1;
Personal Data	has the meaning given to that term in Data Protection Laws;
Personal Data Breach	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
processing	has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
Processing Instructions	has the meaning given to that term in clause 2.1.1;
Protected Data	means Personal Data received from or on behalf of the Data Controller in connection with the performance of the Data Processor's obligations under this Agreement;
Sub-Processor	means another Data Processor engaged by the Data Processor for carrying out processing activities in respect of the Protected Data on behalf of the Data Controller; and
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for

administering Data Protection Laws.

In this Agreement:

(a) references to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable; and

(b) a reference to a law includes all subordinate legislation made under that law.

1. Data Processor and Data Controller

- 1.1 The Data Processor shall process Protected Data in compliance with:
- 1.1.1 the obligations under Data Protection Laws in respect of the performance of its obligations under this Agreement; and
 - 1.1.2 the terms of this Agreement.
- 1.2 The Data Controller shall comply with:
- 1.2.1 all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
 - 1.2.2 the terms of this Agreement.
- 1.3 The Data Controller warrants, represents and undertakes, that:
- 1.3.1 all data sourced by the Data Controller for use in connection with the Services, prior to such data being provided to or accessed by the Data Processor for the performance of the Services under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Data Controller providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;
 - 1.3.2 all instructions given by it to the Data Processor in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
 - 1.3.3 it is satisfied that:
 - (a) the Data Processor's processing operations are suitable for the purposes for which the Data Controller proposes to use the Services and engage the Data Processor to process the Protected Data; and
 - (b) the Data Processor has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.

2 Instructions and details of processing

- 2.1 Insofar as the Data Processor processes Protected Data on behalf of the Data Controller, the Data Processor:
- 2.1.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Data Controller's documented instructions as set out in this clause 2 and Schedule 1 (Data Processing Details), as updated from time to time in accordance with the Change Control Procedure (**Processing Instructions**);
 - 2.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Data Controller of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and
 - 2.1.3 shall promptly inform the Data Controller if the Data Processor becomes aware of a Processing Instruction that, in the Data Processor's opinion, infringes Data Protection Laws, provided that:
 - (a) this shall be without prejudice to clauses 1.2 and 1.3;
 - (b) to the maximum extent permitted by mandatory law, the Data Processor shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Data Controller's Processing Instructions following the Data Controller's receipt of that information; and
 - (c) this clause 2.1.3 shall only apply from the GDPR Date.
- 2.2 The processing of Protected Data to be carried out by the Data Processor under this Agreement shall comprise the processing set out in Schedule 1 (Data Processing Details), as may be updated from time to time in accordance with the Change Control Procedure.

3 Technical and organisational measures

- 3.1 The Data Processor shall implement and maintain, at its cost and expense, the technical and organisational measures:
- 3.1.1 in relation to the processing of Protected Data by the Data Processor; and
 - 3.1.2 from the GDPR Date, taking into account the nature of the processing, to assist the Data Controller insofar as is possible in the fulfilment of the Data Controller's obligations to respond to Data Subject Requests relating to Protected Data.

4 Using staff and other processors

- 4.1 The Data Processor shall not engage any Sub-Processor for carrying out any processing activities in respect of the Protected Data without the Data Controller's written authorisation of that specific Sub-Processor (such authorisation not to be unreasonably withheld, conditioned or delayed) provided that the Data Controller authorises the appointment of any of the Sub-Processors listed.
- 4.2 The Data Processor shall:
- 4.2.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract

containing materially the same obligations as under clauses 0 to 11 (inclusive) that is enforceable by the Data Processor;

4.2.2 ensure each such Sub-Processor complies with all such obligations.

5 Assistance with the Data Controller's compliance and Data Subject rights

- 5.1 The Data Processor shall refer all Data Subject Requests it receives to the Data Controller within five [5] Business Days of receipt of the request.
- 5.2 From the GDPR Date, the Data Processor shall provide such reasonable assistance as the Data Controller reasonably requires (taking into account the nature of processing and the information available to the Data Processor) to the Data Controller in ensuring compliance with the Data Controller's obligations under Data Protection Laws.

6 International data transfers

- 6.1 The Data Controller agrees that the Data Processor may transfer Protected Data to countries outside the European Economic Area (EEA) or to any International Organisation(s) (an **International Recipient**), provided all transfers by the Data Processor of Protected Data to an International Recipient (and any onward transfer) shall (to the extent required under Data Protection Laws) be effected by way of Appropriate Safeguards and in accordance with Data Protection Laws. The provisions of this Agreement shall constitute the Data Controller's instructions with respect to transfers in accordance with clause 2.1.
- 6.2 If the processing carried out by the Data Processor includes the transfer of Personal Data to a country outside of the EEA which is not recognised by the European Commission to have an adequate level of protection in accordance with the Data Protection Laws, the Data Controller and the Data Processor shall enter into a supplementary agreement containing the Standard Contractual Clauses (SCC).
- 6.3 If and to the extent this Agreement and the SCC are inconsistent, the provisions of the SCC shall prevail.

7 Records, information and audit

- 7.1 The Data Processor shall maintain, in accordance with Data Protection Laws binding on the Data Processor, written records of all categories of processing activities carried out on behalf of the Data Controller.
- 7.2 The Data Processor shall, in accordance with Data Protection Laws, make available to the Data Controller such information as is reasonably necessary to demonstrate the Data Processor's compliance with its obligations under Article 28 of the GDPR (and under any Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Data Controller (or another auditor mandated by the Data Controller) for this purpose, subject to the Data Controller:
- 7.2.1 giving the Data Processor reasonable prior notice of such information request, audit and/or inspection being required by the Data Controller;

- 7.2.2 ensuring that all information obtained or generated by the Data Controller or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);
- 7.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to the Data Processor's business, the Sub-Processors' business and the business of other customers of the Data Processor; and
- 7.2.4 paying the Data Processor's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

8 Breach notification

- 8.1 In respect of any Personal Data Breach involving Protected Data, the Data Processor shall, without undue delay:
 - 8.1.1 notify the Data Controller of the Personal Data Breach; and
 - 8.1.2 provide the Data Controller with details of the Personal Data Breach.

9 Deletion or return of Protected Data and copies

- 9.1 The Data Processor shall, at the Data Controller's written request, either delete or return all the Protected Data to the Data Controller in such form as the Data Controller reasonably requests within a reasonable time after the earlier of:
 - 9.1.1 the end of the provision of the relevant Services related to processing; or
 - 9.1.2 once processing by the Data Processor of any Protected Data is no longer required for the purpose of the Data Processor's performance of its relevant obligations under this Agreement,and delete existing copies (unless storage of any data is required by Applicable Law and, if so, the Data Processor shall inform the Data Controller of any such requirement).

10 Liability, indemnities and compensation claims

- 10.1 The Data Controller shall indemnify and keep indemnified the Data Processor in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, the Data Processor and any Sub-Processor arising from or in connection with any:
 - 10.1.1 non-compliance by the Data Controller with the Data Protection Laws;
 - 10.1.2 processing carried out by the Data Processor or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or
 - 10.1.3 breach by the Data Controller of any of its obligations under clauses 0 to 11 (inclusive),except to the extent the Data Processor is liable under clause 10.2.
- 10.2 The Data Processor shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement:
 - 10.2.1 only to the extent caused by the processing of Protected Data under this Agreement and directly resulting from the Data Processor's breach of clauses 0 to 11 (inclusive); and

- 10.2.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Agreement by the Data Controller (including in accordance with clause 2.1.3(b)).
- 10.3 If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:
 - 10.3.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and
 - 10.3.2 consult fully with the other party in relation to any such action.
- 10.4 The parties agree that the Data Controller shall not be entitled to claim back from the Data Processor any part of any compensation paid by the Data Controller in respect of such damage to the extent that the Data Controller is liable to indemnify the Data Processor in accordance with clause 10.1.
- 10.5 This clause 10 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:
 - 10.5.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and
 - 10.5.2 that it does not affect the liability of either party to any Data Subject.

11 Survival of data protection provisions

- 11.1 Clauses 0 to 11 (inclusive) shall survive termination (for any reason) or expiry of this Agreement and continue:
 - 11.1.1 indefinitely in the case of clauses 9 to 11 (inclusive); and
 - 11.1.2 until 12 months following the earlier of the termination or expiry of this Agreement in the case clauses 0 to 8 (inclusive),provided always that any termination or expiry of clauses 0 to 8 (inclusive) shall be without prejudice to any accrued rights or remedies of either party under any such clauses at the time of such termination or expiry.

12 Contact details

If you have any queries in relation to this Agreement please contact:

Information Security & Compliance Co-ordinator

Email address: privacy@controlunion.com
privacy@onepeterson.com

Postal address: Boompjes 270
3011 XZ
Rotterdam
The Netherlands

SCHEDULE 1
DATA PROCESSING DETAILS

- 1 Subject-matter of processing:**
[Insert]
- 2 Duration of the processing:**
[Insert]
- 3 Nature and purpose of the processing:**
[Insert]
- 4 Type of Personal Data:**
[Insert]
- 5 Categories of Data Subjects:**
[Insert]
- 6 Processing Instructions**
[Insert, including any specific security measures that are required to be taken, eg encryption]

Thus agreed and signed by:

Data Controller

Undersigned by and on behalf of: _____

Name: _____

Title: _____

Date and place: _____

Signature: _____

Data Processor

Undersigned by and on behalf of: _____

Name: _____

Title: _____

Date and place: _____

Signature: _____