

## Data Protection Agreement

### **1. INTERPRETATION**

- 1.1 “Company” means the entity that has executed the purchase, supply, service or any other commercial agreement with CMI or its affiliates.
- 1.2 The terms "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processing**", "**Processor**" and "**Supervisory Authority**" each have the meaning given to it in the GDPR.
- 1.3 “Data Protection Laws” refers to (i) any applicable laws of the European Union, (ii) any applicable local laws relating to the Processing of Personal Data and the protection of individual privacy, (iii) the GDPR, and (iv) any binding guidance or code of practice issued by a Supervising Authority.
- 1.4 “GDPR” refers to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.5 “Project” means (i) the product and/or service to be provided by the Company and (ii) the process of the Company providing such product and/or service, both in accordance with its agreement with CMI or its affiliates.

### **2. PROCESSING OF PERSONAL DATA**

- 2.1 The Parties acknowledge and agree that with regard to the Processing of Personal Data, CMI is the Controller of Personal Data and to the extent that the Company is Processing Personal Data it will do so acting as Processor on behalf of CMI.
  - 2.2 Notwithstanding any other provision in the agreement regarding the Company’s purchase, supply, service or any other commercial agreement with CMI or its affiliates, for the Company to provide the Project, Personal Data may be:
    - 2.2.1 used, managed, accessed, transferred or held on a variety of systems, networks and facilities (including databases) worldwide; or
    - 2.2.2 transferred by the Company worldwide to the extent necessary to allow the Company to fulfil its obligation under its agreement with CMI or its affiliates
- CMI appoints the Company to perform each transfer to provide the Project provided that the Company will rely on appropriate transfer mechanisms permitted by Data Protection Laws.
- 2.3 When Processing is to be carried out on behalf of CMI, the Company shall provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner that

Processing will meet the requirements of Data Protection Laws and ensure the protection of the rights of the Data Subject.

- 2.4 The Company shall not engage, sub-contract, sub-license or otherwise delegate another processor the Processing of any Personal Data in relation to the Project under its agreement with CMI or its affiliates without prior written approval of CMI.
- 2.5 Where each Party acts as a Controller in relation to the Processing of Personal Data under the Company's agreement with CMI or its affiliates in relation to the Project, the Parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.
- 2.6 The Company may propose amendments to its agreement with CMI or its affiliates in relation to the Project to reflect changes to the Company's security measures, policies and processes to enable the Company to comply with Data Protection Laws. The Company shall notify in writing CMI of such amendments. If CMI does not accept the amendment the Parties shall act reasonably and in good faith to negotiate and agree a further amendment in a timely manner.
- 2.7 Subject to Data Protection Laws, the Company shall provide reasonable notification to CMI if it detects activity which, in its opinion, may indicate fraudulent use of any part of the Project. Nothing in this Clause shall oblige the Company to actively monitor fraudulent use of the Project.

### **3. INTERNATIONAL TRANSFERS OF PERSONAL DATA**

- 3.1 The Company shall not Process or transfer any Personal Data (nor permit the Personal Data to be transferred) outside of the European Economic Area unless an adequate level of protection in accordance with Data Protection Laws is ensured (the "Safeguards"). Such Safeguards may include without limitation: (1) a transfer to countries which ensure an adequate level of data protection according to an adequacy decision of the European Commission, or (2) such transfer is needed for the performance of the Company's agreement with CMI or its affiliates in relation to the Project, or (3) it is governed by the EU Standard Contractual Clauses (Processors) to the European Commission Decision of February 5, 2010, which are deemed incorporated herein by reference. The transfer of Personal Data outside of the European Economic Area shall immediately cease to take place from the moment the adequacy decision from the European Commission or such Safeguards are no longer valid or its conditions to apply are no longer fulfilled.

### **4. SECURITY**

- 4.1 Taking into account the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the Company shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that Processing is performed in accordance with Data Protection Laws. Those measures shall be reviewed and updated where necessary.
- 4.2 Where proportionate in relation to Processing activities, the measures referred to in section 4.1 shall include the implementation of appropriate data protection policies.

## **5. NOTIFICATION**

- 5.1 The Company shall promptly give written notice to and/or shall fully cooperate with CMI if for any reason (i) The Company cannot comply, or has not complied, with any portion of this Agreement, (ii) it would be in breach of or has breached any Data Protection Laws governing its Processing of Personal Data, or (iii) Data Protection Laws no longer allow the lawful transfer of Personal Data from CMI to the Company. In such cases, the Company shall take all reasonable, necessary and appropriate steps to remedy any non-compliance, or cease further Processing of Personal Data, and CMI may immediately terminate the agreement in relation to the Project and/or this Agreement and/or the Company's access to Personal Data, or take any other necessary action, as determined in its sole discretion.

## **6. TERMINATION**

- 6.1 This Agreement shall commence on the date of execution hereof and shall continue unless and until terminated in accordance with the agreement in relation to the Project. The Company shall promptly notify CMI of all Personal Data in its possession and promptly return or delete all such Personal Data (at CMI's sole election) and any existing copies thereof, at the Company's sole expense, unless any applicable law requires the further storage of the Personal Data. The Company shall certify to CMI that all Personal Data has been returned or destroyed in accordance with the foregoing and CMI's instructions. If the Company cannot destroy or delete the Personal Data due to legal or technical reasons, the Company shall immediately inform CMI.

## **7. INDEMNIFICATION**

- 7.1 In no event shall CMI be liable for and the Company shall indemnify CMI against any and all damages, costs, liabilities, expenses and losses resulting from the Company's failure to comply with any of the Data Protection Laws.
- 7.2 The Company acknowledges that the obligations set forth in this Agreement are essential and that any violation thereof may seriously harm CMI. Should any data subject to whom the data relates, a data protection authority or any other regulatory body lodge a claim for compensation against CMI that results from the Company's breach of its obligations under the Data Protection Laws (a "Claim"), the Company shall assist and intervene in CMI's defence against such Claim upon CMI's request and shall indemnify and hold harmless CMI against all costs and damages resulting from such Claim. CMI shall give the Company prompt written notice of any such Claim and shall fully cooperate with the Company in the defence and all related settlement negotiations of the same.

## **8. TERM AND ORDER OF PRECEDENCE**

- 8.1 The new terms set out in this Agreement shall apply immediately.
- 8.2 In the event of a conflict between the provisions of this Agreement and the Company's other purchase, supply, service or any other commercial agreement with CMI or its affiliates in respect of the Processing and protection of Personal Data, the provisions of this Agreement will prevail.

Except as expressly modified herein, all terms and conditions of the Company's other purchase, supply, service or any other commercial agreement with CMI or its affiliates shall remain in full force and effect.