TEMPLATE 3

(Agency's appointment of a sub-processor to process Client personal data)

Guidance Note:

- **To be used where the Agency appoints a supplier to process Client personal data as a sub-processor (i.e. the supplier will process personal data on behalf of the Agency's client).**
- **This template can be used for existing engagements and new engagements effective from 25th May 2018.**
- **This Agreement is designed to sit alongside the terms of any existing services agreement made between the Agency and the Supplier concerning the Supplier's processing of Client personal data.**
- **Please do not amend these terms without consulting your legal team.**
- **This form includes the language that is necessary to qualify as an onward transfer agreement under the US Privacy Shield rules. It therefore combines the requirements of both GDPR and US Privacy Rules and eliminates the need for separate documents.**
- **Clauses which are highlighted in yellow are mandatory requirements of the GDPR and therefore should not be amended in any circumstances.**

DATA PROCESSING AGREEMENT

THIS AGREEMENT is 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. [**xxx**], a company incorporated in [xxx] under Registration Number [xxx] whose registered office is at [xxx] ("**Supplier**").

WHEREAS:

(A) Agency has been engaged by Client to Process Personal Data;

(B) Agency has engaged, or may engage, Supplier to supply certain services to Agency (the "**Services**") under one or more service agreements;

(C) In order to supply all or part of the Services, Supplier will be required to obtain and/or Process Personal Data on behalf of Agency's Client;

(D) The parties have agreed that in consideration of Agency's appointment of Supplier to supply the Services, Agency and Supplier shall enter into this Agreement whose terms shall govern Supplier's procurement and/or Processing of Client Personal Data.

THE PARTIES AGREE AS FOLLOWS:

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Client" means Agency's Client specified in a Relevant Agreement;

"Client Personal Data" shall mean Personal Data:

(i) supplied to Supplier by, or on behalf of Client; and/or

(ii) obtained by, or created by, Supplier in the course of delivery of Services,

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

"Data Privacy Laws" shall mean all laws governing the handling of personal data, including without limitation 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 Controller" shall have the same meaning as defined in the GDPR;

"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 the date that Supplier first commenced Processing of Client Personal Data if such date is later than 25th May 2018 or, if earlier, 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;

"Privacy Shield" means the EU-U.S. Privacy Shield framework;

"Processing Records" shall have the meaning set out in clause 3.4(a);

"Relevant Agreement" shall mean any agreement between the parties or their affiliates, which concerns the Processing of Client Personal Data;

"Services" means the services to be supplied by Supplier under the terms of a Relevant Agreement.

"System Administrator" shall have the same meaning as defined under the Decision issued by the Italian Data Protection Authority on November 27, 2008 "*Measures and precautions addressed to Data Controllers for data processing performed through electronic means regarding the tasks assigned to System Administrators*".

"Supervisory Authority" shall have the same meaning as defined in the GDPR.

1.2 Where the context so admits or requires words in this Agreement 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 Agreement 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 conflict with the terms of any Relevant Agreement, then the terms of clauses 2, 3 or 4 shall prevail to the extent of such conflict and neither shall the terms of any Relevant Agreement operate as an amendment to clauses 2, 3 or 4 of this Agreement.

3 Data Protection

3.1 Appointment of Supplier as Client's Sub-Processor

(a) The parties confirm that where Services comprise of Supplier's Processing of Client Personal Data, Supplier shall be the Client's sub-processor and Client shall be the Data Controller with respect to such Processing.

(b) If, as a consequence of Supplier'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 promptly notify the other party and the parties shall discuss and agree in good faith such steps that may be required to confirm the parties' intentions stated in clause 3.1(a).

3.2 General obligations of the parties

(a) Without prejudice to the remaining provisions of this clause 3, 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 Relevant Agreement for such 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; 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 Supplier

(a) Supplier shall Process Client Personal Data strictly in accordance with the documented instructions of Agency on behalf of Client, including transfers of Client Personal Data outside the EEA unless required to do otherwise by applicable EU Law. If applicable EU Law requires Supplier (or, for avoidance of doubt, any approved processor appointed by Supplier) to conduct Processing that is or could be construed as inconsistent with Agency's documented instructions, then Supplier shall notify Agency

promptly and prior to commencing the Processing, unless applicable EU Law prohibits such notification on important grounds of public interest.

(b) Without prejudice to clause 3.3(a), if Supplier is aware, or is of the opinion, that any instruction given by Agency on behalf of Client breaches Data Privacy Laws, Supplier shall immediately inform Agency of this giving details of the breach or potential breach.

(c) Supplier shall:

(i) not do anything or omit to do anything that may put Agency or Client in breach of its obligations under Data Privacy Laws or otherwise materially damage the reputation of Agency or Client;

(ii) only make copies of Client Personal Data to the extent reasonably necessary (which may include back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and/or testing of the data);

(iii) not transfer Client Personal Data outside the European Economic Area without the prior written consent of Agency or Client, which can be withheld at the sole discretion of Agency or Client. Agency's or Client's consent shall be subject to such conditions as Agency or Client may require, including entering into or procuring that any relevant and approved sub-processor appointed by Supplier enters into the standard contractual clauses set out in Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to sub-processors established in third countries (under Directive 95/46/EC);

(iv) not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store Client Personal Data other than as permitted under the terms of this Agreement;

(d) Supplier shall:

(i) ensure that any persons authorised by it to Process Client Personal Data are subject to a legally binding obligation of confidentiality; and

(ii) take all reasonable steps to ensure the reliability of its personnel and the personnel of its approved sub-processors who have access to Client Personal Data and ensure that access to Client Personal Data is limited to such authorised personnel who require access to it for the purpose of complying with the obligations under this Agreement.

(e) Supplier 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 Supplier or its approved sub-processors, taking into account the factors stated in Article 32 of the GDPR, including as appropriate:

(i) the pseudonymisation and encryption of Client Personal Data;

(ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

(iii) the ability to restore the availability and access to Client Personal Data in a timely manner in the event of a physical or technical incident; and

(iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of Client Personal Data;

(f) Supplier shall notify Agency without undue delay after becoming aware of a Personal Data Breach relating to Client Personal Data and in any event not later than twenty-

four (24) hours after becoming aware of such breach. Such notification shall be accompanied by the following information (where available at the time of the notification);

(i) The Client Personal Data affected by the breach, including the categories and volumes of such data;

(ii) The factual circumstances giving rise to the breach;

(iii) The steps taken or to be taken by Supplier to contain and remediate the breach; and

(iv) Any other information that is reasonably required by Agency or Client to assess the impact and severity of the breach.

(g) Where all or part of the information specified in clause 3.3(f) is not available at the time of notification to Agency, Supplier shall supply such information to Agency as soon as possible and shall keep Agency updated on the timescales for delivery of the outstanding information.

(h) Supplier shall assist Agency and Client by using appropriate technical and organisational measures for the fulfilment of Client's obligation to respond to requests for exercising a data subject's rights under the GDPR.

(i) Supplier shall assist Agency and Client with regard to Agency's and Client's compliance with its obligations under the following Articles of the GDPR taking into account the nature of the Processing and the information available to Supplier:

(i) Article 32 (Security of Processing);

(ii) Without prejudice to clause 3.3(f), 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 a Supervisory Authority).

(j) The Supplier undertakes to fully comply with Decision issued by the Italian Data Protection Authority on November 27, 2008 "*Measures and precautions addressed to Data Controllers for data processing performed through electronic means regarding the tasks assigned to System Administrators*" as subsequently amended by Decision issued on June 25, 2009. In particular, according to the above-mentioned Decision, the Supplier shall abide by the obligations of assessing the experience, ability and reliability of the subjects operating as System Administrators, and will individually appoint such subjects, expressively specifying the scope of the assigned tasks based on the authorization profile provided.

(k) The Supplier undertakes to maintain updated written records identifying the subjects operating as System Administrators also including a description of the relevant assigned tasks. Having regard to the above-mentioned System Administrators records, due to their mandatory nature and considering the obligation to verify the System Administrators' activity, the Supplier shall periodically provide Agency with the above records and, however, at least every six (6) months or further to Agency's specific request.

(l) Supplier shall at its own expense and without undue delay, notify Agency, and provide such co-operation, assistance and information as Agency may reasonably require if Supplier:

(i) receives any complaint, notice or communication which relates directly or indirectly to the Processing of Client Personal Data, or to either party's compliance with Data Privacy Laws; or

(ii) becomes aware of any unauthorised or unlawful Processing of any Client Personal Data.

(m) Supplier shall, at the request of Agency or Client, provide Agency or Client with all information necessary to demonstrate Supplier's compliance with its obligations under this Agreement, including allowing for and contributing to audits and inspections conducted by or on behalf of Agency or Client.

(n) Supplier shall promptly and without undue delay comply with any request from Agency on behalf of Client requiring Supplier to amend, transfer or delete Client Personal Data, either during or after the term of this Agreement.

(o) Upon termination of Services that required the Processing of Client Personal Data (in whole or in part) Supplier shall, at the sole election of Agency on behalf of Client, deliver up in such format as Agency (on behalf of Client) may require, or destroy such Client Personal Data which is in the possession of, or under the control of, Supplier.

(p) To the extent is Supplier is Processing Client Personal Data in the United States, then Supplier shall (i) provide at least the same level of privacy protection for, Client Personal Data as is required by the Privacy Shield principles, (ii) promptly notify Agency if at any time Supplier cannot provide or is not providing at least the same level of privacy protection for such Client Personal Data as is required by the Privacy Shield principles, and (iii) take reasonable and appropriate steps to stop and remediate, as directed by Agency, the Processing of such Client Personal Data if at any time Agency notifies Supplier that agency has determined Supplier is not Processing the Client Personal Data in a manner consistent with the Privacy Shield principles.

3.4 Processing Records

(a) Where required by the GDPR, Supplier shall maintain written records of its Processing of Client Personal Data (the "**Processing Records**") as follows:

(i) the name and contact details of:

(1) Supplier and its approved sub-processors;

(2) Agency and Client;

(3) where applicable, the representatives of Agency, Supplier and Supplier's approved sub-processors and Supplier's data protection officer (where applicable);

(ii) the categories of Processing of Client Personal Data carried out by Supplier;

(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) a general description of the technical and organisational security measures taken by Supplier and its approved sub-processors.

(b) Supplier shall and shall procure that it's approved sub-processors (and, where applicable, their appointed representatives) shall make the Processing Records available to Agency, Client and/or any Supervisory Authority on request.

3.5 Supplier's engagement of sub-processors

(a) Notwithstanding any other provision of this Agreement, Supplier shall only be entitled to sub-contract any Processing of Client Personal Data with Agency's prior written consent and subject to Supplier providing Agency with full details of the proposed sub-contracting including, without limitation, details of the identity of such sub-processor, the services to be supplied by such sub-processor and the nature of Client Personal Data to be Processed by such sub-processor.

(b) When appointing a sub-processor of Client Personal Data Supplier shall:

(i) Conduct such due diligence on the sub-processor as is necessary to ensure that the sub-processor's Processing of Client Personal Data complies with Data Privacy Laws;

(ii) put in place written contractual obligations which are at least equivalent to the obligations imposed on Supplier pursuant to this clause 3, including obligations which provide sufficient guarantees from the sub-processor that the Processing meets the requirements of Data Privacy Laws; and

(iii) be liable to Agency for any failure of any such sub-processor to comply with such equivalent data protection obligations (including where Supplier is in breach of its obligations under this clause 3.5).

(c) For the avoidance of doubt, where Supplier proposes to replace an approved sub-processor, or to amend the terms of engagement of an approved sub-processor, then such proposed replacement or amendment shall be subject to Supplier providing Agency with full details of the proposed replacement and Agency's prior written consent.

(d) To the extent Supplier is: (A) Processing Client Personal Data in the United States; and (B) Supplier provides a sub-processor access to Client Personal Data, Supplier shall (i) transfer the Client Personal Data to the sub-processor only for the limited and specified purposes instructed by Agency, (ii) ascertain that the sub-processor is obligated to provide at least the same level of privacy protection as is required by the Privacy Shield principles, (iii) take reasonable and appropriate steps to ensure that the sub-processor effectively Processes the Client Personal Data transferred in a manner consistent with the Privacy Shield principles, (iv) require the sub-processor to notify Supplier if the sub-processor determines that it can no longer meet its obligation to provide the same level of protection as is required by the Privacy Shield principles, and (v) upon notice, including under (iv) above, take reasonable and appropriate steps to stop and remediate unauthorized Processing.

4 Indemnification & Liability

(a) Supplier shall indemnify and keep Agency and Client indemnified for any Losses incurred by Agency, Client and their respective affiliates which arise as a consequence of Supplier's breach of clause 3.

(b) The terms of any Relevant Agreement shall not exclude or limit Agency's or Client's recovery of any Losses arising under the indemnity in clause 4(a).

5 Termination

(a) This Agreement shall automatically terminate on the earlier of:

(i) expiry or termination of all Relevant Agreements; or

(ii) by Agency giving Supplier not less than seven (7) day's notice in writing

(b) The provisions of this Agreement which expressly or by implication are intended to come into or remain in force on or after termination shall continue in full force and effect.

6 Notices

(a) Any notice required to be given under or in connection with this Agreement shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax or email:

(i) by Supplier to Agency at: [insert contact details for notices]; and

(ii) by Agency to Supplier at: [insert contact details for notices];

(b) A notice shall be deemed to have been received:

(i) if delivered personally at the time of delivery;

(ii) if delivered by post, three (3) Working Days from the date of posting;

(iii) if sent by fax or email;

(iv) if sent before before 5pm on a Working Day, the day of sending; and

(v) otherwise on the next Working Day after sending.

(vi) For the purposes of this clause 6 "Working Day" means Monday to Friday excluding UK public holidays.

7 General

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

(b) A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.

(c) The relationship of the parties is that of independent contractors dealing at arm's length. Nothing in this Agreement shall constitute the parties as partners, joint venturers or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

(d) No modification or variation of this Agreement (or any document entered into pursuant to or in connection with this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement. Unless expressly set out herein, no modification or variation of this Agreement shall:

(i) be valid if made by e- mail;

(ii) constitute or be construed as a general waiver of any provisions of this Agreement; and

(iii) affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and

obligations of the parties under this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.

(e) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Italy.

(f) Each party irrevocably agrees that the court of Milan shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

SIGNED by)
on behalf of [xxx])

SIGNED by)
on behalf of [xxx])