GDPR: ADDENDUM

Between

Mandarin Kite Communications 2006 Ltd. ("Mandarin Kite") ("MK") ("We") ("Us"), and the Customer.

Definitons

Data Controller, Data Processor and Data Subject have the respective meanings (or their corresponding equivalent meanings) set out in the applicable DP Legislation

DP Legislation means the Data Protection Act 1998, The General Data Protection Regulation (Regulation (EU)

2016/679) ("GDPR") and all other laws and regulations from time to time relating to the processing of personal data, including any which implement the GDPR or create broadly equivalent law in the United Kingdom

Personal Data has the meaning set out in the applicable DP Legislation and relates only to personal data, or any part of such personal data, in respect of which the Supplier is not the Data Controller and in relation to which the Supplier is providing services under this Agreement

Processing has the meaning set out in the applicable DP Legislation, and "Process" shall be construed accordingly

Data Protection Legislation (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; and (iiii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;

Data Loss Event any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018;

GDPR the General Data Protection Regulation (Regulation (EU) 2016/679);

LED Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures appropriate technical and organisational measures which may include: pseudo-anonymisation and encryption of Personal Data, ensuring confidentiality, integrity, availability and GDPR Addendum resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Schedule means the schedule attached to this Annex 1 forming part of this Letter and titled: 'Schedule of Processing, Personal Data and Data Subjects'; and

Sub-Processor any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

Background

The Customer ("You") is the owner and/or data Controller of certain data ("Customer data") and agrees that MK may process that data on the terms of this Agreement.

1. The Customer shall own the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, backing up and quality of the Customer Data.

2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Agreement is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and MK is the Data Processor of the Customer Data. The Schedule sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of Data Subject.

4. Without prejudice to the generality of clause 2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Us for the duration and purposes of this Contract and has entered into appropriate data sharing agreements and the Customer shall, whenever requested by Us provide copies of all agreements and consents to Us such that We can satisfy ourselves as to these consents (provided always that it shall be the Customer's sole responsibility to ensure that it has all necessary consents).

5. Without prejudice to the generality of clause 2, We shall, in relation to any Personal Data processed in connection with the performance by MK of its obligations under this Agreement:

   5.1 process that Personal Data only on the written instructions of the Customer and any Data Controller in relation to the Personal Data unless We are required by the laws of the United Kingdom, any member of the European Union or by the laws of the European Union applicable to us to process Personal Data. Where We are relying on laws of the United Kingdom, a member of the European Union or European Union law as the basis for processing Personal Data, We shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Us from so notifying the customer;

      5.1.1 MK will inform the Controller if it believes any instruction to hand information to the Data Controller breaches the GDPR or any other law

   5.2 ensure that it has in place appropriate technical and organisational measures, reviewed by the Customer if the Customer elects, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

   5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

   5.4 assist the Customer and any Data Controller of the Personal Data, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; such assistance may include:

      5.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

      5.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

      5.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

      5.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

   5.5 at the written direction of the Customer or the relevant Data Controller, delete or return Personal Data and copies thereof to the Customer or the Data Controller on termination of the Agreement unless required by Applicable Laws to store the Personal Data;

   5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach who must then notify the relevant Data Controller;

   5.7 maintain complete and accurate records and information to demonstrate its compliance with this Agreement;

   5.8 not transfer any Personal Data outside of the European Economic Area unless:

      5.8.1 this is at the request of the Customer (for example but not limited to a request for the delivery of Personal Data to a person or a server situated outside the European Economic Area); or

      5.8.2 the prior written consent of the Customer has been obtained; or

      5.8.3 the transfer is permitted by Chapter 5 of the GDPR or other provisions of Applicable Laws.

      5.8.4 assist the Customer in carrying out data protection impact assessments and consulting with relevant supervisory authorities where such assessments and/or consultations are required pursuant to the Data Protection Legislation, provided that the scope of such assistance shall be agreed by the parties in advance.

   5.9 The Customer does not consent to MK appointing any third-party Processor of Personal Data under this Agreement.

   5.10 Before allowing any sub-Processor to process any Personal Data related to this agreement We shall:

      5.10.1 notify the Customer of the intended sub-Processor and details of processing activities;

      5.10.2 enter into a written agreement with the sub-Processor to ensure adherence to our terms as detailed in this agreement;

      5.10.3 provide the Customer with such information regarding the sub-Processor as the Customer may reasonably require

5.11 Subject to clause 5.11 MK will notify the Customer immediately if it:

    5.11.1   receives a Data Subject Access Request

    5.11.2   receives a request to rectify, block or erase any personal data

    5.11.3   receives any other request, complaint or communication relating to either party's obligations under the Data Protection legislation;

    5.11.4   receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this agreement where required by law;

    5.11.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required by Law;

5.12 MK's obligation to notify under 5.10 shall include the provision of further information to the Customer as detail becomes available

5.13 The Customer shall indemnify and hold MK harmless from and against any and all losses and damages to the extent arising from or related to Customer Data (except to the extent that any such claim, demand or action arose out of or is in connection with MK's intentional misuse of, infringement of, or gross negligence or wilful misconduct in relation to Customer Data).

5.14 The parties shall co-operate with each other to demonstrate compliance with this clause Agreement and allow for and contribute to audits, including inspections conducted by or on behalf of the Customer.

5.15 This Agreement will remain in full force and effect so long as MK retains any Customer Data. Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination in order to protect Personal Data will remain in full force and effect.

In this Agreement, **Data Protection Legislation** means:
(i) the Data Protection Act 1998 while it is force;
(ii) unless and until the GDPR is no longer directly applicable in the UK, the GDPR;
(iii) any successor legislation to the GDPR or the Data Protection Act 1998.

Policy Date: **01/09/2018**

Policy Review Date: **01/09/2019**