**November 24, 2017**

**Modus Engagement, Inc.**

**DATA PROCESSING ADDENDUM**

This Data Processing Addendum (“DPA”) is incorporated into the Master Services Agreement (“Agreement”) between Customer and Modus. All defined terms in the Agreement are incorporated by reference. This DPA reflects the parties’ agreement with respect to the Processing of Personal Data (as defined below) in connection with the requirements of Data Protection Laws. This DPA will control with respect to the subject matter herein in the event of any conflict with the Agreement. This DPA includes the Standard Contractual Clauses, attached hereto as **EXHIBIT 1**.

**Definitions.** In addition to the definitions in the Agreement and set forth in other sections of this DPA:

**“Data Controller”** means the entity that determines the purposes and means of Processing Personal Data, in this case, Customer.

**“Data Processor”** means the entity that Processes Personal Data on behalf of the Data Controller, in this case, Modus.

 **“Data Protection Laws”** means any applicable data protection laws and regulations applicable to the Processing of Personal Data under the Agreement, including the applicable laws and regulations of the European Union, The European Economic Area and their member states, and Switzerland.

 **“Data Subject”** means the individual to whom Personal Data relates.

 **“Personal Data”** means any information relating to an identifiable or identified individual that is provided by Customer to be processed by Modus.

 **“Processing,”** **“Processes,”** or **“Process”** means any operation or set of operations performed upon Personal Data, whether or not by automated meads, such as collection, recording, organization, storage, adaptation, or alteration, retrieval, consultation, use, disclosure, dissemination, erasure, or destruction.

**“Sub-processor”** nears any third-party service providers that Process Customer Data for Modus.

**Processing of Personal Data.** Customer controls the categories of Data Subjects and Personal Data Processed under this Agreement. Modus has no knowledge of, or control over, the Personal Data that Customer provides for Processing. Customer is solely responsible for the accuracy, quality, and legality of the Customer Data and the means by which it acquired the Customer Data.Customer is solely responsible to ensure that its submission of Personal Data to Modus and instructions for the Processing of Personal Data will comply with Data Protection Laws. Modus will inform Customer without delay if, in Modus’ opinion, Customer’s instructions violate Data Protection Laws.

Modus will Process Personal Data on behalf of and in accordance with Customer’s document instructions (i) in accordance with the Agreement (including all documents incorporated into the Agreement) and (ii) to comply with Customer’s other reasonable instructions (including those received via email) to the extent those instructions are consistent with the Agreement. Modus will not otherwise disclose Personal Data to third parties unless required to do so by applicable law, in which case Modus will inform Customer in advance unless it is prohibited from doing so. Modus will not Process Personal Data for any other purpose unless Customer instructs it to do so.

**Rights of Data Subjects**. Modus will, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject to access, correct, amend, or delete that person’s Personal Data or if the Data Subject objects to the Processing thereof (“Data Subject Request”). Modus will not respond to a Data Subject Request without Customer’s prior written consent, except to confirm that the request relates to Customer. To the extent Customer does not have the ability to address a Data Subject Request, Modus shall upon Customer’s request provide commercially reasonable assistance to facilitate such Data Subject Request to the extent Modus is legally permitted to do so and provided that such Data Subject Request is exercised in accordance with Data Protection Laws. To the extent legally permitted, Customer shall be responsible for any costs arising from Modus’ providing such assistance.

With effect from May 25, 2018, the following language shall replace the foregoing. *Data Subject Requests. Modus shall, to the extent legally permitted, promptly notify Customer if Modus receives a request from a data Subject to exercise the Data Subject’s right of access, right of rectification, restriction of Processing, right of erasure (“right to be forgotten”) data portability, objection to Processing, or its right not to be Subject to an automated individual decision making (“Data Subject Request”). Taking into account the nature of the Processing, Modus shall assist Customer by appropriate technical and organization measures, insofar as this is possible, for the fulfillment of Customer’s obligation to respond to a Data Subject Request under Data Protection Laws. In addition, to the extent Customer does not have the ability to address a Data Subject Request, Modus shall upon Customer’s request provide commercially reasonable efforts to assist Customer in responding to such Data Subject Requests, to the extent Modus is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws. To the extent legally permitted, Customer shall be responsible for any costs arising from Modus’ providing such assistance.*

**Modus Personnel and Subprocessors**. Modus shall ensure its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities, and have executed written confidentiality agreements that will survive the termination of their relationship with Modus. Modus shall ensure that access to Personal Data is limited to those personnel who require access to perform services or Process Personal Data in accordance with the Agreement. Customer expressly authorizes Modus to use Sub-processors to perform specific services on Modus’ behalf to enable it to perform its obligations under the Agreement. Modus has entered into written agreements with its Sub-processors that contain obligations substantially similar to Modus’ obligations under this DPA. Modus will notify Customer of changes to its Sub-processors upon written request.

**Security**. Modus shall maintain appropriate technical and organizational safeguards to protect the confidentiality, integrity, and security of Customer Data, including protection from unauthorized or unlawful Processing, accidental or unlawful destruction, unauthorized disclosure or aces, accidental loss or alteration, or damage. Modus shall notify Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized access, or unauthorized disclosure of Customer Data, including Personal Data, transmitted, stored, or otherwise Processed by Modus or its Sub-processor of which Modus becomes aware (“Customer Data Incident”). Modus shall make reasonable efforts to identify the cause of such Customer Data Incidents and take steps it deems necessary and reasonable to remediate the cause of such incidents to the extent dong so is within Modus’ control. These obligations do not apply to incidents that are caused by Customer, its affiliates, or users.

**GDPR.** When the General Data Protection Regulation (“GDPR”) becomes effective on May 25, 2018, Modus will Process Personal Data in accordance with the GDPR’s requirements that are directly applicable to the Services Modus provides. With effect from May 25, 2018, upon Customer’s request, Modus shall provide Customer with reasonable cooperation and assistance needed for Customer to fulfill its obligation under the GDPR to conduct a data protection impact assessment related to Customer’s use of the Services, to the extent Customer does not have access to certain relevant information and such information is available to Modus. To the extent required by the GDPR, in connection with the tasks in this section, Modus will provide reasonable assistance to Customer in cooperation, or prior to consultation, with any Supervisory Authority.

**STANDARD CONTRACT CLAUSES**

**BETWEEN DATA EXPORTER AND THIRD PARTY VENDOR**

These Standard Contractual Clauses (“Clauses”) are entered into by and between the Customer and Modus as an attachment to the Master Services Agreement (“Agreement”) governing Customer’s purchase of and access to Services. All capitalized words that are not defined in these Clauses have the meaning set forth in the Agreement.

**Recitals**

1. The purpose of these Clauses is to ensure both Parties’ compliance with the principles of Article 26 (2) of Directive 95/46/EC of the European Parliament and of the Council of October 14, 1995 on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data~~.~~ or, as of its entry into force, Article 28 (3) of 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.
2. The terms and conditions of the Clauses are applicable only to Personal Data exported from the European Economic Area or Switzerland to the extent required by national regulations or other Applicable Data Protection Laws. The Clauses shall supersede any provision of the Agreement that is directly contradictory to one or more terms of Clauses, to the extent and only to the extent of the contradiction.
3. Customer, as Data Exporter of Personal Data, and Modus, as Data Importer of Personal Data, have agreed on the following provisions in order to provide for adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by Customer to Modus of the Personal Data specified in Appendix I attached to these Clauses.
4. **Definitions**

For the purposes of the Clauses:

* 1. “Personal Data”, “Special Categories of Data”, “process/processing”, “Controller”, “Processor”, “Data Subject,” “Data Importer,” Data Exporter,” and “Supervisory Authority”/”Authority” shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data, or, as of its entry into force, in the Regulation. For the application of these Clauses Personal Data can be transferred to Modus by or on behalf of the Controller. For the application of the Clauses, Personal Data are limited to Personal Data collected by or on behalf of Customer Affiliates established in the EEA and Switzerland or in a country that has obtained an adequacy finding by the European Commission with regard to data protection laws;
	2. “Controller” means Customer;
	3. “Processor” means Modus;

1.4 “Sub-processor” means any processor engaged by Modus or by any other sub-processor of Modus who agrees to receive from Modus or from any other sub-processor of Modus Personal Data exclusively intended for processing activities to be carried out on behalf of the Controller after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

1.5 “Applicable Data Protection Law” means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of Personal Data applicable to a Data Controller in the Member State in which the Customer Affiliate is established, including, as of its entry into force, the Regulation;

1.6 “Technical and Organizational Security Measures” means those measures aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

1.7 “Member State” means the countries being a member of the European Economic Area, and – for the purposes of the Clauses – Switzerland.

1. **Details of the transfer**

The details of the transfer and in particular the special categories of Personal Data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

1. **Third-Party beneficiary clause**
	1. The Data Subject can enforce against the Controller this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
	2. The Data Subject can enforce against Modus this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the Controller has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Controller by contract or by operation of law, as a result of which it takes on the rights and obligations of the Controller, in which case the Data Subject can enforce them against such entity.
	3. The Data Subject can enforce against the Sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the Controller and Modus have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the Controller by contract or by operation of law as a result of which it takes on the rights and obligations of the Controller, in which case the Data Subject can enforce them against such entity. Such third-party liability of the Sub-processor shall be limited to its own processing operations under the Clauses.

3.4 The Parties do not object to a Data Subject being represented by an association or other body if the Data Subject so expressly wishes and if permitted by national law.

1. **Obligations of the Data Exporter**

Customer, as the Data Exporter, agrees and warrants:

1. that the processing, including the transfer itself, of the Personal Data has been and will continue to be carried out in accordance with the relevant provisions of the Applicable Data Protection Law (and, where applicable, has been notified to the relevant Authorities of the Member State where the Data Subject resides) and does not violate the relevant provisions of that State;
2. that it has instructed and throughout the duration of the Personal Data processing services will instruct Modus to process the Personal Data transferred only on the Controller's behalf and in accordance with the Applicable Data Protection Law and the Clauses;
3. that Modus will provide sufficient guarantees in respect of the Technical and Organizational Security Measures specified in Appendix 2 to these Clauses;
4. that after assessment of the requirements of the Applicable Data Protection Law, the security measures are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
5. that it will ensure compliance with the security measures;
6. that, if the transfer involves Special Categories of Data, the Data Subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC, or, as of its entry into force, the General Data Protection Regulation;
7. to forward any notification received from Modus or any Sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection Supervisory Authority if the Controller decides to continue the transfer or to lift the suspension;
8. to make available to the Data Subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
9. that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a Sub-processor providing at least the same level of protection for the Personal Data and the rights of Data Subject as Modus under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

1. **Obligations of the Data Importer**

 Modus, as the Data Importer, agrees and warrants:

(a) to process the Personal Data only on behalf of the Controller who has collected the Personal Data (or on whose behalf the Personal Data have been collected) and in compliance with their instructions and these Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Controller of its inability to comply, in which case the Controller is entitled to suspend the transfer of data and/or terminate the contract;

1. that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Controller and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the Controller as soon as it is aware, in which case the Controller is entitled to suspend the transfer of data and/or terminate the contract;
2. that it has implemented the Technical and Organizational Security Measures specified in Appendix 2 before processing the Personal Data transferred;

(d) that it will promptly notify the Controller about:

(i) any legally binding request for disclosure of the Personal Data by a law enforcement Authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

(ii) any accidental or unauthorized access, and

(iii) any request received directly from the Data Subjects without responding to that request, unless it has been otherwise authorized to do so;

(e) to deal promptly and properly with all inquiries from the Controller or the Customer Affiliate who has collected the Personal Data (or on whose behalf the Personal Data have been collected) relating to its processing of the Personal Data Subject to the transfer and to abide by the advice of the Supervisory Authority with regard to the processing of the data transferred;

(f) at the request of the Controller or the Customer Affiliate who has collected the Personal Data (or on whose behalf the Personal Data have been collected) to submit its data processing facilities (or the facilities of any Sub-processor) for audit of the processing activities covered by the Clauses which shall be carried out by the Controller, the Customer Affiliate who has collected the Personal Data (or on whose behalf the Personal Data have been collected) or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Controller or the Customer Affiliate who has collected the Personal Data (or on whose behalf the Personal Data have been collected), where applicable, in agreement with the Supervisory Authority;

1. to make available to the Data Subject upon request a copy of these Clauses, or any existing contract for subprocessing, unless these Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the Data Subject is unable to obtain a copy from the Controller;
2. that, in the event of subprocessing, it has previously informed the Controller and obtained its prior written consent;
3. that the Processing services by the Sub-processor will be carried out in accordance with Clause 11;
4. to send promptly a copy of any Sub-processor agreement it concludes under the Clauses to the Controller.
5. **Liability and indemnification**
	1. The Parties agree that any Data Subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any Party or Sub-processor is entitled to receive compensation from the Controller or the Customer Affiliate who has collected the Personal Data (or on whose behalf the Personal Data have been collected) for the damage suffered.

6.2. If a Data Subject is not able to bring a claim for compensation in accordance with paragraph 1 against the Controller or the Customer Affiliate who has collected the Personal Data (or on whose behalf the Personal Data have been collected), arising out of a breach by Modus or its Sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the Controller has factually disappeared or ceased to exist in law or has become insolvent, Modus agrees that the Data Subject may issue a claim against Modus as if it were the Controller, unless any successor entity has assumed the entire legal obligations of the Controller by contract of by operation of law, in which case the Data Subject can enforce its rights against such entity.

Modus may not rely on a breach by a Sub-processor of its obligations in order to avoid its own liabilities.

* 1. If a Data Subject is not able to bring a claim against the Controller or Modus referred to in paragraphs 1 and 2, arising out of a breach by the Sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the Controller and Modus have factually disappeared or ceased to exist in law or have become insolvent, the Sub-processor agrees that the Data Subject may issue a claim against the data Sub-processor with regard to its own processing operations under the Clauses as if it were the Controller or Modus, unless any successor entity has assumed the entire legal obligations of the Controller or Modus by contract or by operation of law, in which case the Data Subject can enforce its rights against such entity. The liability of the Sub-processor shall be limited to its own processing operations under the Clauses.
1. **Mediation and jurisdiction**
	1. Modus agrees that if the Data Subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, Modus will accept the decision of the Data Subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the Supervisory Authority;

(b) to refer the dispute to the courts in the Member State in which the Controller is established.

* 1. The Parties agree that the choice made by the Data Subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.
1. **Cooperation with supervisory authorities**
	1. The Controller agrees to deposit a copy of this contract with the Supervisory Authority if it so requests or if such deposit is required under the Applicable Data Protection Law.
	2. The Parties agree that the Supervisory Authority has the right to conduct an audit of Modus, and of any Sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the Controller under the Applicable Data Protection Law.

8.3 Modus shall promptly inform the Controller about the existence of legislation applicable to it or any Sub-processor preventing the conduct of an audit of Modus, or any Sub-processor, pursuant to paragraph 2. In such a case the Controller shall be entitled to take the measures foreseen in Clause 5(b).

1. **Governing Law**

The Clauses shall be governed by the law of the Member State in which the Customer is located.

1. **Variation of the contract**

The Parties undertake not to vary or modify the Clauses. This does not preclude the Parties from adding Clauses on business related issues where required as long as they do not contradict the Clauses.

1. **Subprocessing**
	1. Modus shall not subcontract any of its processing operations performed on behalf of the Controller under the Clauses without the prior written consent of the Controller. Where Modus subcontracts its obligations under the Clauses, with the consent of the Controller, it shall do so only by way of a written agreement with the Sub-processor which imposes the same obligations on the Sub-processor as are imposed on Modus under the Clauses. Where the Sub-processor fails to fulfill its data protection obligations under such written agreement Modus shall remain fully liable to the Controller for the performance of the Sub-processor's obligations under such agreement.
	2. The prior written contract between Modus and the Sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the Data Subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the Controller or Modus because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the Controller or Modus by contract or by operation of law. Such third-party liability of the Sub-processor shall be limited to its own processing operations under the Clauses.
	3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the laws of the country in which the Customer is located.

11.4 The Controller shall keep a list of subprocessing agreements concluded under the Clauses and notified by Modus pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the Controller's data protection Supervisory Authority.

1. **Obligation after the termination of Personal Data Processing services**
	1. The Parties agree that on the termination of the provision of data processing services, Modus and the Sub-processor shall, at the choice of the Controller, return all the Personal Data transferred and the copies thereof to the Controller or shall destroy all the Personal Data and certify to the Controller that it has done so, unless legislation imposed upon Modus prevents it from returning or destroying all or part of the Personal Data transferred. In that case, Modus warrants that it will guarantee the confidentiality of the Personal Data transferred and will not actively process the Personal Data transferred anymore.
	2. Modus and the Sub-processor warrant that upon request of the Controller and/or of the Supervisory Authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Standard Contractual Clauses and must be completed and signed by the Parties. Submission of an Order shall be considered signature by Customer, and invoicing for such Order shall be considered signature by Modus.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Description of the Technical and Organizational Security Measures implemented by Modus in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

**A. Data exporter**

The data exporter is the Customer, as defined in the Master Services Agreement.

**B. Data importer**

The data importer is Modus Engagement, Inc.

**C. Data subjects**

The personal data transferred concern the Data Exporter’s end users including employees, contractors and the personnel of customers, suppliers, collaborators, and subcontractors. Data Subjects also includes individuals attempting to communicate with or transfer personal information to the Data Exporter’s end users.

**D. Categories of data**

The personal data transferred concern personal data, entity data, navigational data (including website usage information), email data, system usage data, application integration data, and other electronic data submitted, stored, sent, or received by end users via the Services.

**E. Special categories of data (if appropriate)**

The parties do not anticipate the transfer of special categories of data.

**F. Processing operations**

The personal data transferred will be subject to the following basic processing activities:

*Scope of Processing*

Personal data may be processed for the following purposes: (a) to provide the Service (which may include the detection, prevention and resolution of security and technical issues); (b) to respond to customer support requests; and (c) otherwise to fulfill the obligations under the Modus Master Services Agreement.

The Data Exporter instructs the Data Importer to process personal data in countries in which the Data Importer or its subprocessors maintain facilities as necessary for it to provide the Service.

*Term of Data Processing*

Data processing will be for the term specified in the Modus Master Services Agreement. For the term of the Modus Master Services Agreement, and for a reasonable period of time after the expiry or termination of the Modus Master Services Agreement, the Data Importer will provide the Data Exporter with access to, and the ability to export, the Data Exporter’s personal data processed pursuant to the Modus Master Services Agreement.

*Data Deletion*

For the term of the Modus Master Services Agreement, the Data Importer will provide the Data Exporter with the ability to delete data as detailed in the Modus Master Services Agreement.

*Access to Data*

For the term of the Modus Master Services Agreement, the Data Importer will provide the Data Exporter with the ability to correct, block, export and delete the Data Exporter’s personal data from the Service in accordance with the Modus Master Services Agreement.

*Sub-processors*

The Data Importer may engage subprocessors to provide parts of the Service. The Data Importer will ensure subprocessors only access and use the Data Exporter’s personal data to provide the Data Importer’s products and services and not for any other purpose.

**APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

List of Sub-processors

* Amazon Web Services
* Any other Modus affiliates