

FRESH RELEVANCE DATA PROTECTION ADDENDUM

This Fresh Relevance Data Protection Addendum (“**DPA**”) is supplemental to the applicable agreement (Customer Terms and Conditions, Reseller Agreement, or other agreement entered into between Customer and Fresh Relevance) and any associated Order Forms (collectively the “**Agreement**”) between Fresh Relevance and the Customer.

Parties to this DPA

- If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement. In such case, the Fresh Relevance entity that is party to the Agreement is party to this DPA.
- If the Customer entity signing this DPA has executed an Order Form with Fresh Relevance or its Affiliates pursuant to the Agreement, but is not itself a party to the Agreement, this DPA is an addendum to that Order Form and applicable renewal Order Forms, and the Fresh Relevance entity that is party to such Order Form is party to this DPA.
- If the Customer entity signing this DPA is neither a party to an Order Form nor the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA.

This DPA has been pre-signed on behalf of Fresh Relevance. The Standard Contractual Clauses in Annex C have been pre-signed by Fresh Relevance, Inc. as the data importer. To execute this DPA, Customer must sign the DPA and Annexes (as noted on the documents) and return a copy of the countersigned DPA to GDPR@freshrelevance.com. Upon receipt of the validly completed DPA by Fresh Relevance at this email address, this DPA will become legally binding.

1. Definitions and interpretation

Interpretations and defined terms set forth in the Agreement apply to the interpretation of this DPA unless stated otherwise.

- “**Customer Personal Data**” means any Personal Data (i) sent by or on behalf of the Customer to, or which is otherwise Processed by, Fresh Relevance under the Agreement, or (ii) which is created or generated under the Agreement, to the extent that such information is protected as personal data under Applicable Data Protection Law;
- “**Data Controller**” means the entity which determines the purposes and means of the Processing of Personal Data;
- “**Applicable Data Protection Law**” means all laws and regulations (including the GDPR), including laws and binding regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement;
- “**Fresh Relevance**” means the Fresh Relevance entity which is a party to this DPA, as specified above, being Fresh Relevance, Inc. or Fresh Relevance Limited, as applicable;
- “**GDPR**” means the EU’s General Data Protection Regulation (2016/679), and references to an ‘Article’ refer to an article of the GDPR;
- “**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- “**Processor**” means the entity which Processes Personal Data on behalf of the Controller.
- “**Standard Contractual Clauses**” means the agreement executed by and between Customer and Fresh Relevance, Inc. and attached hereto as Annex B, pursuant to Commission Decision C (2010)593 Standard Contractual Clauses, as may be amended or replaced from time to time;
- “**Services**” has the meaning given in the Agreement;

- **“Sub-processor”** means any entity engaged by Fresh Relevance or its Affiliates to Process Personal Data in connection with the Services; and
- **“Supervisory Authority”** means an independent public authority which is established by an EU Member State pursuant to the GDPR.

1.1 A reference to writing or written includes faxes and email.

1.2 In the case of conflict or ambiguity between any of the provisions of this DPA and the provisions of the Agreement, the provisions of this DPA will prevail.

2. Scope of Processing by Fresh Relevance

2.1 Customer may be the Data Controller or Data Processor of the Customer Personal Data. Fresh Relevance shall at all times be a Data Processor (or sub-Data Processor, as applicable) in respect of the Customer Personal Data Processed by Fresh Relevance under the Agreement.

2.2 Fresh Relevance will only Process the Customer Personal Data as necessary to provide the Services and in accordance with the Customer’s written instructions. The Agreement, this DPA and Customer’s use of the Fresh Relevance Platform’s features and functionality and Services, are Customer’s instructions (**“Documented Instructions”**) to Fresh Relevance in relation to the Processing of Customer Personal Data. Additional instructions outside the scope of the Documented Instructions (if any) require prior written agreement of Fresh Relevance.

2.3 The Particulars of Processing and a Description of the Processing Activities is at Annex A of this DPA.

3. Consents and Compliance with applicable Laws

3.1 Customer is solely responsible for obtaining and warrants and represents that it has obtained or will obtain prior to Processing by Fresh Relevance, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis under Applicable Data Protection Law for the Processing of any Customer Personal Data as part of the Services.

3.2 Customer controls the Personal Data processed through the Fresh Relevance Platform, either by uploading the Personal Data to the Fresh Relevance Platform or by instructing Fresh Relevance to collect and process the Personal Data on the Customer’s behalf (e.g. through the use of cookies). Customer is responsible for ensuring it provides any required notices to data subjects in compliance with Applicable Data Protection Law and for the Processing instructions it gives to Fresh Relevance.

3.3 Subject to 3.1 and 3.2, Fresh Relevance will comply, and will ensure that its personnel comply, with the requirements of state, federal and national privacy laws and regulations governing Customer Personal Data in Fresh Relevance’s possession or under its control and applicable to Fresh Relevance’s provision of Services. Customer is solely responsible for ensuring that it complies with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to Process with the Fresh Relevance Platform.

3.4 Customer may not use the Fresh Relevance Platform to Process “electronic Protected Health Information” (only applicable if the Customer is subject to US healthcare data protection laws e.g. HIPAA) or any other special categories of personal data unless the applicable Agreement explicitly permits this.

4. Security

4.1 Taking into account (i) the nature, scope, context and purposes of processing, (ii) the state of the art and costs of implementation and (iii) the risk of varying likelihood and severity for the rights and freedoms of individuals, Fresh Relevance will implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Personal Data in the custody and under the control of Fresh Relevance to the extent such Customer Personal Data is confidential and disclosure is not required to perform the Services or otherwise permitted under the terms of the Agreement; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Personal Data; (iii) protect against unauthorized access, misuse, loss or damage to or of use of the Customer Personal Data; and (iv) ensure that Fresh

Relevance's return or disposal of such Customer Personal Data is performed in a manner consistent with Fresh Relevance's obligations under items (i)-(iii) above. Fresh Relevance will ensure that its personnel access Customer Personal Data only where such access is required to supply the Services and Fresh Relevance will ensure that its personnel are subject to obligations of confidentiality with respect to Customer Personal Data.

5. Data Export, Retention, Deletion and Return

5.1 Customer may export Customer Personal Data from the Fresh Relevance Platform at any time during the term of the Agreement, using the Fresh Relevance Platform's then existing features and functionality, at no additional charge. Fresh Relevance's obligations to return Customer Personal Data upon termination of the Agreement may be fulfilled by permitting Customer to export Customer Personal Data as specified above. Fresh Relevance will delete the Customer Personal Data within the Fresh Relevance Platform within 60 days of termination or expiration of the Agreement. Fresh Relevance is not obligated to delete copies of Customer Personal Data retained in automated backup copies generated by Fresh Relevance, which Fresh Relevance may retain for up to 12 months from their creation. Such backup copies will remain subject to this DPA until the copy, or the Customer Personal Data in the copy, is destroyed.

6. Sub-Processors

6.1 If the Customer directly engages other entities to process Customer Personal data in connection with or related to the Services provided by Fresh Relevance, these entities will be processors (or sub-processors) of the Customer and will not constitute sub-processors of Fresh Relevance. The Customer remains liable for the actions and omissions of entities directly engaged by the Customer under this Clause 6.1.

6.2 Customer consents to Fresh Relevance's use of sub-processors to fulfil its contractual obligations under the Agreement and/or to provide certain of the Services on Fresh Relevance's behalf, and consents to Fresh Relevance's disclosure and provision of Customer Personal Data to those sub-processors.

6.3 A list of Fresh Relevance's now-current sub-processors is at the below link:

https://www.freshrelevance.com/images/uploads/blog/GDPR_Data_Processing_Addendum_Subprocessors.pdf ("**Sub-Processor List**").

6.4 Fresh Relevance will publish any additions or replacements to the Sub-Processor List in accordance with this Clause 6.4. Fresh Relevance requires its sub-processors to comply with terms that are substantially no less protective of Customer Personal Data than those required under Article 28 of the GDPR. Fresh Relevance remains liable for any breach of its obligations under this DPA that is caused by an act, error or omission of its sub-processors. Fresh Relevance may engage new sub-processors provided it provides reasonable prior written notice to Customer, and by updating the Sub-Processor List. If Customer objects to the authorization of any future sub-processor on reasonable data protection grounds within 30 days of notification of the proposed authorisation, and if Fresh Relevance is unable to provide an alternative or workaround to avoid Processing of Customer Personal Data by the objected to sub-processor within a reasonable period of time (not to exceed 30 days from receipt of the objection) then, at any time within 30 days of expiration of such 30 days period, Customer may elect to terminate those part of Services in which the objected to sub-processor is or would be involved without penalty, by written notice to Fresh Relevance. If Customer terminates the Services in accordance with the foregoing, then Fresh Relevance will refund to Customer a pro-rata amount of any fees prepaid to Fresh Relevance for the terminated Services calculated in accordance with the term remaining under the Agreement.

6.5 Fresh Relevance will not transfer Customer Personal Data outside of the European Economic Area ("**Third Country**") unless it is necessary to provide the Services initiated by the Customer and subject to compliance with Clause 6.6 and Clause 6.7.

6.6 Fresh Relevance shall be entitled to transfer Customer Personal Data to an organisation in a Third Country provided that any such transfer is carried out in compliance with the Applicable Data Protection Law, including through use of the Standard Contractual Clauses. Customer hereby explicitly authorises Fresh Relevance to enter into the Standard Contractual Clauses on behalf of and as agent for the Customer, to the extent this is required.

6.7 If at any time a decision under Applicable Data Protection Law is made or revoked in relation to:

- a) whether a jurisdiction or body provides an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data; or
- b) the means of demonstrating adequate safeguards are in place in relation to a transfer of Personal Data to a third country,

and any such decision or revocation requires the Parties to implement alternative safeguards or measures, the Parties shall discuss and agree alternative measures, or where no alternative measures or safeguards are available, any necessary changes to the Services in order for the Parties to remain compliant with Applicable Data Protection Law.

7. Data Subject Requests

7.1 If Fresh Relevance receives a request from a Data Subject to invoke their rights under Applicable Data Protection Law, including access to, or deletion of that person's Personal Data, Fresh Relevance shall (a) notify the Customer on receiving the request, (b) provide the Customer with reasonable co-operation and assistance taking in to account the nature of the Services and ability of the Customer to comply with its obligations towards Data Subjects directly, and (c) not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer provided that Fresh Relevance shall be authorised to communicate with the Data Subject to acknowledge receipt of the request and provide progress updates as may be necessary.

8. Audits

8.1 The Customer may contact the Fresh Relevance in accordance with the "Notices" Clause of the Agreement to request an on-site audit of Fresh Relevance's procedures relevant to the protection of the Customer's Personal Data, but only to the extent required under Applicable Data Protection Law and only to the extent required to demonstrate Fresh Relevance's compliance with the terms of this DPA.

8.2 The Parties shall agree the scope, date and duration of the audit in advance. Subject to Clause 8.3, the Customer shall reimburse Fresh Relevance for any time expended by Fresh Relevance in connection with an such on-site audit which shall be calculated and charged at Fresh Relevance's then-current rates, which shall be made available to the Customer upon request. The Customer shall not be required to pay Fresh Relevance for any time expended by Fresh Relevance in connection with an on-site audit where this audit is being conducted in response to Security Breach resulting from a breach by Fresh Relevance of its obligations under Applicable Data Protection Law.

8.3 If Fresh Relevance agrees to disclose Confidential Information or commercially sensitive information as part of any audit, such disclosure shall be subject to the parties entering into a non-disclosure agreement on the terms agreed between the parties in advance of the on-site audit.

9. Security Breach

9.1 Fresh Relevance will notify Customer of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data in Fresh Relevance's possession or under its control (a "**Security Breach**") within 48 hours of Fresh Relevance's confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier and Fresh Relevance will take reasonable steps to mitigate the effects and to minimise any damage resulting from the Security Breach.

9.2 Fresh Relevance and Customer will reasonably cooperate with each other with respect to the investigation and resolution of any Security Breach including, in the case of Fresh Relevance, within a reasonably practicable timeframe, the provision of the following, to the extent then known to Fresh Relevance (i) the possible cause and consequences of the Security Breach; (ii) the categories of Customer Personal Data involved; (iii) a summary of the possible consequences for the effected Data Subjects (iv) a summary of the unauthorised recipients of the Customer Personal Data; and (v) the measures taken by Fresh Relevance mitigate any damage.

9.3 Upon confirmation of any vulnerability or breach of Fresh Relevance's security affecting Customer Personal Data in Fresh Relevance's custody and control, Fresh Relevance will modify its processes and security program as necessary to mitigate the effects of the vulnerability or breach upon such Customer Personal Data.

9.4 Notification(s) of Security Breaches, if any, will be delivered to one or more of Customer's administrators by any means Fresh Relevance selects, including via email. It is Customer's sole responsibility to ensure Customer's authorised administrators maintain accurate contact information on Fresh Relevance Platform.

10. Data Protection Impact Assessment

10.1 Upon Customer's request, Fresh Relevance shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Fresh Relevance. Fresh Relevance shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority, to the extent required under the GDPR.

11. Agreement

11.1 Except as provided for in this DPA, all other terms and conditions of the Agreement shall remain in full force and effect, but in the event of a conflict between the Agreement and this DPA, this DPA shall prevail. This DPA shall terminate automatically without the need for notice on the termination or expiry of the Agreement.

12. Liability

12.1 Each Party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Customer and Fresh Relevance, whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together. For the avoidance of doubt, Fresh Relevance and its Affiliates' total liability for all claims from the Customer and all of its Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under the Agreement, including by Customer and its Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any of its Affiliates that is a contractual party to any such DPA.

13. Parties to this DPA

13.1 The Section "Parties to this DPA" specifies which Fresh Relevance entity is party to this DPA. Notwithstanding the signatures below of any other Fresh Relevance entity, such other Fresh Relevance entities are not a party to this DPA.

14. Legal Effect

14.1 This DPA shall only become legally binding between Customer and Fresh Relevance Limited (and Fresh Relevance, Inc., if different) when the formalities steps set out in the Preamble above have been fully completed. If Customer has previously executed a data processing addendum with Fresh Relevance, this DPA supersedes and replaces such prior Data Processing Addendum.

15. Governing Law and Jurisdiction

15.1 The stipulations on choice of law and venue of jurisdiction in the Agreement shall not apply to this DPA. This DPA 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 England.

16. Variation

16.1 No change of, or variation to, this DPA shall be valid and binding unless made in writing (including electronic copies) signed by or on behalf of the Parties. If one or more stipulations of this DPA are deemed void, this shall not affect validity of the other stipulations of this DPA. In the event of invalidity of one or more stipulations of this Addendum, the Parties shall negotiate a legally effective provision commercially close to the invalid stipulation.

Annex A**Particulars of the Processing and Description of Processing Activities**

- **Subject matter of processing:** the performance of services pursuant to the Agreement
- **Duration of Processing:** as set out in the Agreement.
- **Nature of Processing:** processing necessary to provide the Services to the Customer, provision of support services to the Customer and other processing in accordance with the terms of the Agreement.
- **Categories of Data:** The Customer Personal Data may include data subjects' names and email addresses, orders, interests, marketing seen or responded to, and other data useful for marketing and reports, and other personal data comprised in the Customer Personal Data. The Customer can also instruct the Provider to store additional data and to import and export data to third-party systems.
- **Categories of Data Subject:** Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer and which may include, but is not limited to, personal data relating to the following categories of data subject: the Customer's prospects, customers, employees, suppliers and agents and Users.

Annex B**Additional Terms applicable to the Standard Contractual Clauses**

1. The Standard Contractual Clauses and the additional terms specified in this Exhibit A apply to (i) the Customer legal entity who has executed, or on behalf of whom Fresh Relevance has executed (if applicable), the Standard Contractual Clauses together with that Customer legal entity's affiliates. For the purpose of the Standard Contractual Clauses and this Section 1, the aforementioned entities shall be deemed "data exporters".
2. This DPA and the Agreement are Customer's complete and final instructions at the time of execution of the DPA for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the Standard Contractual Clauses, the following is deemed an instruction by the Customer to process Personal Data: (a) Processing in accordance with the Agreement and applicable Order Form(s); (b) Processing initiated by Users in their use of the Services; and (c) Processing to comply with other reasonable instructions provided by Customer (e.g., via email or support tickets) where such instructions are consistent with the terms of the Agreement.
3. Appointment of new Sub-processors and List of current Sub-processors. Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that (a) Fresh Relevance's Affiliates may be retained as Sub-processors; and (b) Fresh Relevance and Fresh Relevance's Affiliates respectively may engage existing and new third-party Sub-processors in connection with the provision of the Services. Fresh Relevance shall make available to Customer the current list of Sub-processors in accordance with Section 6 of this DPA. Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that Fresh Relevance may engage new Sub-processors as described in Sections 6 of the DPA. The parties agree that the copies of the Sub-processor agreements that must be provided by Fresh Relevance to Customer pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by Fresh Relevance beforehand; and, that such copies will be provided by Fresh Relevance, in a manner to be determined in its discretion, only upon request by Customer.
4. The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with Section 8 of the DPA.
5. Certification of Deletion. The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by Fresh Relevance to Customer
6. In the event of any conflict or inconsistency between the body of this DPA and any of its Annexes, (not including the Standard Contractual Clauses) and the Standard Contractual Clauses in Annex C, the Standard Contractual Clauses shall prevail.

Annex B
Standard Contractual Clauses

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of the data exporting organisation:

Address:

.....

Tel.; fax; e-mail:

Other information needed to identify the organisation

.....

(the data exporter)

And

Name of the data importing organisation: **Fresh Relevance, Inc.**

Address: 6 Liberty Square, Unit 248, Boston, MA 02109, United States of America

Tel. +1-617-207-0156; e-mail: <mailto:GDPR@freshrelevance.com>

Other information needed to identify the organisation (if applicable)

.....

(the data importer)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

*Clause 1***Definitions**

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory 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;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the sub-processor'* means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the 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 data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

*Clause 2***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.

*Clause 3***Third-party beneficiary clause**

1. The data subject can enforce against the data exporter 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 the data importer 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 data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by

operation of law, as a result of which it takes on the rights and obligations of the data exporter, 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 data exporter and the data importer 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 data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, 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.
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.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) 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 exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) 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, unauthorised 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;
- (e) that it will ensure compliance with the security measures;
- (f) 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;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) 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 sub-processing 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;

- (i) that, in the event of sub-processing, 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 the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter 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 data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter 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 unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter 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 data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter 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 data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the 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 data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

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 data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer 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 data exporter and the data importer 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 data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer 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.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer 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 data exporter is established.
2. 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.

*Clause 8***Cooperation with supervisory authorities**

1. The data exporter 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 the data importer, 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 data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9***Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10***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 Clause.

*Clause 11***Sub-processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, 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 the data importer under the Clauses¹. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer 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 data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the

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entire legal obligations of the data exporter or data importer 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 sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
- 4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

- 1. The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full):

.....

Position:

.....
.....

Address:

.....
.....

Other information necessary in order for the contract to be binding (if any):

Signature

(stamp of organisation)

On behalf of the data importer:

Name (written out in full): Mr Peter Richard John Austin

Position: Director

Address: 6 Liberty Square, Unit 248, Boston, MA 02109, United States of America

Other information necessary in order for the contract to be binding (if any):

Signature 

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

Appendix 1 forms part of the Clauses and must be completed and signed by the parties.

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

Data exporter

The Data Exporter is a customer of the Data Importer’s realtime marketing software, services, systems and/or technologies.

Data importer

The data importer is Fresh Relevance, Inc., a supplier of realtime marketing software, services, systems and/or technologies.

Data subjects

Data Exporter may submit Personal Data to the Services, the extent of which is determined and controlled by Customer and which may include, but is not limited to, personal data relating to the following categories of data subject: the Data Exporter’s prospects, customers, employees, suppliers and agents and Users.

Categories of data

All personal data comprising Customer Personal Data (as defined in the Fresh Relevance Data Protection Addendum)

Special categories of data (if appropriate)

No special categories of data will be transferred by the Data Exporter.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify): delievery of services and products comprised withint the Fresh Relevanc Solution further described at www.freshrelevance.com

DATA EXPORTER

Name:

Authorised Signature

DATA IMPORTER

Name: Mr Peter Richard John Austin

Authorised Signature *Pete Asti*

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

Appendix 2 forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The technical and organisational security measures implemented by the data importer are as described in the Fresh Relevance Data Protection Addendum entered into between the data importer and the data exporter which is attached to the main agreement for services entered in to between the parties.

DATA EXPORTER

Name:

Authorised Signature

DATA IMPORTER

Name: Mr Peter Richard John Austin

Authorised Signature 