# DATA PROCESSING ADDENDUM

This Data Protection Addendum ("**Addendum**") forms part of the eMudhra Terms of Service, found at https://www.emudhra.com/terms-of-use.html, including any amendment to the same as may have mutually agreed between the subscriber and eMudhra. (hereinafter referred to as "Principal Agreement.

By accepting the Terms of use, Subscriber (**"Subscriber"**) agrees to the terms of this DPA on behalf of itself and, to the extent required under Applicable Data Protection Laws, in the name and on behalf of any Affiliates (defined below) who are authorized to use the eMudhra's Services. If you are entering into this DPA on behalf of a Subscriber (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that Subscriber or legal entity to this DPA. In that case, "**Subscriber**" will refer to that Subscriber or other legal entity.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement.

## HOW THIS DPA APPLIES TO SUBSCRIBER AND ITS AFFILIATES

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

## Definitions

1.1     In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

      1.1.1      "**Applicable Laws**" means (a) European Union or Member State laws with respect to any Subscriber Personal Data in respect of which any Subscriber Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Subscriber Personal Data in respect of which any Subscriber Group Member is subject to any other Data Protection Laws;

      1.1.2      "**Subscriber Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Subscriber,

      1.1.3      "**Subscriber Group Member**" means Subscriber or any Subscriber Affiliate;

      1.1.4      "**Subscriber Personal Data**" means any Personal Data Processed by a Contracted Processor on behalf of a Subscriber Group Member pursuant to or in connection with the Principal Agreement; This data does not include the data directly processed by the subscriber group member by using all websites including mobile applications owned and operated by eMudhra Limited and/or its subsidiaries and affiliates from time to time

1.1.5    "**Contracted Processor**" means eMudhra or a Subprocessor;

1.1.6    "**Data Protection Laws**" means EU Data Protection Laws and, to the extent applicable, the data protection laws of any other country;

1.1.7    "**EEA**" means the European Economic Area;

1.1.8    "**EU Data Protection Laws**" means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.9    "**GDPR**" means EU General Data Protection Regulation 2016/679;

1.1.10   "**Restricted Transfer**" means:

      1.1.10.1    a transfer of Subscriber Personal Data from any Subscriber Group Member to a Contracted Processor; or

      1.1.10.2    an onward transfer of Subscriber Personal Data from a Contracted Processor to another Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under section [6.4.3 or] 12 below;

1.1.11   "**Services**" means the services and other activities to be supplied to or carried out by or on behalf of eMudhra for Subscriber Group Members pursuant to the Principal Agreement;

1.1.12   "**Standard Contractual Clauses**" means the contractual clauses set out in Annex 2, amended as indicated (in square brackets and italics) in that Annex and under section 13.4 Upon Customer's explicit written request, eMudhra may execute Standard Contractual Clauses in order to ensure adequate protection for the Personal Data in accordance with the requirements of Articles 25 and 26 of the EU Directive;

1.1.13   "**Subprocessor**" means any person (including any third party, but excluding an employee of eMudhra or any of its sub-contractors) appointed by or on behalf of eMudhra or any eMudhra Affiliate to Process Personal Data on behalf of any Subscriber Group Member in connection with the Principal Agreement; and

1.1.14   "**eMudhra Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with EMudhra,

1.2    The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

1.3    The word "**include**" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

**2.      Authority**

eMudhra warrants and represents that, before any eMudhra Affiliate Processes any Subscriber Personal Data on behalf of any Subscriber Group Member, such eMudhra's affiliates entry into this Addendum will have been duly and effectively authorised (or subsequently ratified) by that eMudhra Affiliate.

**3.      Processing of Subscriber Personal Data**

3.1      eMudhra and each eMudhra Affiliate shall:

    3.1.1      comply with all applicable Data Protection Laws in the Processing of Subscriber Personal Data; and

    3.1.2      not Process Subscriber Personal Data other than on the relevant Subscriber Group Member's instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case eMudhra or the relevant eMudhra Affiliate shall to the extent permitted by Applicable Laws inform the relevant Subscriber Group Member of that legal requirement before the relevant Processing of that Personal Data. The usage by subscriber Group members of all websites including mobile applications owned and operated by eMudhra Limited and/or its subsidiaries and affiliates from time to time to process subscriber personal data will be deemed to be under instructions from such subscriber group members..

3.2      Each Subscriber Group Member:

    3.2.1      instructs eMudhra and each eMudhra Affiliate (and authorises eMudhra and each eMudhra Affiliate to instruct each Subprocessor) to:

        3.2.1.1      Process Subscriber Personal Data; and

        3.2.1.2      in particular, transfer Subscriber Personal Data to any country or territory,

    as reasonably necessary for the provision of the Services and consistent with the Principal Agreement; and

    The usage by subscriber Group members of all websites including mobile applications owned and operated by eMudhra Limited and/or its subsidiaries and affiliates from time to time to process subscriber personal data will be deemed to be uinstructions under Section 3.2.1from such subscriber group members.

    3.2.2      warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 3.2.1 on behalf of each relevant Subscriber Affiliate.

3.3      Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Subscriber Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Subscriber may make reasonable amendments to Annex 1 by written notice to eMudhra from time to time as Subscriber reasonably considers necessary to meet those requirements. Nothing in Annex 1

(including as amended pursuant to this section 3.3) confers any right or imposes any obligation on any party to this Addendum.

**4.    eMudhra and eMudhra Affiliate Personnel**

eMudhra and each eMudhra Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Subscriber Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Subscriber Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

**5.    Security**

5.1    Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, eMudhra and each eMudhra Affiliate shall in relation to the Subscriber Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

5.2    In assessing the appropriate level of security, eMudhra and each eMudhra Affiliate shall take into account, the risks that are presented by Processing, in particular from a Personal Data Breach perspective.

**6.    Subprocessing**

6.1    Each Subscriber Group Member authorises eMudhra and each eMudhra Affiliate to appoint ,and permit each Subprocessor appointed in accordance with this section 6 to appoint, Subprocessors in accordance with this section 6 and any restrictions in the Principal Agreement.

6.2    eMudhra and each eMudhra Affiliate may continue to use those Subprocessors already engaged by eMudhra or any eMudhra Affiliate as at the date of this Addendum, subject to eMudhra and each eMudhra Affiliate in each case as soon as practicable meeting the obligations set out in section 6.4.

6.3    eMudhra shall give Subscriber written notice or make publicly available on its website of the appointment of any new Subprocessor that will process Subscriber's data, including details of the Processing to be undertaken by the Subprocessor. If, within 7 days of receipt of that notice, Subscriber notifies eMudhra in writing of any objections (on reasonable grounds) to the proposed appointment:

Neither eMudhra nor any eMudhra Affiliate shall appoint (or disclose any Subscriber Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address the objections raised by any Subscriber Group Member and Subscriber has been provided with a reasonable written explanation of the steps taken

6.4    With respect to each Subprocessor, eMudhra or the relevant eMudhra Affiliate shall:

6.4.1   before the Subprocessor first Processes Subscriber Personal Data (or, where relevant, in accordance with section 6.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Subscriber Personal Data required by the Principal Agreement;

6.4.2   ensure that the arrangement between on the one hand (a) eMudhra, or (b) the relevant eMudhra Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a contract including terms which offer at least the same level of protection for Subscriber Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;

6.4.3   if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) eMudhra, or (b) the relevant eMudhra Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, or before the Subprocessor first Processes Subscriber Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the relevant Subscriber Group Member(s) (and Subscriber shall procure that each Subscriber Affiliate party to any such Standard Contractual Clauses co-operates with their population and execution); and

6.4.4   provide to Subscriber for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Subscriber may request from time to time.

6.5   eMudhra and each eMudhra Affiliate shall ensure that each Subprocessor performs the obligations under sections 3.1, 4, 5, 7.1, 8.2, 9 and 11.1, as they apply to Processing of Subscriber Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of eMudhra.

## 7.    Data Subject Rights

7.1   Taking into account the nature of the Processing, eMudhra and each eMudhra Affiliate shall assist each Subscriber Group Member by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Subscriber Group Members' obligations, as reasonably understood by Subscriber, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

7.2   eMudhra shall:

7.2.1   promptly notify Subscriber if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Subscriber Personal Data; and

7.2.2   ensure that the Contracted Processor does not respond to that request except on the documented instructions of Subscriber or the relevant Subscriber Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case eMudhra shall to the extent permitted by Applicable Laws inform Subscriber of that legal requirement before the Contracted Processor responds to the request.

8. **Personal Data Breach**

8.1 eMudhra shall notify Subscriber without undue delay upon eMudhra or any Subprocessor becoming aware of a Personal Data Breach affecting Subscriber Personal Data, providing Subscriber with sufficient information to allow each Subscriber Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

8.2 eMudhra shall co-operate with Subscriber and each Subscriber Group Member and take such reasonable commercial steps as are directed by Subscriber to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

9. **Data Protection Impact Assessment and Prior Consultation**

eMudhra and each eMudhra Affiliate shall provide reasonable assistance to each Subscriber Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Subscriber reasonably considers to be required of any Subscriber Group Member by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Subscriber Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

10. **Deletion or return of Subscriber Personal Data**

10.1 Upon Subscriber request, eMudhra and each eMudhra Affiliate shall promptly delete all copies of Subscriber Personal Data. This requirement shall not apply to the extent that eMudhra is required by any applicable law to retain some or all of the Subscriber personal data, in which event eMudhra shall isolate and protect the personal data from any further processing except to the extent required by such law.

11. **Information rights**

eMudhra and each eMudhra affiliate shall make available to each subscriber on request all information necessary to demonstrate compliance with this Agreement.

12. **Restricted Transfers**

12.1 Subject to section 12.3, each Subscriber Group Member (as "data exporter") and each Contracted Processor, as appropriate, (as "data importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that Subscriber Group Member to that Contracted Processor.

12.2 The Standard Contractual Clauses shall come into effect under section 12.1 on the later of:

12.2.1 the data exporter becoming a party to them;

12.2.2 the data importer becoming a party to them; and

12.2.3 commencement of the relevant Restricted Transfer.

12.3 Section 12.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

12.4 eMudhra warrants and represents that, before the commencement of any Restricted Transfer to a Subprocessor which is not an eMudhra Affiliate, eMudhra's or the relevant eMudhra Affiliate's entry into the Standard Contractual Clauses under section 12.1, and agreement to variations to those Standard Contractual Clauses made under section 13.4.1, as agent for and on behalf of that Subprocessor will have been duly and effectively authorised (or subsequently ratified) by that Subprocessor.]

**13.    General Terms**

*Governing law and jurisdiction*

13.1  Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:

13.1.1    the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Principal Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

13.1.2    this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Principal Agreement.

*Order of precedence*

13.2  Nothing in this Addendum reduces eMudhra's or any eMudhra Affiliate's obligations under the Principal Agreement in relation to the protection of Personal Data or permits eMudhra or any eMudhra Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Principal Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

13.3  Subject to section 13.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Principal Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

*Changes in Data Protection Laws, etc.*

13.4  Subscriber may:

13.4.1    by at least [30 (thirty) calendar days'] written notice to eMudhra from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under section 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and

13.4.2    propose any other variations to this Addendum which Subscriber reasonably considers to be necessary to address the requirements of any Data Protection Law.

13.5    If Subscriber gives notice under section 13.4.1:

13.5.1    eMudhra and each eMudhra Affiliate shall promptly co-operate (and ensure that any affected Subprocessors promptly co-operate) to ensure that equivalent variations are made to any agreement put in place under section 6.4.3; and]

13.5.2    Subscriber shall not unreasonably withhold or delay agreement to any consequential variations to this Addendum proposed by eMudhra to protect the Contracted Processors against additional risks associated with the variations made under section 13.4.1 [and/or 13.5.1].

13.6    If Subscriber gives notice under section 13.4.2, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Subscriber's notice as soon as is reasonably practicable.

13.7    Neither Subscriber nor eMudhra shall require the consent or approval of any Subscriber Affiliate or eMudhra Affiliate to amend this Addendum pursuant to this section 13.5 or otherwise.

*Severance*

13.8    Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Principal Agreement with effect from the date first set out above.

**[Subscriber]**

Signature _____

Name _____

Title _____

Date Signed _____


**[eMudhra]**

Signature

Name Venu Madhava

Title Head - Legal

Date Signed

**ANNEX 1: DETAILS OF PROCESSING OF SUBSCRIBER PERSONAL DATA**

This Annex 1 includes certain details of the Processing of Subscriber Personal Data as required by Article 28(3) GDPR.

*Subject matter and duration of the Processing of Subscriber Personal Data*

*The nature and purpose of the Processing of Subscriber Personal Data*

*The types of Subscriber Personal Data to be Processed*

*The categories of Data Subject to whom the Subscriber Personal Data relates*

*The obligations and rights of Subscriber and Subscriber Affiliates*

**ANNEX 2: STANDARD CONTRACTUAL CLAUSES**

**Standard Contractual Clauses (processors)**

Name of the data exporting organisation:

Address:

Tel.: _____; e-mail: _____

<div align="center">(the data <b>exporter</b>)</div>

And

Name of the data importing organisation: eMudhra Ltd

Address: 3rd Floor, Sai Arcade, 56 Outer Ring Road, Devarabeesanahalli, Bangalore - 560103

Tel.: +91 80 42275300 ; e-mail: privacy@emudhra.com

<div align="center">(the data <b>importer</b>)</div>

<div align="center">each a "party"; together "the parties",</div>

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.

<div align="center">Background</div>

The data exporter has entered into a data processing addendum ("DPA") with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer's execution of, and compliance with, the terms of these Clauses.

<div align="center"><i>Clause 1</i></div>

<div align="center"><i>Definitions</i></div>

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; [*If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words "except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data" are added.*]

(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; [*If these Clauses are not governed by the law of a Member State, the words "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" are deleted.*]

(d)     '*the subprocessor*' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor 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 subprocessor 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 subprocessor 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; [*If these Clauses are not governed by the law of a Member State, the words "within the meaning of Directive 95/46/EC" are deleted.*]

(g)     to forward any notification received from the data importer or any subprocessor 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 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;

(i)     that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor 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 subprocessing, 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 subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i)     that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j)     to send promptly a copy of any subprocessor 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 subprocessor 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 subprocessor 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 of 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 subprocessor 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 subprocessor 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 subprocessor agrees that the data subject may issue a claim against the data subprocessor 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 subprocessor 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 subprocessor, 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 subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, 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*

*Subprocessing*

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 subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the

subprocessor 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 subprocessor's obligations under such agreement.

2.    The prior written contract between the data importer and the subprocessor 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 entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor 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 law of the Member State in which the data exporter is established.

4.    The data exporter shall keep a list of subprocessing 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 subprocessor 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 subprocessor 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……………………………………….

**On behalf of the data importer:**
Name (written out in full): Venu Madhava
Position: Head- Legal
Address: 3<sup>rd</sup> Floor, Sai Arcade, 56 Outer Ring Road, Devarabeesanahalli, Bangalore - 560103
Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

# APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix 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
Name:………………………………
Authorised Signature ……………………

DATA IMPORTER
Name: Venu Madhava
Authorised Signature ……………………

# APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix 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):**

[TO BE COMPLETED]