Data Protection and Processing Agreement

This Data Protection and Processing Agreement between *ReloTalent* acting on its own behalf, and *[company name]* ("Company") acting on its own behalf and as agent for each Company Affiliate.

The terms used in this Agreement shall have the meanings set forth in this Agreement.

1. Definitions

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

Company Affiliate – an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Company, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

Company Group Member – Company or any Company Affiliate.

Company Personal Data – any Personal Data Processed by ReloTalent on behalf of a Company Group Member.

Data Protection Laws – EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country.

EEA **–** the European Economic Area.

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Laws – EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR.

GDPR - EU General Data Protection Regulation 2016/679.

Services – the services and other activities to be supplied to or carried out by or on behalf of ReloTalent for Company Group Members.

Standard Contractual Clauses – the contractual clauses set out in Annex 1, amended as indicated in that Annex and under section 10.4.

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

Include – shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

2. Processing of Company Personal Data

2.1 ReloTalent shall:

2.1.1 comply with all applicable Data Protection Laws in the Processing of Company Personal Data; and

2.1.2   not Process Company Personal Data other than on the relevant Company Group Member's instructions unless Processing is required by Applicable Laws to which ReloTalent is subject, in which case ReloTalent shall to the extent permitted by Applicable Laws inform the relevant Company Group Member of that legal requirement before the relevant Processing of that Personal Data.

2.2   Each Company Group Member:

2.2.1   instructs ReloTalent to:
2.2.1.1   Process Company Personal Data; and
2.2.1.2   in particular, transfer Company Personal Data to any country or territory,

as reasonably necessary for the provision of the Services; and

2.2.2   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 2.2.1 on behalf of each relevant Company Affiliate.

3.   ReloTalent Personnel

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

4.   Security

4.1   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, ReloTalent shall 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.

4.2   In assessing the appropriate level of security, ReloTalent shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

5.   Data Subject Rights

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

5.2   ReloTalent shall:

5.2.1   promptly notify Company if ReloTalent receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and
5.2.2   ensure that the ReloTalent does not respond to that request except as required by Applicable Laws to which the ReloTalent is subject, in which case ReloTalent shall to the extent permitted by Applicable Laws inform Company of that legal requirement before the ReloTalent responds to the request.

6. Personal Data Breach

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

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

7. Data Protection Impact Assessment and Prior Consultation

ReloTalent shall provide reasonable assistance to each Company Group Member with any data protection impact assessments, which Company reasonably considers to be required of any Company 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 Company Personal Data and taking into account the nature of the Processing and information available to ReloTalent.

8. Deletion or Return of Company Personal Data

8.1 Subject to sections 8.2 and 8.3 ReloTalent shall promptly and in any event within 30 days of the date of cessation of any Services involving the Processing of Company Personal Data (the "Cessation Date"), delete all copies of those Company Personal Data.

8.2 Subject to section 8.3, Company may in its absolute discretion by written notice to ReloTalent within 20 days of the Cessation Date require ReloTalent to (a) return a complete copy of all Company Personal Data to Company by secure file transfer in such format as is reasonably notified by Company to ReloTalent, subject to format availability; and (b) delete and procure the deletion of all other copies of Company Personal Data Processed by ReloTalent. ReloTalent shall comply with any such written request within 30 days of the Cessation Date.

8.3 ReloTalent may retain Company Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that ReloTalent shall ensure the confidentiality of all such Company Personal Data and shall ensure that such Company Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

8.4 ReloTalent shall provide written certification to Company that it has fully complied with this section 8 within 40 days of the Cessation Date.

9. Restricted Transfers

9.1 Subject to section 9.3, each Company Group Member (as "data exporter") and ReloTalent (as "data importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that Company Group Member to ReloTalent.

9.2 The Standard Contractual Clauses shall come into effect under section 9.1 on the later of:

9.2.1 the data exporter becoming a party to them;
9.2.2 the data importer becoming a party to them; and

9.2.3   commencement of the relevant Restricted Transfer.

9.3   Section 9.1 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.

10.   General Terms

Governing law and jurisdiction

10.1   Without prejudice to clauses 6 (Mediation and Jurisdiction) and 8 (Governing Law) of the Standard Contractual Clauses:

10.1.1   The parties to this Agreement hereby submit to the choice of jurisdiction stipulated by the Company with respect to any disputes or claims howsoever arising under this Agreement, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

10.1.2   this Agreement 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.

Order of precedence

10.2   Nothing in this Addendum reduces ReloTalent's obligations to the protection of Personal Data or permits ReloTalent to Process Personal Data in a manner which is prohibited by the any previous agreements between the parties. In the event of any conflict or inconsistency between this Agreement and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

10.3   In the event of inconsistencies between the provisions of this Agreement and any other agreements between the parties, 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 Agreement, the provisions of this Agreement shall prevail.

Changes in Data Protection Laws, etc.

10.4   ReloTalent will provide at least 30 calendar days written notice to Company declaring any change to the clauses contained within this agreement, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law.

10.5   The Company may propose any other variations to this Addendum which Company reasonably considers to be necessary to address the requirements of any Data Protection Law.

10.6   Company gives notice under section 10.5:

10.6.1   ReloTalent shall promptly co-operate to ensure that equivalent variations are made to any agreement put in place; and

10.6.2   Company shall not unreasonably withhold or delay agreement to any consequential variations to this Agreement proposed by ReloTalent to protect ReloTalent against additional risks associated with the variations made under section 10.5.

10.7   If Company gives notice under section 10.5, 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 Company's notice as soon as is reasonably practicable.

10.8 Neither Company nor ReloTalent shall require the consent or approval of any Company Affiliate to amend this Agreement pursuant to this section 10.6 or otherwise.

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

[Company name]

Signature   _____

Name   _____

Title   _____

Date Signed   _____

ReloTalent

Signature   _____

Name   _____

Title   _____

Date Signed   _____

ANNEX 1: STANDARD CONTRACTUAL CLAUSES

These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law (otherwise).

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: ReloTalent

Address:

Tel.: _____; fax: _____; e-mail:_____

Other information needed to identify the organisation:

………………………………………………………………
(the data **importer**)

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 personal data.

Background

The data exporter has entered into a data protection and processing agreement ("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.

Clause 1

Definitions

For the purposes of the Clauses:
> *'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;

a) *'the data exporter'* means the controller who transfers the personal data;

b) *'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;

c) *'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;

d) *'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;

e) *'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

Third-Party Beneficiary Clause

1. The data subject can enforce against the data exporter this Clause, Clause 3(b) to (i), Clause 4(a) to (e), and (g) to (j), Clause 5(1) and (2), Clause 6, Clause 7(2), and Clauses 8 to 11 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 4(a) to (e) and (g), Clause 5, Clause 6, Clause 7(2), and Clauses 8 to 11, 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 4(a) to (e) and (g), Clause 5, Clause 6, Clause 7(2), and Clauses 8 to 11, 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 3

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 required;

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 subprocessor pursuant to Clause 4(b) and Clause 7(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, 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 10 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 3(a) to (i).

Clause 4

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 required technical and organisational security measures 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 supervisory authority to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by 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 10;

j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 5

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 2 or in Clause 10 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 2 or in Clause 10, 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 2 or in Clause 10 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 6

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 7

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 4 (b).

Clause 8

Governing Law

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

Clause 9

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 10

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 2 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 5 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 4 (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 11

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 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:
(Populated with details of, and deemed signed 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:

(Populated with details of, and deemed signed on behalf of, the data importer:)

Name (written out in full):

Position:

Address:

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

Signature   _____