**Data Processing Addendum**

**Parties**

……………………………………… of ……………………..…………………………………………(**Customer**)

**ClickSend Pty Ltd** of Level 24, 367 Collins Street, Melbourne VIC Australia 3000 (**ClickSend**)

**Background**

1 ClickSend and the Customer are party to a contract (**Customer Contract**) pursuant to which ClickSend provides SMS services (**Services**) to the Customer.

2 In the course of providing the Services, ClickSend may Process Personal Data on behalf of the Customer.

3 This Data Processing Addendum (**DPA**) reflects the parties’ agreement as to the Processing of Personal Data for the purposes of the Customer Contract.

**Operative Provisions**

**1 Processing of Personal Data**

**1.1 Role of the parties**

The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller and ClickSend is the Processor.

**1.2 Customer’s Processing of Personal Data**

Customer shall, in its use of the Services, comply with the requirements of the Data Protections Laws and Regulations. For the avoidance of doubt, Customer’s instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality and legality of Personal Data and the means by which Customer acquired Personal Data.

**1.3 ClickSend’s processing of Personal Data**

ClickSend shall treat Personal Data as confidential and shall only Process Personal Data on behalf of and in accordance with Customer’s instructions for the purposes of Processing in accordance with the Customer Contract.

**1.4 Details of the Processing**

The subject matter of the Processing of Personal Data by ClickSend is the performance of the Services pursuant to the Customer Contract. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this document are further set out in Schedule 1 to this document.

**2 Rights of Data Subjects**

ClickSend will, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws and Regulations in respect of his or her Personal Data (**Data Subject Request**). Having regard to the nature of the Processing, ClickSend will provide all reasonably appropriate assistance to Customer to enable Customer to respond to such Data Subject Request.

**3 Sub-processors**

**3.1 Appointment of sub-processors**

(a) Customer acknowledges and agrees that:

1. ClickSend’s affiliates may be retained as Sub-processors; and
2. ClickSend and ClickSend’s affiliates respectively may engage Sub-processors in connection with the provision of the Services,

provided always that ClickSend or a ClickSend affiliate will enter into a written agreement with any Sub-processor containing data protection obligations not less protective than those in this document with respect to the protection of Customer Data to the extent applicable to the nature of the Services provided by such Sub-processor.

(b) ClickSend will maintain a publicly available list of any Sub-processors appointed by it, which list will be available at www.ClickSend.com.au/gdprcompliance/.

**3.2 Liability**

ClickSend will be liable for the acts and omissions of its Sub-processors to the same extent it would be liable if performing the services of each Sub-processor directly under the terms of this document.

**4 Security**

**4.1 Security controls**

ClickSend will maintain appropriate technical and organisational measures for the protection of the security, confidentiality and integrity of Customer Data in accordance with the requirements of the Data Protection Laws and Regulations.

**4.2 Notification of Customer Data Breach**

ClickSend will promptly notify Customer after becoming aware of any accidental or unlawful destruction, loss, unauthorised disclosure of, or access to, Customer Data, including Personal Data, transmitted, stored or otherwise Processed by ClickSend or its Sub-processors (**Data Breach**). ClickSend will make reasonable efforts to identify and remediate the cause of such Data Breach and will provide reasonable assistance to the Customer in circumstances where the Customer is required to notify any Supervisory Authority or Data Subject of such Data Breach.

**5 Return and deletion of Customer Data**

Upon completion or termination of the Customer Contract, ClickSend will return Customer Data to Customer or delete Customer Data in accordance with the procedures and timeframes specified in the Customer Contract and otherwise subject to the requirements of applicable laws.

**6 Data transfer outside of EU**

Customer acknowledges that as at the date of this DPA, ClickSend’s primary Processing facilities are located in Australia. To the extent that the Customer’s use of the Services requires the transfer of Personal Data outside of the European Economic Area, the transfer of Personal Data will be in accordance with the Standard Contractual Clauses set out in Schedule 1 to this DPA.

**7 Definitions**

In this DPA:

**Affiliate** means an entity that directly or indirectly controls, is controlled by or is under common control with, an entity.

**Controller** means the entity that determines the purposes and means of the Processing of Personal Data.

**Customer Data** means the data or other information of the Customer provided to ClickSend for the purposes of performing the Services.

**Data Protection Laws and Regulations** means the laws and 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, including the GDPR.

**Data Subject** means the identified or identifiable person to whom Personal Data relates.

**GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**Personal Data** means any information relating to (i) an identified or identifiable natural person and (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations) where for each (i) or (ii) such data is Customer Data.

**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.

**Sub-processor** means any Processor engaged by ClickSend.

**Supervisory Authority** means an independent public authority which is established by an EU Member State pursuant to the GDPR.

**Schedule 1**

**STANDARD CONTRACTUAL CLAUSES (PROCESSORS)**

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: ………………………………………………….

E-mail: ………………………………………………….

Other information needed to identify the organisation: N/A

(the **data exporter**)

and

Name of the data importing organisation: ClickSend Pty Ltd

Address: Level 24, 367 Collins Street, Melbourne VIC

Tel: 1300 849 272

E-mail: support@ClickSend.com.au

Other information needed to identify the organisation: N/A

(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 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; 12.2.2010 Official Journal of the European Union L 39/11 EN;

(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 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 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. 12.2.2010 Official Journal of the European Union L 39/13 EN

**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, namely the Country specified in the Application Form.

**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 Clauses. 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 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, namely the Country specified in the Application Form.

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.

**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**: The data exporter is a customer of the data importer, who wishes to use the data importer's telecommunications services to send electronic messages to individuals within the European Economic Area.

**Data importer**: The data importer, who is specified in the Application Form, is a telecommunications service provider that processes certain personal data provided to it by its customers in order to provide electronic messaging services to those customers.

**Data subjects** The personal data transferred concerns the following categories of data subjects:

Customers, employees and other end users of the data exporter. As the data exporter has full control over the personal data which is being transferred to the data importer, and the data importer will receive any personal data that the data exporter transfers, the data exporter has sole control over the specific data subjects.

**Categories of data**:

As the data exporter has full control over the personal data which is being transferred to the data importer, and the data importer will receive any personal data that the data exporter transfers, the data exporter necessarily has sole control over the specific categories of data. Categories may include name, telephone numbers and email addresses.

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

The personal data transferred concern the following special categories of data (please specify):

As the data exporter has full control over the personal data which is being transferred to the data importer, and the data importer will receive any personal data that the data exporter transfers, the data exporter necessarily has sole control over any special specific categories of data which may be transferred to and processed by the data importer.

**Processing operations**: The personal data transferred will be subject to the following basic processing activities: Submission to telecommunication providers for delivery; storage; access for customer service, email and messaging abuse detection, prevention, and remediation; monitoring, maintaining and improving the data importers services.

**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) (or document/legislation attached):

The data importer’s security measures include, but are not limited to:

• Customers interact with and transmit messages over a secure (encrypted) TLS/SSL connection

• Services interact and transmit to carriers over a secure (encrypted) TLS connections and/or VPN tunnels  
• Firewalls protecting the data importer’s production network and servers.

• Non-public access to production network and servers is also protected by a secure VPN connection

• Services are hosted in secure Tier-1 datacentres protecting physical servers and devices.   
• Strict protocols and controls governing authorisation and access to the data importer’s servers and devices.   
• Audits by security experts, including penetration testing.

**Executed** as an agreement

|  |  |
| --- | --- |
| **Executed** by **ClickSend Pty Ltd** by its duly authorised representative: | )  ) |

Signature

Print full name

|  |  |
| --- | --- |
| **Executed** by  by its duly authorised representative: | )  ) |

Signature

Print full name