Data Processing Agreement

This Data Processing Agreement (the "**Data Processing Agreement**" or "**DPA**"), dated as of Customer's Order Form date (the "**Effective Date**") by and between the customer identified on the applicable Order Form ("**Customer**"), and PKWARE, Inc. ("**PKWARE**"). This DPA is incorporated into, and forms part of, the separate agreement for Services entered into between Customer and PKWARE (as may have been amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its provisions) (the "**Services Agreement**").

1. **DEFINITIONS.** Capitalized terms used and not defined in this Data Processing Agreement have the respective meanings assigned to them in the Services Agreement.

"**Applicable Law**" shall mean all regional, national, and international laws, rules, regulations, and standards including those imposed by any governmental or regulatory authority which apply from time to time to the Services in question.

"**Controller**" means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of Processing Personal Data.

"**Data Privacy Law**" means, any Applicable Law or regulation relating to the protection of Personal Data, including, without limitation, the EU General Data Protection Regulation 2016/679, and the implementing acts of the foregoing by the member state of the European Union and/or the European Economic Area (collectively, the "**GDPR**"), GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("**UK GDPR**"), the California Consumer Privacy Act of 2018 (the "**CCPA**") and other similar US state privacy laws.

"**Data Subject**" means an identified or identifiable individual who is the subject of Personal Data, the Processing of which is governed under applicable Data Privacy Law. The term "Data Subject" also includes the term "consumer" as defined under the CCPA.

"**Personal Data**" any information Processed by PKWARE on behalf of Customer that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular Data Subject, including, without limitation, the term "personal data" as defined under the GDPR and the term "personal information" as defined under the CCPA.

"**Processing**" means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether through automated 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. "**Process**" and "**Processed**" have correlative meanings.

"**Processor**" means a natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of a Controller.

"**Services**" means the provision of services or other work products by the PKWARE as described and set out in the Services Agreement.

"**Standard Contractual Clauses**" means where the GDPR applies, the standard contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("**EU SCCs**"); or where the UK GDPR applies, the applicable standard data protection clauses adopted pursuant to Article 46(2)(c) or (d) of the UK GDPR ("**UK SCCs**").

"**Subprocessor**" means a third party engaged by PKWARE to assist with the provision of the Services which involves the Processing of Personal Data.

2. **STATUS OF PARTIES.** The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller or the business under Data Privacy Law and PKWARE is the Processor or the service provider under Data Privacy Law. This DPA shall not apply the extent PKWARE Processes business contact information in order to administer the Services Agreement (such as to conduct invoicing).

3. **SCOPE OF DATA PROCESSING.** PKWARE will Process the Personal Data during the Term as set forth in Annex I to the Standard Contractual Clauses. The parties agree and acknowledge that the disclosure of Personal Data to PKWARE is for the business purpose (as defined under the CCPA) identified in Annex I of the PKWARE Standard Contractual Clauses and such disclosure is not made for any monetary or other valuable consideration.

4. **PROCESSOR OBLIGATIONS.**

4.1. PKWARE will Process the Personal Data only in accordance with any written Customer instructions received by PKWARE with respect to the Processing of such Personal Data and in a manner necessary for the provision of the Services by PKWARE which includes, without limitation, all Processing in accordance with this DPA and the Services Agreement. Customer's instructions shall be issued in writing or via e-mail. PKWARE shall not use or otherwise disclose or make available any Personal Data for PKWARE's own purposes without Customer's prior written consent.

4.2. In the event PKWARE is required under any Applicable Law to Process Personal Data in excess of Customer's documented instructions, PKWARE shall immediately notify Customer of such a requirement, unless such Applicable Law prohibits such notification on important grounds of public interest, in which case it will notify Customer as soon as the Applicable Law permits it to do so.

4.3. PKWARE shall promptly notify Customer if PKWARE reasonably believes that an instruction issued Customer would violate any Data Privacy Laws.

4.4. Taking into account the nature of the Processing, PKWARE shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure, data portability, objection to the Processing, or its right not to be subject to an automated individual decision making made under applicable Data Privacy Law ("**Data Subject Request**"). PKWARE shall, to the extent legally permitted, promptly notify Customer if PKWARE receives a Data Subject Request related to Customer's Personal Data. PKWARE shall not respond to a Data Subject Request except on the document instructions of Customer or as required under Applicable Law. To the extent legally permitted, Customer shall be responsible for any costs arising from PKWARE's performance under this Section 4.4.

4.5. PKWARE shall, to the extent specifically required under applicable Data Privacy Law, assist Customer in complying with its obligations with respect to Personal Data including, without limitation, the obligations set forth in Articles 32 to 36 of the GDPR.

4.6. PKWARE will ensure that persons authorized to Process Personal Data on behalf of PKWARE have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

4.7. Except as provided herein or the Services Agreement, PKWARE shall not: (a) disclose Personal Data to a third party for monetary or other valuable consideration or to perform targeted advertising; (b) retain, use, or disclose Personal Data for a commercial purpose or any other purpose other than as specific in Annex I of the PKWARE SCCs; (c) retain, use, or disclose Personal Data outside of the direct business relationship between Customer and PKWARE; or (d) combine Customer Personal Data with personal data of another PKWARE customer.

5. CUSTOMER PROCESSING.

5.1. **Customer Processing.** Customer will, in its use of the Services, Process Personal Data in accordance with the requirements of applicable Data Privacy Laws. Customer's instructions to PKWARE for the Processing of Personal Data will comply with Data Privacy Laws and Customer will have sole responsibility for the creation, collection, receipt, transmission, storage, access, disposal, use, and disclosure of any Personal Data acquired by Customer or by PKWARE on Customer's behalf and for the accuracy, quality, and legality of such Personal Data and the means by which Customer acquired such Personal Data. Customer shall be solely responsible for the unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Data under its control or possession. Customer shall notify PKWARE in advance of which Data Privacy Laws apply to the Processing of Personal Data for Customer's use of the Services and any specific requirements for Processing Personal Data not listed in this DPA.

5.2. **Personal Data from EU and/or Switzerland.** With respect to Personal Data originating in the EEA, United Kingdom, and Switzerland, if required under applicable data protection law, prior to making any such Personal Data available to PKWARE, directly or through the Services, Customer shall obtain consents from all Data Subjects whose Personal Data may be Processed by the Services to the transfer of such Personal Data to the United States or other countries and to the Processing of such Personal Data for the purposes described in this DPA and the Services Agreement. Customer shall also obtain all authorizations and give all notices to data protection authorities within the EEA, the United Kingdom, and Switzerland that are required by applicable Data Privacy Laws prior to the Processing of such Personal Data to PKWARE.

5.3. **Personal Data from Other Jurisdictions.** With respect to Personal Data originating in any other jurisdiction, Customer shall obtain all consents and take all other actions required under applicable Data Privacy Laws to make the transfer and Processing of such Personal Data as contemplated in this DPA and the Services Agreement fully consistent with the requirements of the Applicable Laws of the jurisdiction where such Personal Data originated.

6. PROCESSING INSTRUCTIONS.

Customer instructs PKWARE to Process Personal Data for the following purposes: (a) as necessary for the provision of the Services and in accordance with the Services Agreement; (b) as necessary for Processing initiated by Data Subjects in their use of the Services; and (c) as necessary to comply with the other reasonable instructions provided by Customer to PKWARE (e.g., via email or via support requests) where such instructions are consistent with the terms of the Services Agreement. Customer further instructs PKWARE to Process Personal Data pursuant to data analytics or monitoring carried out by PKWARE in connection with the provision of Services or otherwise connected with Customer's use of the Services. Customer further instructs PKWARE that it may aggregate, deidentify, or anonymize Personal Data ("**Aggregated Data**") such that it is no longer considered Personal Data and use such Aggregated Data for its own purposes.

7. SECURITY.

7.1. **Security Measures.** Taking into account the state of the art, costs of implementation, and nature, scope, context, and purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, PKWARE shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, as further set forth in the Services Agreement and Annex II of the Standard Contractual Clauses.

7.2. **Security Incident Notification.** If PKWARE becomes aware of any unauthorized or unlawful access to, or acquisition, alteration, use, disclosure, or destruction of, Customer's Personal Data, including any "personal data breach" as defined in the GDPR ("**Security Incident**"), PKWARE will notify Customer without undue delay after becoming aware of the Security Incident. PKWARE will also reasonably cooperate with Customer with respect to any investigations and with preparing potentially required notices, and provide any information reasonably requested by Customer in relation to the Security Incident.

8. SUBPROCESSORS.

Customer hereby provides a general authorization to PKWARE to use Subprocessors, subject to compliance with the requirements in this Section. PKWARE will: (a) ensure that all Subprocessors are bound by contractual terms no less onerous than those contained in this DPA; and (b) be liable for the acts and omissions of its Subprocessors to the same extent PKWARE would be liable if performing the portion of the Services performed of each of those Subprocessors directly under the terms of this DPA, except as otherwise set forth in the Services Agreement. PKWARE will maintain a list of its Subprocessors at https://legal.pkware.com/dpa, which will be updated from time to time to reflect changes in Subprocessors. PKWARE will provide Customer with an opportunity to object to any addition or replacement of any Subprocessor. Customer's continued use of the Services following any update to the Subprocessor list will constitute Customer's acceptance of the updated Subprocessors.

9. INTERNATIONAL DATA TRANSFERS.

9.1. The Standard Contractual Clauses available at https://legal.pkware.com/dpa (the "PKWARE SCCs") will apply to all Processing of Personal Data by PKWARE where the Personal Data is transferred from the European Economic Area ("**EEA**") to outside the EEA to any country or recipient: (a) not recognized by the European Commission as providing an adequate level of protection for Personal Data (as described in the applicable Data Privacy Law), and (b) not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for Personal Data.

9.2. Customer authorizes PKWARE to transfer and process any Customer Personal Data subject to the GDPR or UK GDPR outside of the EEA and the United Kingdom in order to provide the Services pursuant to the Services Agreement and for PKWARE's other legitimate interests, provided that PKWARE has taken appropriate measures designed to ensure the transfer and resulting processing is in compliance with Data Privacy Laws.

9.3. In relation to transfers of Customer Personal Data protected by the UK GDPR, the UK SCCs shall apply, completed as follows:

9.3.1. In Table 1 of the UK SCCs, the parties' details and key contact information are located in Annex I of the PKWARE SCCs;

9.3.2. In Table 2 of the UK SCCs, information about the version of the Approved EU SCCs, modules and selected clauses which this UK International Data Transfer Agreement is appended to is located in the PKWARE SCCs; and

9.3.3. In Table 3 of the UK SCCs: The list of Parties is located in Annex I of the PKWARE SCCs. The description of the transfer is set forth in Annex I of the PKWARE SCCs. The list of security measures is located in Annex II of the PKWARE SCCs . The list of sub-processors shall be provided upon Customer's request.

10. RETURN AND DESTRUCTION.

10.1. Without prejudice to any obligations under this Section 10, following termination or expiration of the Services Agreement for whatever reason, PKWARE shall, and shall all Subprocessors to, cease Processing Personal Data.

10.2. Following termination or expiration of the Services Agreement for whatever reason and having received written confirmation from Customer, PKWARE shall destroy all copies of Personal Data, unless and for the duration PKWARE is permitted to retain such Personal Data in accordance with Applicable Laws. Notwithstanding the foregoing, to the extent it is not commercially reasonable for PKWARE to remove Personal Data from archive or other backup media, PKWARE may retain Personal Data on such media in accordance with its backup or other disaster recovery procedures. In the event PKWARE retains Personal Data after the Term, PKWARE shall continue to comply with the confidentiality and privacy obligations hereunder until it is no longer in possession of Personal Data.

10.3. To the extent feasible, PKWARE shall archive documentation that is evidence of proper Processing of Personal Data beyond termination or expiration of the Services Agreement and continuing for any period of time in which PKWARE retains Personal Data.

11. AUDITS.

11.1. PKWARE shall, upon receiving at least thirty (30) days prior written notice from Customer, submit, its data Processing facilities for a reasonable audit of Processing activities carried out under this DPA, where such audit shall be carried out by an independent third-party auditor mutually agreed upon by the parties and bound by a duty of confidentiality ("**Auditor**") and, where applicable, approved by the relevant supervisory authority. Any effort as well as internal and external costs of audits requested by Customer pursuant to this Section 11 shall be borne by Customer.

11.2. PKWARE shall provide Customer or Auditor with the necessary information and shall keep the necessary records required for an audit of the Processing of Personal Data and will, subject to Applicable Law, provide said documents and/or data media to Customer upon written request. PKWARE shall provide reasonable support for any and all audits of Customer or Auditor under this Section 11 and shall contribute to the complete and efficient completion of the audit.

11.3. PKWARE acknowledges that under certain Data Privacy Laws Customer has the right, upon notice, to take reasonable and appropriate steps to stop and remediate any of PKWARE's use of Customer Personal Data that is in breach of this DPA.

12. MISCELLANEOUS.

12.1. **Term and Termination.** This DPA will remain in force starting as of the Effective Date and until: (a) replaced or repealed by mutual agreement of Customer and PKWARE; (b) replaced by an alternative data transfer mechanism that applies to the data transfers covered by this DPA and that is recognized under applicable Data Privacy Laws as adducing adequate safeguards for international data transfers; or (iii) the Services Agreement is terminated or expires (the "**Term**").

12.2. **Liability.** Any claims brought under this DPA will be subject to the same terms and conditions, including the exclusions and limitations of liability, as set out in the Services Agreement. PKWARE's liability to Customer under this DPA will be limited to the same extent as PKWARE's liability to Customer under the Services Agreement. In no event will any party limit its liability with respect to any Data Subject rights under the Standard Contractual Clauses.

12.3. **Governing Law.** Without prejudice to the Standard Contractual Clauses: (a) the parties to this DPA hereby subject to the choice of jurisdiction stipulated in the Services Agreement with respect to any disputes or claims howsoever arising under this DPA, including disputes regarding its existence, validity, or termination or the consequences of its nullity; and (b) this DPA and all non-contractual or other obligations arising out of in connection with it are governed by the laws of the country, territory, or jurisdiction stipulated for this purpose in the Services Agreement.

12.4. **Changes in Data Privacy Legislation.** Both PKWARE and Customer may: (a) by at least 30 (thirty) days' written notice to the other party from time to time make any variations to this DPA, which are required as a result of any change in, or decision of a competent authority under, that Data Privacy Laws, to allow such Processing to be done (or continue to be done) without breach of such Data Privacy Laws; and (b) propose any other variation to this DPA which either party reasonably considers to be necessary to address the requirements of any Data Privacy Laws.

12.5. **Severability.** If any provision of this DPA is invalid, illegal, or unenforceable by any court or administrative body of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this DPA and all such other terms and provisions shall remain in full force and effect.

12.6. **Entire Agreement.** This DPA, together with the Standard Contractual Clauses where applicable, and the Services Agreement, constitutes the sole and entire agreement of the parties with respect to the subject matter of this DPA, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in this DPA, the Services Agreement, and the Standard Contractual Clauses, the following order of precedence governs: (a) the Standard Contractual Clauses where applicable; (b) this DPA; and (c) the Services Agreement. Subject to the foregoing, all other provisions of the Services Agreement apply.

12.7. **Headings.** The headings in this DPA are for reference only and shall not affect the interpretation of this DPA.