

DATA PROCESSING ADDENDUM

This Data Processing Addendum ("DPA") is incorporated by reference into the sales automation services agreement and all related orders for Subscription Services (defined below) between Customer (defined below) and ToutApp Inc. ("Agreement"). This DPA is entered into as of the later of the dates beneath the parties' signatures below. This DPA includes the provisions of this Addendum and the Standard Contractual Clauses, with Appendices 1-2, in Exhibit 1. This DPA applies exclusively to the ToutApp sales automation services and does not apply to other services provided by Marketo.

This DPA is supplemental to the Agreement and sets out the terms that apply when Personal Data (defined below) is Processed (defined below) by ToutApp under the Agreement. The purpose of the DPA is to ensure such Processing is conducted in accordance with applicable laws, including EU Data Protection Legislation (defined below), and with due respect for the rights and freedoms of individuals whose Personal Data are Processed.

HOW TO EXECUTE THIS DPA

This DPA has been pre-signed on behalf of ToutApp. When ToutApp receives the completed and signed DPA as specified below, this DPA will become a legally binding addendum to the Agreement. To make this DPA a part of the Agreement, Customer must do the following:

1. Complete the information in the signature block of this DPA and have an authorized representative sign on page 7.
2. Complete the information regarding the data exporter in Exhibit 1 on page 8.
3. Complete the information in the signature blocks of Exhibit 1 and have an authorized representative sign Exhibit 1 at pages 14, 16 and 17.
4. If e-signatures are accepted in your jurisdiction and you elect to execute the DPA through Adobe Sign, follow the prompts to provide the required information and e-signature as indicated above and, upon selecting "Click to Sign" at the end, the DPA will be executed and submitted. Alternatively, the DPA may be printed, completed and signed as indicated above, and returned to ToutApp via email at: dataprocessingaddendum@marketo.com.

HOW THIS DPA APPLIES

- A. If the Customer entity signing this DPA is lawfully permitting an Affiliate (defined below) to use the Subscription Services, that Customer Affiliate is a party to this DPA.
- B. This DPA will not be valid and legally binding if the signing Customer entity is not a party to the Agreement or order(s), is not a Customer Affiliate lawfully permitted to use the Subscription Services.

DATA PROCESSING TERMS

In providing the Subscription Services to Customer pursuant to the Agreement, ToutApp may Process Personal Data on behalf of Customer. ToutApp will comply with the provisions in this DPA with respect to its Processing of any Personal Data.

Capitalized terms used but not defined in this DPA have the same meanings as set out in the Agreement.

1. Definitions

1.1 For the purposes of this DPA:

- (a) **"Affiliate(s)"** has the same meaning ascribed to it in the Agreement and, if not defined in the Agreement, the term means any legal entity directly or indirectly controlling, controlled by or under common control with a party, where control means the ownership of a majority share of the stock, equity or voting interests of such entity.
- (b) **"Controller"** means the entity which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.
- (c) **"Customer"** means the non-ToutApp party to both the Agreement and this DPA that has access to the Subscription Services.
- (d) **"Customer Data"** means any data, information or material originated by Customer that Customer submits to ToutApp, collects through its use of the Subscription Services or provides to ToutApp in the course of using the Subscription Services.
- (e) **"Data Subject"** means the individual to whom Personal Data relates.
- (f) **"EEA"** means the European Economic Area, which constitutes the member states of the European Union and Norway, Iceland and Liechtenstein, as well as, for the purposes of this DPA, Switzerland and the United Kingdom.
- (g) **"EU Data Protection Legislation"** means (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, including any applicable national implementations thereof, (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("**General Data Protection Regulation**" or "**GDPR**"), as amended, replaced or superseded, and (iii) the applicable data protection laws of Switzerland and the United Kingdom.
- (h) **"Personal Data"** means any Customer Data relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- (i) **“Privacy Shield”** means the EU-US and Swiss-US Privacy Shield self-certification programs operated by the U.S. Department of Commerce.
- (j) **“Privacy Shield Principles”** means the Privacy Shield Framework Principles (as supplemented by the Supplemental Principles) contained in Annex II to the European Commission Decision C(2016)4176 of July 12, 2016 (as may be amended, superseded or replaced).
- (k) **“Processor”** means an entity which Processes Personal Data on behalf of the Controller.
- (l) **“Processing”** means any operation or set of operations which is performed on Personal Data, whether or not by 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.
- (m) **“Subscription Services”** means the ToutApp sales automation services provided by Marketo to Customer under the Agreement and does not apply to any other services provided by Marketo.
- (n) **“Supervisory Authority”** means an independent public authority which is established by an EU member state pursuant to EU Data Protection Legislation.
- (o) **“ToutApp Inc.”** means a Delaware corporation and a wholly owned subsidiary of Marketo, Inc.

2 **Applicability of DPA**

- 2.1 Applicability. This DPA shall apply only to the extent Customer is established within the EEA and/or to the extent ToutApp Processes Personal Data of Data Subjects located in the EEA on behalf of Customer or a Customer Affiliate.

3 **Roles and Responsibilities**

- 3.1 Parties' Roles. Customer, as Controller, appoints ToutApp as a Processor to process the Personal Data on Customer's behalf. In some circumstances Customer may be a Processor, in which case Customer appoints ToutApp as Customer's sub-processor, which shall not change the obligations of either Customer or ToutApp under this DPA, as ToutApp will remain a Processor with respect to the Customer in such event.
- 3.2 Purpose Limitation. ToutApp shall Process Personal Data for the purposes set forth in the Agreement and only in accordance with the lawful, documented instructions of Customer, except where otherwise required by applicable law. The Agreement and this DPA set out Customer's complete instructions to ToutApp in relation to the Processing of Personal Data and any Processing required outside of the scope of these instructions (inclusive of the rights and obligations set forth under the Agreement) will require prior written agreement of the parties.
- 3.3 Training. ToutApp shall ensure that its relevant employees, agents and contractors receive appropriate training regarding their responsibilities and obligations with respect to the Processing, protection and confidentiality of Personal Data.
- 3.4 Compliance. ToutApp, as Processor, has complied and will continue to comply with all applicable privacy and data protection laws including, but not limited to, EU Data Protection Legislation. Customer, as Controller, shall be responsible for ensuring that, in connection with Customer Data and the Subscription Services:

- (a) it has complied, and will continue to comply, with all applicable privacy and data protection laws, including EU Data Protection Legislation; and
- (b) it has, and will continue to have, the right to transfer, or provide access to, the Personal Data to ToutApp for Processing in accordance with the terms of the Agreement and this DPA.

4 Security

- 4.1 **Security.** ToutApp shall implement appropriate technical and organisational measures 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 Data Subjects. Such measures shall be designed to ensure a level of security appropriate to the risk in order to protect Personal Data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure, access or use (each a "**Security Incident**") and in accordance with ToutApp's security standards as set forth in the Agreement and Appendix 2 to the Standard Contractual Clauses attached hereto as Exhibit 1.
- 4.2 **Confidentiality of Processing.** ToutApp shall ensure that any person that it authorizes to Process the Personal Data (including its staff, agents, subcontractors and Sub-processors) shall be subject to a duty of confidentiality (whether a contractual or a statutory duty) that shall survive the termination of their employment and/or contractual relationship.
- 4.3 **Security Incidents.** Upon becoming aware of a Security Incident, ToutApp shall notify Customer without undue delay and pursuant to the terms of the Agreement, but within no more than seventy-two (72) hours, and shall provide such timely information as Customer may reasonably require to enable Customer to fulfil any data breach reporting obligations under EU Data Protection Legislation. ToutApp will take steps to immediately identify and remediate the cause of such Security Incident.

5 Sub-processing

- 5.1 **Sub-processors.** Customer agrees that ToutApp may engage ToutApp Affiliates and third party sub-processors (collectively, "**Sub-processors**") to Process the Personal Data on ToutApp's behalf. The Sub-processors currently engaged by ToutApp and authorized by Customer are listed at Marketo's Sub-processor web page (the "**Sub-processor List**"): <https://documents.marketo.com/legal/sub-processor-list>. The Sub-processor List identifies those third-party Sub-processors specific to ToutApp and shall include a mechanism for Customer to subscribe to notifications of any new Sub-processors or changes to the Sub-processor List. ToutApp shall impose on such Sub-processors data protection terms that protect the Personal Data to the same standard provided for by this DPA and shall remain liable for any breach of the DPA caused by a Sub-processor.
- 5.2 **Changes to Sub-processors.** ToutApp may, by giving no less than thirty (30) days' notice to Customer, add or make changes to the Sub-processors. Customer may object to the appointment of an additional Sub-processor within fourteen (14) calendar days of such notice on reasonable grounds relating to the protection of the Personal Data, in which case ToutApp shall have the right to cure the objection through one of the following options (to be selected at ToutApp's sole discretion): (a) ToutApp will cancel its plans to use the Sub-processor with regard to Personal Data or will offer an alternative to provide the Subscription Services without such Sub-processor; or (b) ToutApp will take the corrective steps requested by Customer in its objection (which remove Customer's objection) and proceed to use the Sub-processor with regard to Personal Data; or (c) ToutApp may cease to provide or Customer may agree not to use (temporarily or permanently) the

particular aspect of the Subscription Services that would involve the use of such Sub-processor with regard to Personal Data, subject to a mutual agreement of the parties to adjust the remuneration for the Subscription Services considering the reduced scope of the Subscription Services. Objections to a Sub-processor shall be submitted to ToutApp by following the directions set forth in the Sub-processor List. If none of the above options are reasonably available and the objection has not been resolved to the mutual satisfaction of the parties within 30 days after ToutApp's receipt of Customer's objection, either party may terminate the Agreement and Customer will be entitled to a pro-rata refund for prepaid fees for Subscription Services not performed as of the date of termination.

- 5.3 Emergency Replacement. ToutApp may replace a Sub-processor if the need for the change is urgent and necessary to provide the Subscription Services and the reason for the change is beyond ToutApp's reasonable control. In such instance, ToutApp shall notify Customer of the replacement as soon as reasonably practicable, and Customer shall retain the right to object to the replacement Sub-processor pursuant to Section 5.2 above.

6 Cooperation

- 6.1 Data Subjects' Rights. ToutApp shall provide commercially reasonable assistance, including by appropriate technical and organizational measures as reasonably practicable, to enable Customer to respond to any inquiry, communication or request from a Data Subject seeking to exercise his or her rights under EU Data Protection Legislation, including rights of access, correction, restriction, objection, erasure or data portability, as applicable. In the event such inquiry, communication or request is made directly to ToutApp, ToutApp shall promptly inform Customer by providing the full details of the request. For the avoidance of doubt, Customer is responsible for responding to Data Subject requests for access, correction, restriction; objection, erasure or data portability involving that Data Subject's Personal Data.

- 6.2 Supervisory Authorities. ToutApp shall notify Customer without undue delay if a Supervisory Authority or law enforcement authority makes any inquiry or request for disclosure regarding Personal Data.

- 6.3 Data Protection Impact Assessments and Prior Consultation. ToutApp shall, to the extent required by EU Data Protection Legislation, provide Customer with reasonable assistance with data protection impact assessments and/or prior consultations with Supervisory Authorities that Customer is required to carry out under EU Data Protection Legislation.

7 Security Reports and Audits

- 7.1 Any provision of security attestation or audit reports (such as SOC 2 or equivalent) shall take place in accordance with Customer's rights under the Agreement. If the Agreement does not include a provision regarding security attestation reports or audit rights, ToutApp shall provide a copy of its most current security report upon Customer's written request and subject to the confidentiality provisions of the Agreement. If the Agreement does not include audit rights, ToutApp shall allow Customer (or Customer's independent third-party auditor) to conduct an on-site audit of the procedures relevant to the protection of Personal Data, subject to the confidentiality provisions of the Agreement. Customer and ToutApp will discuss and agree in advance on the reasonable start date, scope and duration of and security and confidentiality controls applicable to any audit; and Marketo reserves the right to charge a fee (based on ToutApp's reasonable costs) for any such audit. ToutApp will provide further details of any applicable fee and the basis of its calculation to Customer in advance of such audit.

8 Deletion or Return of Customer Data

- 8.1 Deletion or Return of Data. Upon termination or expiration of the Agreement, ToutApp shall, in accordance with the terms of the Agreement, delete or make available to Customer for retrieval all relevant Personal Data (including copies) in ToutApp's possession, save to the extent that ToutApp is required by any applicable law to retain some or all of the Personal Data. In such event, ToutApp shall extend the protections of the Agreement and this DPA to such Personal Data and limit any further Processing of such Personal Data to only those limited purposes that require the retention, for so long as ToutApp maintains the Personal Data.

9 Privacy Shield

- 9.1 During the term of the Agreement, ToutApp shall comply with the protection requirements and principles of the Privacy Shield, including providing at least the same level of data security and privacy protection as required by the Privacy Shield Principles. ToutApp shall promptly notify Customer if it either: (i) ceases to be certified under and compliant with the Privacy Shield; or (ii) it determines that it can no longer meet its obligation to provide the same level of protection as is required by the Privacy Shield Principles
- 9.2 To the extent that ToutApp permits a Sub-processor to Process Personal Data that originated in the EEA, ToutApp shall impose on such Sub-processors data protection terms that protect the Personal Data to the same standard provided for by the Agreement, this DPA and the relevant Privacy Shield Principles.
- 9.3 ToutApp will facilitate reasonable and appropriate steps by Customer to ensure that ToutApp effectively Processes the Personal Data transferred in a manner consistent with each party's obligations under the Privacy Shield Principles.

10 Standard Contractual Clauses

- 10.1 The Standard Contractual Clauses are set forth in Exhibit 1.
- 10.2 Clause 1 of the Standard Contractual Clauses ("data importer"). The term "data importer" means ToutApp.
- 10.3 Clause 1 of the Standard Contractual Clauses ("data exporter"). The term "data exporter" means Customer and its Affiliates.
- 10.4 Clause 5(f) of the Standard Contractual Clauses. Clause 5(f) of the Standard Contractual Clauses will be satisfied by compliance with Section 7.1 of this DPA.
- 10.5 Clause 5(h) of the Standard Contractual Clauses. Clause 5(h) of the Standard Contractual Clauses will be satisfied by compliance with Section 5 of this DPA.
- 10.6 Clause 12(1) of the Standard Contractual Clauses. Clause 12(1) of the Standard Contractual Clauses will be satisfied by the return and/or deletion of data exporter's data in accordance with this DPA.

11 Miscellaneous

- 11.1 Except as amended by this DPA, the Agreement will remain in full force and effect.
- 11.2 If there is a conflict between the Agreement and this DPA, the terms of this DPA will control.
- 11.3 Any claims brought under this DPA shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations set forth in the Agreement.

11.4 Customer may terminate this DPA and the Standard Contractual Clauses at Customer's discretion upon ToutApp's receipt of Customer's written notice of termination.

ACCEPTED AND AGREED TO:

Customer: _____
Legal Name of Customer

By: _____
Authorized Signature

Print Name: _____

Title: _____

Date: _____

ToutApp Inc.

By: _____
Authorized Signature



Print Name: Sterling Miller

Title: Secretary

Date: 13 June 2018

DATA PROCESSING ADDENDUM

EXHIBIT 1

This Exhibit 1 is part of the DPA and must be included as part of and signed with the DPA to be valid and legally binding.

Commission Decision C(2010)593

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.: ; fax: ; e-mail:

Other information needed to identify the organisation:

.....
(the data exporter)

Name of the data importing organisation:

ToutApp, Inc.

Address: 901 Mariners Island Blvd., Suite 500, San Mateo, CA 94404

Tel.: 1.650.376.2300; e-mail: privacyofficer@marketo.com

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 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;
- (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 or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a 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): N/A

Signature.....

(stamp of organisation)

On behalf of the data importer:

ToutApp Inc.:

Name: Sterling Miller

Position: Secretary

Address: 901 Mariners Island Blvd., Suite 500, San Mateo, CA 94404

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

N/A

Signature.....

(stamp of organisation)



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 (please specify briefly your activities relevant to the transfer):

The data exporter is: (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and, (ii) all Affiliates (as defined in the underlying agreement for services between the data exporter and data importer) of the data exporter on whose behalf data importer processes personal data of data subjects located in the European Economic Area (EEA), Switzerland or the United Kingdom.

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

ToutApp Inc. is a provider of automated sales services (the "Subscription Services") which involves processing personal data provided by, and pursuant to the instructions and directions of, the data exporter in accordance with the terms of the DPA and the underlying sales automation services agreement and all related orders between data exporter and data importer (the "Agreement").

Data subjects

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

The categories of data subjects whose personal data may be transferred in connection with the Services are determined and controlled by the data exporter in its sole discretion and may include but not limited to: Customers and prospects of the data exporter; employees or contractors of the data exporters' prospects and customers, and; employees and contractors of the data exporter.

Categories of data

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

The categories of personal data are determined by the data exporter in its sole discretion and may include but not limited to: first and last name; employer; business role; professional title; contact information (e.g., email, phone, physical address); business network; business experience and; business interests, localization data, connection data, device identification data.

Special categories of data (if appropriate)

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

The special categories of personal data, if any, are determined by the data exporter in its sole discretion and may include but not limited to: membership information; race, ethnicity or health information.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

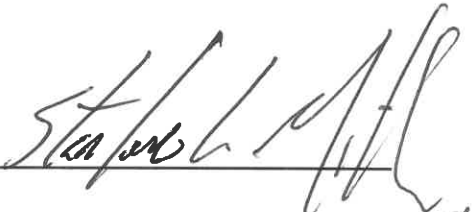
Data importer will process personal data as necessary to perform the Subscription Services pursuant to the Agreement. The processing operations performed on the personal data will depend on the scope of data exporter's Subscription Services and data exporter's configuration of its ToutApp application. Such processing operations of personal data as necessary for data importer to provide the Subscription Services may include the following: collecting, recording, organizing, storage, use, alteration, disclosure, transmission, combining, retrieval, consultation, archiving and/or destruction.

DATA EXPORTER:

Signature: _____

Printed Name: _____

DATA IMPORTER: ToutApp Inc.

Signature: _____ 

Printed Name: _____ 

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):

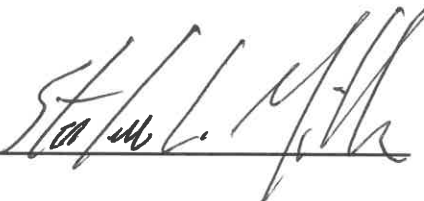
ToutApp maintains a written security program for the security, integrity and protection of personal data against unauthorized disclosure or loss. ToutApp's security program includes administrative, technical and physical safeguards appropriate for ToutApp's size and resources and the types of information that it processes. ToutApp's technical and organizational security measures are described in the *ToutApp Security Architecture* applicable to the Subscription Services purchased by data exporter, as updated from time to time, and accessible at <https://documents.marketo.com/legal/toutapp-security-architecture>.

DATA EXPORTER:

Signature: _____

Printed Name: _____

DATA IMPORTER: ToutApp Inc.

Signature: _____ 

Printed Name: _____ 