Data Processing Agreement

Last updated 2021-04-07

The terms of this Data Processing Agreement (**"DPA"**) govern your use of the **"Services"** of Pelcro Inc. (**"Pelcro"**) as defined in:

- the online Terms and Conditions you have entered into with Pelcro, or
- in any offline agreement you may have entered into with Pelcro.

By accepting the terms below or by using Pelcro's Services in any manner, you and the entity you represent ("Customer') agree that you have read and agree to be bound by the DPA. Pelcro and Customer may collectively be referred to as the **"Parties"** in the DPA.

If you have any questions or concerns with the terms of the DPA, and/or any of the aforementioned agreements, please reach out to us at legal@pelcro.com.

A. WHEREAS the Customer wishes to contract certain Services, which include the processing of personal data, to Pelcro, the "**Data Processor**" or "**Service Provider**". Any reference to Data Processor or Service Provider in the DPA shall mean Pelcro. The Parties agree that in respect of any personal Data processed in connection with the DPA that Customer shall be the "**Data Controller**" or "**Business**" or "**Organization**" as defined by any applicable privacy regulations.

B. WHEREAS the Parties seek to implement a DPA that complies with the requirements of current legal privacy regulations as applicable, in relation to processing of personal data or personal information, including the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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).

C. WHEREAS the Parties wish to specify their respective rights and obligations.

It is agreed as follows:

1. Definitions and Interpretation

Unless otherwise defined herein, the terms and expressions used in the DPA shall have the following meaning:

"Canadian Privacy Laws" means the Personal Information Protection and Electronic Documents Act and substantially similar provincial legislation, as well as any applicable federal or provincial privacy or data protection legislation applicable to institutions and organizations in Canada, each together with the regulations thereto and as amended from time-to-time.

"CCPA" means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq., and its implementing regulations.

"Data Localization Laws" means all laws and regulations which impose data localization obligations, to the extent applicable to the Processing of Personal Data under the DPA, as amended from time to time.

"Data Protection Laws" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states (including, without limitation, the GDPR), Switzerland, the United Kingdom, Canada (including, without limitation, the Canadian Privacy Laws) and the United States of America and its states, to the extent applicable to the Processing of Personal Data under the DPA as amended from time to time.

"Data Transfer" means: a transfer of Personal Data from Customer to the Data Processor; or an onward transfer of Personal Data from Data Processor to a Sub-processor;

"DPA" means this Data Processing DPA and all Schedules and Annexes.

"EU Personal Data" means any personal data that is subject to the laws and regulations of the European Union, the European Economic Area and their member states (including, without limitation, the GDPR), Switzerland, the United Kingdom.

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

"Personal Data" means any information contained or included in Customer Data relating to

1. an identified or identifiable natural person and,

2. an identified or identifiable legal entity where such information is protected similarly as personal data, personal information or personally identifiable information under applicable Data Protection Laws.

"Sub-Processor" means any person appointed by or on behalf of Data Processor to process Personal Data on behalf of Customer in connection with the DPA, and as further specified in Section 2.2.

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

2. Data Processing Terms (All Jurisdictions)

When the Customer transfers Personal Data to Data Processor for Data processor to Process in the course of providing any Services, or Data Processor collects Personal Data on behalf of Customer for the purpose of providing Services to Customer, the parties intend and are of the view that the Customer will be the Controller and Data processor will be a Processor in relation to such Personal Data and that Data Processor or its Affiliates will engage Sub-processors in accordance with the DPA.

The parties agree that any Personal Data that the Customer transfers to Data Processor shall remain within the custody and control of the Customer, and as between the Customer and Data Processor, the Customer shall be the owner of such data.

Notwithstanding the above, Customer acknowledges and agrees that if Customer shares or authorizes any third party or related party to receive or view Customer Data directly in the application or via the use of any application integrations, the further processing by such third party or related party is not covered by the DPA.

2.1. Data Processor Obligations:

1. comply with all applicable Data Protection Laws in the Processing of Personal Data;

2. only process Personal Data on behalf of and in accordance with the Customer's lawful written instructions from time-to-time (including as set out in the DPA) or as required for Data Processor to provide, manage and facilitate the provision of the Services, but only where such instructions are consistent with the terms of the DPA and only in respect of the subject matter, duration, nature and purpose of the Services, and the type of Personal Data and categories of Data Subject relevant to the Services;

3. not Process Personal Data other than on the Customer's documented instructions, except if required pursuant to applicable legislation to which Data Processor is subject, in which case Data Processor shall inform Customer of such requirement before Processing unless prohibited by law;

4. ensure that only authorized persons process such Personal Data and that such persons are subject to appropriate obligations to maintain the confidentiality of such Personal Data, and

5. upon the Customer's request, and at Customer's cost, Data Processor shall provide the Customer with reasonable cooperation and assistance needed to fulfil the Customer's obligation (if any) under the Data Protection Laws to carry out a data protection impact

assessment or any other similar assessment related to the Customer's use of the Services, to the extent the Customer does not otherwise have access to the relevant information, and to the extent such information is available to Data Processor.

2.2. Customer Obligations:

1. Where the Customer transfers or otherwise makes available Personal Data to Data Processor in relation to the Services, the Customer warrants and represents that

   a. it has the necessary rights to transfer or make available such Personal Data to Data Processor (including that it has, or has procured, the necessary legal authority, permissions and/or consents for Data Processor to Process the Personal Data to provide the Services);

   b. the Customer's instructions to Data Processor comply with (and will not cause Data Processor to be in breach of) the Data Protection Laws or any Data Localization Laws; and

   c. the Customer has taken reasonable steps to ensure that any Data Subjects are aware of the nature of the Processing to be undertaken, including by providing any notices required by applicable law or Regulatory Authority, or has otherwise complied with applicable Data Protection and Localization Laws in relation to informing Data Subjects concerning the Processing of their Personal Data comprised in the Customer Data. The Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which the Customer acquired Personal Data. The Customer specifically acknowledges that its use of the Services will not violate the rights of any Data Subject, including the rights of any Data Subject that has opted-out from sales or other disclosures of Personal Data to the extent applicable under the CCPA or other similar regulatory requirements.

2. The subject-matter of Processing of Personal Data by the Data Processor is the performance of the Services pursuant to the DPA. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under the DPA are further specified in Schedule 1 to the DPA.

2.3. Security

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

2.4. Sub-Processors

1. **Appointment of Sub-Processors**. Customer acknowledges and agrees that: (a) Data Processor affiliates may be retained as Sub-Processors; and (b) Data Processor and Data Processor affiliates may engage third-party Sub Processors in connection with the provision of the Services. Data Processor or a Data Processor affiliate will enter into a written agreement with the Sub-Processor containing data protection obligations not less protective than those in the DPA, with respect to the Customer Data to the extent applicable to the nature of the Services provided by such Sub-processor. In case the Sub-Processor fails to fulfill its data protection obligations under such a written agreement with Data Processor, Data Processor will remain liable to the Customer for the performance of the Sub Processor's obligations under such agreement.

2. **List of Current Sub-Processors**. the Data Processor shall make available a list of Sub-Processors for the Services. A current list of the Pelcro Sub-Processors can be found https://www.pelcro.com/en/legal/sub-processors. Pelcro will update the list to reflect any addition, replacement or other changes to Pelcro's Sub-Processors.

3. **Authorization**. Customer's acceptance of the DPA shall be considered written authorization for Pelcro to engage the Sub-Processors as reflected on the list of Sub-Processors current as of the date of signing the DPA. Pelcro will provide notification of new Sub-processor(s) before authorizing any new Sub-processor(s) to Process Personal Data in connection with the provision of the applicable Services. If Customer objects to the appointment of any such Sub-processor within 30 days of notification on reasonable grounds related to the protection of Personal Data, Data Processor will work in good faith with Customer to find an alternative solution. In the event that parties are unable to find such a solution, Customer may terminate the DPA at no additional cost.

2.5. Data Subject Rights

1. **Data Subject Request.** Taking into account the nature of the Processing, Data Processor shall assist Customer by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer obligations, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

2. **Obligations.** Data Processor shall:

   a. promptly notify Customer if it receives a request from a Data Subject under any Data Protection Law in respect of Data Subject Personal Data; and

   b. ensure that it does not respond to a Data Subject request except on the documented instructions of Customer or as required by Data Protection Laws to which the Data Processor is subject, in which case Data Processor shall to the

extent permitted by Data Protection Laws inform Customer of that legal
requirement before Data Processor responds to the request.

2.6. Personal Data Breach

1. **Notification.** Data Processor shall notify Customer without undue delay upon Data
   Processor becoming aware of a Personal Data Breach affecting Personal Data,
   providing Customer with sufficient information to allow Customer to meet any obligations
   to report or inform Data Subjects of the Personal Data Breach under the Data Protection
   Laws.

2. **Remediation.** Data Processor shall make reasonable efforts to identify the cause of
   such Customer Data Incident and take those steps as Data Processor deems necessary
   and reasonable in order to remediate the cause of such a Customer Data Incident to the
   extent the remediation is within Data Processor's reasonable control.

2.7. Deletion or return of Personal Data

Data Processor shall return Customer Data to Customer upon written request from Customer
within 30 days of termination of DPA and, to the extent allowed by applicable law, delete
Customer Data within 6 months of the termination of the DPA, unless deletion of Personal Data
is not technically possible, using all reasonable efforts.

2.8. Audit rights

1. **Accountability.** Subject to reasonable access arrangements being agreed between the
   parties and save for disclosure of information which is confidential and/or privileged (or
   where access is otherwise restricted by applicable law or regulation), Data Processor
   shall make available to the Customer all relevant information reasonably necessary to
   demonstrate compliance with Data Processor's obligations under the GDPR and allow
   for and contribute to audits, including inspections, conducted by the Customer or another
   auditor mandated by the Customer, at the Customer's cost.

2. **Legality of Instructions.** Data Processor shall immediately inform Customer if any
   Customer instructions related to the processing of the Personal Data as related to the
   provision of the Services infringes EU Data Protection Laws.

2.9. Legally Required Changes.

Regulatory Changes. Pelcro and Customer acknowledge that laws relating to privacy and data
protection are evolving and that amendment to the DPA may be required to ensure compliance
with such developments. The parties agree to take such action as is necessary to implement
changes to the standards and requirements of any Data Protection and Localization Laws as

applicable to one or both of the parties, including negotiating in good faith to amend the DPA as necessary or prudent for compliance with such laws.

3. Data Processing Terms (CCPA Specific Provisions)

1. **Scope of Data Processing Terms.** Sections 3.1 to 3.3, apply only with respect to California Personal Information.

2. **Roles of the Parties**. When processing California Personal Information in accordance with Customer Instructions, the parties acknowledge and agree that Customer is a Business and Pelcro is a Service Provider for the purposes of the CCPA.

3. **Responsibilities**. The parties agree that Pelcro will Process California Personal Information as a Service Provider strictly for the purpose of performing the Services under the DPA (the "Business Purpose") or as otherwise permitted by the CCPA. Pelcro will not

   a. sell any personal information;

   b. retain, use or disclose any personal information for any purpose other than for the specific purpose of providing the Services, including retaining, using, or disclosing the personal information for a commercial purpose other than the provision of the Service; or

   c. retain, use or disclose the personal information outside of the direct business relationship between the parties.

4. **Certification.** Pelcro certifies that it understands the restrictions in this section 3 and will comply with them.

4. Data Processing Terms (Canada Specific Provisions)

1. **Scope of Data Processing Terms**. Sections 4.1 to 4.8 shall apply only with respect to Processing of Personal Data about Canadian Data Subjects on behalf of Customers or Employers operating within Canada.

2. **Compliance with Canadian Privacy Laws**. Pelcro and Customer will each Process the Personal Data in accordance with all applicable Canadian Privacy Laws.

3. **Protection of Personal Data.** Pelcro will take reasonable steps to protect the Personal Data against such risks as unauthorized access, use, disclosure, destruction or alteration.

4. **Consent Requirements.** Customer shall provide any required notices and obtain any required consents, as needed, for Pelcro to access, use, store and otherwise Process Personal Data outside Canada. Pelcro will take reasonable steps to ensure that Personal Data transferred outside the province where such information is collected is not used for any unauthorized purpose, and that Personal Data accessed, used, stored or otherwise Processed outside Canada is protected by appropriate safeguards.

5. **Customer Record Keeping**. Customer shall keep appropriate records of all notices provided, and all consents obtained, pursuant to Section 4.4 above, and Customer shall promptly provide evidence of such notices and consents to Pelcro upon Pelcro' request.

6. **Data Minimization**. Customer shall ensure that the Customer Data contains only the minimum Personal Data (if any) required by Pelcro to provide the Services.

7. **Cooperation**. The parties agree to reasonably cooperate and assist each other to comply with their respective obligations under applicable Canadian Privacy Laws, including, to the extent permitted by applicable laws, to respond to audits, requests, demands and investigations by any Regulatory Authority.

8. **Roles and Responsibilities of the Parties**.   Pelcro will Process Personal Data as a service provider strictly for the purpose of performing the Services under the DPA (including as instructed by Customer) or permitted by the Canadian Privacy Laws or required by applicable laws.

5. Incorporating Standard Contractual Clauses within Controller to Processor transfers

The Parties agree:

1. that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2010/87/EU set out in Part 1 of Schedule 1 to the DPA in respect of data transfers outside of the European Economic Area;

2. that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2010/87/EU as adapted by the UK Information Commissioner's Office in respect of data transfers outside of the UK;

3. that for the purposes of the Standard Contractual Clauses:

1. **"Data Exporter"**: means the Customer when acting as a transferor of EU Personal Data;

2. **"Data Importer"**: means the Data Processor when acting as a transferee of EU Personal Data from a Data Exporter;

4. With reference to Clauses 10.3 and 10.3.2 of the Standard Contractual Clauses, the Standard Contractual Clauses and the provisions relating to data protection aspects for sub-processing shall, as regards transfers between a Data Exporter and a Data Importer, governed by the law of the Member State in which the Data Exporter is established.

5. that, where no other appropriate safeguard or exemption applies, that the EU Personal Data (to which Chapter V of the GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;

6. that the information in Schedules 1 and 2 to the DPA shall be deemed included in the annexes to the Standard Contractual Clauses;

7. that, to the extent the information in Schedules 1, 2 and 3 is incomplete or out of date, to use best endeavours promptly to supplement or update such information as necessary for the purpose of giving full effect to the Standard Contractual Clauses; and

8. that if there is any conflict between the DPA and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

5.1. Updated Standard Contractual Clauses:

In the event that the European Commission or the UK Government updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

1. that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Annex 1 of the DPA (as the context requires);

2. that where no other appropriate safeguard or exemption applies, that the EU Personal Data subject to the DPA (to which Chapter V of the GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission or UK Government (as applicable) decision regarding such new Standard Contractual Clauses becomes effective;

3. that the information in Schedules 1 and 2 to the DPA shall be deemed included (as applicable) in the annexes to the Standard Contractual Clauses; and

4. that if there is any conflict between the DPA and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

5.2. Local laws affecting compliance with the Standard Contractual Clauses:

1. The Parties warrant that they have no reason to believe that the laws in the third country of destination applicable to the processing of the EU Personal Data by the Data Importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the Data Importer from fulfilling its obligations under the Standard Contractual Clauses. This is based on the understanding that laws that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) GDPR, are not in contradiction with the Standard Contractual Clauses.

2. The Parties declare that as related to the transfer, they have taken due account in particular of the following elements:

   a. the specific circumstances of the transfer, including the content and duration of the contract;

   b. the scale and regularity of transfers;

   c. the length of the processing chain, the number of actors involved and the transmission channels used;

   d. the type of recipient;

   e. the purpose of processing;

   f. the nature of the personal data transferred;

   g. any relevant practical experience with prior instances, or the absence of requests for disclosure from public authorities received by the Data Importer for the type of data transferred;

   h. the laws of the third country of destination relevant in light of the circumstances of the transfer, including those requiring to disclose data to public authorities or authorising access by such authorities, as well as the applicable limitations and safeguards;

   i. any safeguards in addition to those under the Standard Contractual Clauses, including the technical and organisational measures applied

during transmission and to the processing of the personal data in the country of destination.

3. Data Importer shall implement and maintain a documented procedure for reviewing and responding to Government Authority Requests. Such procedure shall require that Data Importer:

   a. to the fullest extent permitted by law, immediately notify Data Exporter, in writing, of any such Government Authority Request and cooperate with Data Exporter in responding to such request;

   b. scrutinize any such Government Authority Request to determine whether the request is valid, legally binding and lawful and reject or contest any request that is not valid, legally binding and lawful; and

   c. ensure that the EU Personal Data disclosed or to which access is provided is proportionate and limited to the minimum amount strictly necessary for the purpose of complying with the Government Authority Request. Data Importer shall, to the fullest extent permitted by applicable law, remove any information prior to disclosure or access that would allow an individual to be directly identified from the data disclosed or to which access is provided.

4. Data Importer shall maintain a written record of all Government Authority Requests. Such record shall include details of (i) the government authorities making the requests or demands, (ii) the number of requests or demands received and how Data Importer responded to such requests or demands, (iii) the types of Personal Information that Data Importer was required to provide in connection with such requests or demands, and (iv) the number of individuals to whom such requests or demands are related. To the extent permitted by applicable law, Data Importer shall make aggregated information from such records available to Data Exporter upon request.

6. Notices

All notices and communications given under the DPA shall be governed by the notice provisions in the online Terms and Conditions or the offline agreement you may have entered into with Pelcro, as applicable.

7. Governing Law and Jurisdiction

The governing law and jurisdiction of the DPA shall be the same as that in the online Terms and Conditions or the offline agreement you may have entered into with Pelcro, as applicable.

The Data Processing DPA (which includes the Schedules and Annex) has been entered into on the date stated at the beginning of it

Signed for and on behalf of PELCRO Inc:

- Name: _____
- Position: _____
- Date: _____

Signed for and on behalf of CUSTOMER:

- Name: _____
- Position: _____
- Date: _____

8. Contacting Us

If you have any questions or concerns, you may contact us at legal@pelcro.com

SCHEDULE 1: Details of Processing

Duration of the Processing: The duration of data Processing shall be for the term agreed between Customer and Pelcro in the online Terms and Conditions or the offline agreement, as applicable.

Nature and purpose of the Processing: The scope and purpose of Processing of the data subjects' Personal Data is:

- to provide, maintain and facilitate the Services as well as to ensure Services performance, to upgrade and to improve the functionality of the Services;

- to comply with regulatory requirements, as applicable;

- to secure (establish, investigate or defend) any legal claims that may arise due to the Services.

Categories of data subjects: Customer may submit Personal Data in the course of using the Purchased Services, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of Data Subjects:

- Customer employees, contractors, collaborators, applicants, trainees, directors and others whose Personal Data is shared by a Customer in the context of the services provided by Pelcro.
- End users of the Services who access Customer platforms hosted by the Services.

Categories of Personal Data: The Personal Data transferred concern the following categories of data in relation to the categories of data subjects described above:

- Identifiers: first and last name,
- Contact information: business email address, phone number, company name and business address
- Payment details: last 4 digits of the credit card number

Special categories of data (if appropriate): The Personal Data transferred concern the following special categories of data (please specify):

- Customer may not submit special categories of data to the Services. For the sake of clarity special categories of data are Personal Data with information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation.

SCHEDULE 2: Security and Organizational Measures

Pelcro will maintain administrative, organizational, physical, and technical safeguards for protection of the security, confidentiality, availability and integrity of Personal Data uploaded to the Services.

Pelcro will not materially decrease the overall security of the Services during a Subscription Term. You can find a list of the Security and Organizational measures at https://www.pelcro.com/en/security.

SCHEDULE 3: List of Subprocessors

Pelcro publishes the list of Sub-Processors contracted to process all Personal Data on its website at https://www.pelcro.com/en/legal/sub-processors.

ANNEX 1: Standard Contractual Clauses

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: Customer, as specified on the relevant Agreements

- Address: as specified on the relevant Agreements

- Tel.: ; fax: ; e-mail: as specified on the relevant Agreements

- Other information needed to identify the organisation:

  _____

  (the Data Exporter)

And

- Name of the data importing organisation: **Pelcro**

- Address: **3555 Cote des neiges, #205, Montreal, Quebec, Canada**

- Tel.: **+1 888-566-5317**

- Other information needed to identify the organisation: Not applicable

(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 of by operation of law, in which case the data subject can enforce its rights against such entity. The Data Importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the Data Exporter or the Data Importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the Data Exporter and the Data Importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the Data Exporter or the Data Importer, unless any successor

entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7
Mediation and jurisdiction
1. The Data Importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the Data Importer will accept the decision of the data subject:
    a. to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
    b. to refer the dispute to the courts in the Member State in which the Data Exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8
Cooperation with supervisory authorities
1. The Data Exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the Data Importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The Data Importer shall promptly inform the Data Exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the Data Importer, or any subprocessor, pursuant to paragraph 2. In such a case the Data Exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9
Governing Law

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

Clause 10
Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11
Subprocessing

1. The Data Importer shall not subcontract any of its processing operations performed on behalf of the Data Exporter under the Clauses without the prior written consent of the Data Exporter. Where the Data Importer subcontracts its obligations under the Clauses, with the consent of the Data Exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the Data Importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the Data Exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the Data Importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the Data Exporter or the Data Importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Exporter is established.

4. The Data Exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services
1. The parties agree that on the termination of the provision of data processing services, the Data Importer and the subprocessor shall, at the choice of the Data Exporter, return all the personal data transferred and the copies thereof to the Data Exporter or shall destroy all the personal data and certify to the Data Exporter that it has done so, unless legislation imposed upon the Data Importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the Data Importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The Data Importer and the subprocessor warrant that upon request of the Data Exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the Data Exporter:

Name: _____

Position: _____

Address: _____

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

Signature: _____

On behalf of the Data Importer:

Name: _____

Position: _____

Address: _____

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

Signature: _____

APPENDIX 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties. The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data Exporter

The Data Exporter is (please specify briefly your activities relevant to the transfer):

Data Importer

The Data Importer is (please specify briefly activities relevant to the transfer):

Data subjects

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

Categories of data

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

Special categories of data (if appropriate)

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

Processing operations

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

Data Exporter

Name: _____
Authorised Signature: _____

Data Importer

Name: _____
Authorised Signature: _____

APPENDIX 2 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The technical and organisational security measures implemented by the Data Importer are described in Schedule 2 Technical and Organisational Security Measures of the DPA.

Data Exporter

Name: _____
Authorised Signature: _____

Data Importer

Name: _____
Authorised Signature: _____

APPENDIX 3 to the Standard Contractual Clauses

The list of sub-processors contracted by Pelcro as of the date of signing the DPA is included in the Schedule 3 above.