



# Data Processing Agreement for Command Alkon Services

(“Data Processing Agreement”)

Last revised: October 30, 2020

## 1. Scope and Applicability

1.1 This Data Processing Agreement applies to Command Alkon Incorporated’s (“CAI” or “CAI’s”) Processing of Personal Information on Your behalf as a Processor for the provision of the Products and Services (hereinafter, “Services”) specified in Your Master License and Services Agreement and any other agreements you have with CAI (together hereinafter, “MLSA”). Unless otherwise expressly stated in Your MLSA, this version of the Data Processing Agreement shall be effective and remain in force for the term of Your MLSA.

1.2 In addition, any Processing of Personal Information subject to Applicable European Data Protection Law is subject to the additional terms of the European DPA Addendum set out in Exhibit 1.

## 2. Responsibility for Processing of Personal Information and Your Instructions

2.1 You are a Controller and CAI is a Processor for the Processing of Personal Information as part of the provision of the Services. Each party is responsible for compliance with its respective obligations under Applicable Data Protection Law.

2.2 CAI will Process Personal Information solely for the purpose of providing the Services in accordance with the MLSA and this Data Processing Agreement.

2.3 In addition to Your instructions incorporated into the MLSA, You may provide additional instructions in writing to CAI with regard to Processing of Personal Information in accordance with Applicable Data Protection Law. CAI will promptly comply with such instructions to the extent necessary for CAI to: (i) comply with its Processor obligations under Applicable Data Protection Law; and/or (ii) assist You to comply with Your Controller obligations under Applicable Data Protection Law relevant to Your use of the Services.

2.4 CAI will follow Your instructions at no additional cost to You and within the timeframes reasonably necessary for You to comply with your obligations under Applicable Data Protection Law. To the extent CAI expects to incur additional charges or fees not covered by the fees for Services payable under the MLSA, such as additional license or third-party contractor fees, it will promptly inform You thereof upon receiving Your instructions. Without prejudice to CAI’s obligation to comply with Your instructions, the parties will then negotiate in good faith with respect to any such charges or fees.

2.5 Unless otherwise specified in the MLSA, You may not provide CAI with any sensitive or special Personal Information that imposes specific data security or data protection obligations on CAI in addition to or different from those specified in the Data Processing Agreement or MLSA.

### **3. Privacy Inquiries and Requests from Individuals**

3.1 If You receive a request or inquiry from an Individual related to Personal Information processed by CAI for the provision of Services, You can either: (i) securely access Your Services environment that holds Personal Information to address the request; or (ii) to the extent such access is not available to You, submit a written request to [privacy@commandalkon.com](mailto:privacy@commandalkon.com) with detailed written instructions to CAI on how to assist You with such request.

3.2 If CAI directly receives any requests or inquiries from Individuals that have identified You as the Controller, it will promptly pass on such requests to You without responding to the Individual. Otherwise, CAI will advise the Individual to identify and contact the relevant controller(s).

### **4. CAI Affiliates and Third-Party Sub-Processors**

4.1 To the extent CAI engages Third-Party Sub-Processors and/or CAI Affiliates to Process Personal Information, such entities shall be subject to the same level of data protection and security as CAI under the terms of the MLSA. CAI is responsible for the performance of the CAI Affiliates' and Third-Party Sub-Processors' obligations in compliance with the terms of this Data Processing Agreement and Applicable Data Protection Law.

### **5. Cross-Border Data Transfers**

5.1 Without prejudice to any applicable regional data center restrictions for hosted Services specified in Your MLSA (if any), CAI may Process Personal Information globally as necessary to perform the Services.

5.2 To the extent such global access involves a transfer of Personal Information subject to cross-border transfer restrictions under Applicable Data Protection Law, such transfers shall be subject to: (i) for transfers to CAI Affiliates, the terms of the CAI Model Clause Agreements, which require all transfers of Personal Information to be made in compliance with Applicable Data Protection Law and all applicable CAI security and data privacy policies and standards globally; and (ii) for transfers to Third-Party Sub-Processors, security and data privacy requirements consistent with the relevant requirements of this Data Processing Agreement and Applicable Data Protection Law.

### **6. Security and Confidentiality**

6.1 CAI has implemented and will maintain appropriate technical and organizational security measures for the Processing of Personal Information designed to prevent accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Information. These security measures govern all areas of security applicable to the Services, including physical access, system access, data access, transmission, input, data backup, data segregation and security oversight, enforcement and other security controls and measures. Additional details regarding the specific security measures that apply to the Services You have ordered may be requested through [privacy@commandalkon.com](mailto:privacy@commandalkon.com).

6.2 All CAI and CAI Affiliates employees, as well as any Third-Party Sub-Processors that Process Personal Information, are subject to appropriate written confidentiality arrangements, including confidentiality

agreements, regular training on information protection, and compliance with CAI policies concerning protection of confidential information.

## **7. Audit Rights**

7.1 You may audit CAI's compliance with its obligations under this Data Processing Agreement up to once per year. In addition, to the extent required by Applicable Data Protection Law, You or Your Regulator may perform more frequent audits.

7.2 If a third party is to conduct the audit, the third party must be mutually agreed to by You and CAI (except if such third party is a Regulator). CAI will not unreasonably withhold its consent to a third-party auditor requested by You. The third party must execute a written confidentiality agreement acceptable to CAI or otherwise be bound by a statutory or legal confidentiality obligation.

7.3 To request an audit, You must submit a detailed proposed audit plan to CAI at least four (4) weeks in advance of the proposed audit date. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. CAI will review the proposed audit plan and provide You with any concerns or questions. CAI will work cooperatively with You to agree on a final audit plan.

7.4 The audit must be conducted during regular business hours at the applicable facility, subject to the agreed final audit plan and CAI's other relevant policies, and may not unreasonably interfere with CAI business activities.

7.5 Upon completion of the audit, You will provide CAI with a copy of the audit report, which is subject to the confidentiality terms of Your MLSA. You may use the audit reports only for the purposes of meeting Your regulatory audit requirements and/or confirming compliance with the requirements of this Data Processing Agreement.

7.6 Each party will bear its own costs in relation to the audit, unless CAI informs you in advance upon reviewing Your audit plan that it expects to incur additional charges or fees in the performance of the audit that are not covered by the fees payable under Your MLSA, such as additional license or third-party contractor fees. The parties will negotiate in good faith with respect to any such charges or fees.

7.7 Without prejudice to the rights granted in Section 7.1 above, if the requested audit scope is addressed in a SOC, ISO, NIST, PCI DSS, HIPAA or similar audit report issued by a qualified third-party auditor within the prior twelve (12) months and CAI provides such report to You confirming there are no known material changes in the controls audited, You agree to accept the findings presented in the third-party audit report in lieu of requesting an audit of the same controls covered by the report.

## **8. Incident Management and Breach Notification**

8.1 CAI has implemented controls and policies designed to detect and promptly respond to incidents that create suspicion of or indicate destruction, loss, alteration, unauthorized disclosure or access to Personal Information transmitted, stored or otherwise Processed. CAI will promptly define escalation paths to investigate such incidents in order to confirm if a Personal Information Breach has occurred, and to take reasonable measures designed to identify the root cause(s) of the Personal Information Breach, mitigate

any possible adverse effects and prevent a recurrence.

8.2 CAI will notify you of a confirmed Personal Information Breach without undue delay but at the latest within seventy-two (72) hours. As information regarding the Personal Information Breach is collected or otherwise reasonably becomes available to CAI, CAI will also provide You with: (i) a description of the nature and reasonably anticipated consequences of the Personal Information Breach; (ii) the measures taken to mitigate any possible adverse effects and prevent a recurrence; and (iii) where possible, information about the types of Personal Information and identity of data subjects that were the subject of the Personal Information Breach. You agree to coordinate with CAI on the content of any intended public statements or required notices for the affected Individuals and/or notices to the relevant Regulators regarding the Personal Information Breach.

## **9. Return and Deletion of Personal Information**

9.1 Upon termination of the Services, CAI will promptly return, including by providing available data retrieval functionality, or delete any remaining copies of Personal Information on CAI systems or Services environments, except as otherwise stated in the MLSA or required by law or CAI's data retention schedule.

9.2 For Personal Information held on Your systems or environments, or for Services for which no data retrieval functionality is provided by CAI as part of the Services, You are advised to take appropriate action to back up or otherwise store separately any Personal Information while the production Services environment is still active prior to termination.

## **10. Legal Requirements**

10.1 CAI may be required by law to provide access to Personal Information, such as to comply with a subpoena or other legal process, or to respond to government requests, including public and government authorities for national security and/or law enforcement purposes.

10.2 CAI will promptly inform You of requests to provide access to Personal Information, unless otherwise required by law.

## **11. Definitions**

**"Applicable Data Protection Law"** means all data privacy or data protection laws or regulations globally that apply to the Processing of Personal Information under this Data Processing Agreement, which may include Applicable European Data Protection Law.

**"Applicable European Data Protection Law"** means: (i) the EU General Data Protection Regulation EU/2016/679, as supplemented by applicable EU Member State law and as incorporated into the EEA Agreement; (ii) the Swiss Federal Act of 19 June 1992 on Data Protection, as amended; and (iii) the UK Data Protection Act 2018.

**"Europe"** means for the purposes of this Data Processing Agreement: (i) the European Economic Area, consisting of the EU Member States, Iceland, Lichtenstein and Norway; (ii) Switzerland; and (iii) the UK.



“**Individual**” shall have the same meaning as the term “data subject” or the equivalent term under Applicable Data Protection Law.

“**Process/Processing,**” “**Controller,**” and “**Processor**” (or the equivalent terms) have the meaning set forth under Applicable Data Protection Law.

“**CAI Affiliate(s)**” means the subsidiary or subsidiaries of CAI that may Process Personal Information as set forth in Section 4.

“**Personal Information**” shall have the same meaning as the term “personal data,” “personally identifiable information (PII),” or the equivalent term under Applicable Data Protection Law.

“**Personal Information Breach**” means a breach of security leading to the misappropriation or accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information transmitted, stored or otherwise Processed on CAI systems or the Services environment that compromises the security, confidentiality or integrity of such Personal Information.

“**Regulator**” shall have the same meaning as the term “supervisory authority,” “data protection authority,” or the equivalent term under Applicable Data Protection Law.

“**MLSA**” means: (i) the applicable order for the Services You have purchased from CAI; (ii) the applicable Master License and Services Agreement and any and all supplements and/or annexes; (iii) any applicable EULA or subscriber agreement; and (iv) any service specifications.

“**Third-Party Sub-Processor**” means a third party, other than a CAI Affiliate, which CAI subcontracts with and which may Process Personal Information as set forth in Section 4.

“**You**” or “**Your**” means the customer entity that has executed the MLSA.

Other capitalized terms have the definitions provided for them in the MLSA.

## **Exhibit 1:**

### **European Data Processing Addendum for Command Alkon Services**

**(“European DPA Addendum”)**

This European DPA Addendum supplements the Data Processing Agreement to include additional Processor terms applicable to the Processing of Personal Information subject to Applicable European Data Protection Law.

Except as expressly stated otherwise in the Data Processing Agreement, the MLSA, or this European DPA Addendum, in the event of any conflict between these documents, the following order of precedence applies (in descending order): (i) this European DPA Addendum; (ii) the body of the Data Processing Agreement; and (iii) the MLSA.

#### **1. Cross-Border Data Transfers – Model Clause Agreements**

1.1 The CAI Model Clause Agreements apply to the Processing of Personal Information by CAI on Your behalf in its role as a Processor as part of the provision of Services under the MLSA and this European DPA Addendum, where such Personal Information is: (i) subject to any data transfer restrictions under Applicable European Data Protection Law; and (ii) processed by CAI or a CAI Affiliate in a country outside Europe.

1.2 Transfers to Third-Party Sub-Processors shall be subject to security and data privacy requirements consistent with the Data Processing Agreement and the MLSA.

#### **2. Description of Processing**

2.1 *Duration of processing activities.* CAI may Process Personal Information during the term of the MLSA and to perform its obligations under Section 9 of the Data Processing Agreement, unless otherwise required by applicable law.

2.2 *Processing activities.* CAI may Process Personal Information as necessary to perform the Services, including where applicable: (i) for hosting and storage; (ii) backup and disaster recovery; (iii) service change management; (iv) issue resolution; (v) applying new product or system versions, patches, updates and upgrades; (vi) monitoring and testing system use and performance; (vii) IT security purposes including incident management; (viii) maintenance and performance of technical support systems and IT infrastructure; and (ix) migration, implementation, configuration and performance testing.

2.3 *Categories of Personal Information.* In order to perform the Services and depending on the Services You have ordered, CAI may Process some or all of the following categories of Personal Information: personal contact information (such as name, home address, home telephone or mobile number, fax number, email address); usernames and passwords; age; sex; date of birth; GPS location; signatures;

employment details (including employer name, job title and function, employment ID numbers, pay rate, supervisor, hire date, job performance, and message history); education/qualifications; identification numbers (such as, for example, driver's license number); unique IDs collected from mobile devices, network carriers or data providers; and IP addresses.

*2.4 Categories of Sensitive Personal Information.* In order to perform the Services and depending on the Services You have ordered and the requirements of your jurisdiction, CAI may Process some or all of the following categories of Sensitive Personal Information: ethnic origin; union affiliation; medical test result information. These categories of Sensitive Personal Information are only processed where required and allowed by a jurisdiction such as the United States of America.

*2.5 Categories of Data Subjects.* Categories of Data Subjects whose Personal Information may be Processed in order to perform the Services may include, among others, Your representatives and end users, such as Your employees, job applicants, contractors, collaborators, partners, suppliers, customers and clients.

2.6 Additional or more specific descriptions of Processing activities, categories of Personal Information and Data Subjects may be described in the MLSA.

### **3. Your Instructions**

3.1 Your right to provide instructions to CAI as specified in Section 2 of the Data Processing Agreement encompasses instructions regarding: (i) data transfers as set forth in Section 1 of this European DPA Addendum; and (ii) assistance with Data Subject requests to access, delete or erase, restrict, rectify, receive and transmit (data portability), block access to or object to Processing of specific Personal Information or sets of Personal Information as described in Section 3 of the Data Processing Agreement.

3.2 To the extent required by the Applicable EEA Data Protection Law, CAI will immediately inform You if, in its opinion, Your instruction infringes Applicable European Data Protection Law. You acknowledge and agree that CAI is not responsible for performing legal research and/or for providing legal advice to You.

### **4. Notice and Objection Right to Third-Party Sub-Processors**

4.1 Subject to the terms and restrictions specified in this Section 4 of the European DPA Addendum and Section 4 of the Data Processing Agreement, You provide CAI general written authorization to engage CAI Affiliates and Third-Party Sub-Processors to assist in the performance of the Services.

4.2 CAI maintains a list of Third-Party Sub-Processors that may Process Personal Information on its website under the Legal tab. If You would like to receive notice of any intended changes to this list of Third-Party Sub-Processors, You can request such notice via message to [privacy@commandalkon.com](mailto:privacy@commandalkon.com).

4.3 Within fourteen (14) calendar days of CAI providing such notice to You under Section 4.2 above, You may object to the intended involvement of a Third-Party Sub-Processor, providing objective justifiable grounds related to the ability of such Third-Party Sub-Processor to adequately protect Personal Information in accordance with the Data Processing Agreement or Applicable European Data Protection Law in writing to [privacy@commandalkon.com](mailto:privacy@commandalkon.com). You and CAI will work together in good faith to find a



mutually acceptable resolution to address such objection, including but not limited to reviewing additional documentation supporting the Third-Party Sub-Processor's compliance with the Data Processing Agreement or Applicable European Data Protection Law, or delivering the Services without the involvement of such Third-Party Sub-Processor. To the extent You and CAI do not reach a mutually acceptable resolution within a reasonable timeframe, You shall have the right to terminate the relevant Services: (i) upon serving thirty (30) days prior notice; (ii) without liability to You or CAI; and (iii) without relieving You from Your payment obligations under the MLSA up to the date of termination. If the termination in accordance with this Section 4.3 only pertains to a portion of Services under an order, You will enter into an amendment or replacement order to reflect such partial termination.

## **5. Information and Assistance**

5.1 CAI will provide You with information and assistance reasonably necessary for You to conduct Your data protection impact assessments or consult with Your Regulator(s), as well as to respond to data subject requests.

## **6. Chief Privacy Officer**

6.1 CAI has appointed a Chief Privacy Officer whose contact information is below:

E-mail:

[privacy@commandalkon.com](mailto:privacy@commandalkon.com)

Or write to:

Command Alkon Incorporated  
Chief Privacy Officer c/o The Legal Department  
1800 International Park Drive  
Suite 400  
Birmingham, Alabama 35243

Or call:

1-800-624-1872 (U.S. toll free)  
0-800-022-9682 (International toll free)

Website:

[www.commandalkon.com](http://www.commandalkon.com)