

This Data Processing Agreement (“DPA”) is incorporated into and forms a part of each Service Contract entered into under the terms of the Master Services Agreement (“MSA”) between LISS and Client pursuant to which LISS is provided by the Client with personal data obtained from persons in the European Economic Area (“EEA”) or the United Kingdom (“UK”), in accordance with Section 15.2 of the MSA. Capitalized terms used and not otherwise defined herein shall have the same meanings as set forth in the MSA, Service Attachment(s), and Order(s) comprising the applicable Service Contract(s).

1. SCOPE AND APPLICABILITY

1.1. Definitions

For purposes of this DPA:

“GDPR” refers to both (i) the EU GDPR, i.e. the General Data Protection Regulation, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016; and (ii) the UK GDPR, i.e. the provisions substantially similar to the EU GDPR that are incorporated in the Data Protection Act of 2018 enacted in the United Kingdom.

“Clauses” refers to the Standard Contractual Clauses for the transfer of personal data to third countries set forth in the Annex to the GDPR, which are hereby incorporated by reference and made part of this DPA. A copy of the Clauses may be found here: https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en.

As used herein, words and phrases related to the processing and protection of personal data are intended to have the same meanings attributed to them in the GDPR. Without limiting the foregoing:

“Controller” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

“Data Subject” means an identified or identifiable natural person, i.e. 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.

“Personal Data” means any information relating to a Data Subject.

“Processing” means any operation or set of operations which is performed on personal data or on sets of 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.

“Processor” means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

“Sensitive Data” means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions or offenses.

“Supervisory Authority” means an independent public authority which is established by an EU member state pursuant to Article 51 of the EU GDPR or by the UK pursuant to the corresponding provisions of the UK GDPR.

In the event of any conflict between the provisions of the GDPR and the Clauses and the terms of this DPA, the provisions of the GDPR and the Clauses shall prevail and control.

1.2. Incorporation of GDPR Clauses

With respect to instances in which Client, as a Controller, transfers Personal Data to LISS for Processing in the United States or third countries outside the EEA or UK that are not recognized by the applicable governing body as ensuring an adequate level of data protection for Personal Data, the parties hereby agree that Module Two of the Clauses shall apply (and that if the nature of the relationship between the parties is otherwise, i.e. controller-to-controller, processor-to-processor, or processor-to-controller, then the corresponding Module One, Three or Four shall apply).

With respect to paragraph 9(a) of the Clauses, the parties choose Option 2 (General Written Authorization). In this regard, Client consents to LISS’ use of sub-Processors found in the list posted at lisstech.com/subprocessors. LISS will inform Client of changes to the list involving the addition or replacement of authorized sub-Processors at least fifteen (15) days in advance. If Client objects to a change in the list of authorized sub-Processors, LISS will use commercially reasonable efforts to make available to Client a change in the affected Services or recommend a commercially reasonable change to Client’s configuration or use of the affected Services to avoid the processing of Personal Data by a sub-Processor to which Client has objected.

With respect to paragraph 11(a) of the Clauses, the optional wording shall not be incorporated.

With respect to Clause 17, the Parties agree that the Clauses shall, if and to the extent permissible under the GDPR, be governed by the law of the United States and the State of New York. To the extent that application of the law of a country that is party to the GDPR is required, matters related to the EU GDPR shall be governed by the law of Ireland and matters related to the UK GDPR shall be governed by the law of England.

With respect to Clause 18, the Parties agree that any dispute arising from the Clauses shall, if and to the extent permissible under the GDPR, be resolved by the federal or state courts located in the State of New York, United States. To the extent that submission to the jurisdiction of a country that is party to the GDPR is required, matters related to the EU GDPR shall be resolved by the courts of Ireland and matters related to the UK GDPR shall be resolved by the courts of England.

The annexes contained in the appendix to the Clauses shall be deemed to be completed with the information set forth in the corresponding annexes contained in the appendix to this DPA.

2. PROCESSING OF PERSONAL DATA BY LISS AND CLIENT OBLIGATIONS

2.1. Client Instructions

LISS will Process Personal Data provided by Client in accordance with instructions from Client given in accordance with this DPA and the Service Contract.

2.2. Cooperation with Client

LISS will promptly comply with all such instructions to the extent necessary for LISS to (i) comply with its obligations under the GDPR; and/or (ii) assist Client in complying with its obligations under the GDPR relevant to the use of the Services.

2.3. Costs Incurred by LISS

To the extent not inconsistent with LISS' obligations under the GDPR, if LISS is required in connection with this DPA to incur additional costs for services not covered by the applicable Service Contract with Client, then it will be entitled to be reimbursed by Client for all such costs that are reasonably incurred.

2.4. Sensitive Data

This DPA does not, in and of itself, constitute an agreement by LISS to accept Sensitive Data from Client. Sensitive Data will be Processed only upon the explicit written consent of LISS; and the provision to LISS of any such data without LISS' consent shall be subject to the indemnification provisions of section 13(d) of the MSA.

2.5. Collection of Data by Client

As between LISS and Client, Client is responsible for the accuracy of the Personal Data that it provides to LISS and for the legality of the means by which Client acquired such Personal Data. Client is responsible for providing any required notice to the Data Subjects and for obtaining any consents, authorizations, or permissions from the Data Subjects that might be required in order to allow Client to transfer the Personal Data to LISS to perform the Services. Client will provide LISS with such evidence of the foregoing as LISS might reasonably request if LISS needs this information to comply with the GDPR or the request of any Supervisory Authority or other regulator.

3. INDIVIDUAL INQUIRIES AND REQUESTS

3.1. Inquiries received by Client

If Client receives a request or inquiry from a Data Subject related to Personal Data Processed by LISS in connection with the provision of Services, LISS will provide Client with such cooperation as Client might reasonably require in responding to such request or inquiry and otherwise comply with LISS' obligations under Clause 10 and the Clauses generally.

3.2. Inquiries received by LISS

If LISS directly receives a request or inquiry from a Data Subjects, then LISS will promptly forward such request or inquiry to Client prior to responding to the Data Subject and will provide Client with such cooperation as Client might reasonably require in responding to such request or inquiry and otherwise comply with LISS' obligations under Clause 10 and the Clauses generally.

4. SUB-PROCESSORS

To the maximum extent permitted by the GDPR, it is agreed that if LISS shall have complied with its obligations under this DPA and the GDPR, including, if applicable, by entering into an agreement with a sub-Processor or other third party that incorporates the Clauses, then LISS shall not be liable for the acts or omissions of any such sub-Processor or third party.

5. ONWARD TRANSFERS

If the provision of the Services by LISS involves a transfer of Personal Data to a country located outside of the EEA or the UK, as applicable (whether such transfer is within the United States or to a third country), then LISS will ensure that the receiving party is bound by the Clauses and otherwise comply with LISS' obligations under Clause 8.8 of Module Two and the Clauses generally.

6. SECURITY AND CONFIDENTIALITY

6.1. Implementation of Security Measures

LISS has implemented and will maintain appropriate technical and organizational security measures for the Processing of Personal Data designed to prevent accidental or unlawful destruction, loss, alteration, disclosure of, or unauthorized access to Personal Data. These security measures include, without limitation, measures related to physical access, system access, data access, transmission and encryption, input, data backup, data segregation and security oversight, enforcement and other security controls and measures.

6.2. Assurance of Confidentiality

All LISS employees, are subject to written confidentiality arrangements and are required to comply with LISS' information security policies.

7. AUDIT RIGHTS

7.1. General

Client may audit LISS's compliance with its obligations under this DPA up to once per year if necessary for purposes of meeting its regulatory requirements.

7.2. Third-Party Auditor

If a third party is to conduct the audit, then the third party must be mutually agreed upon by Client and LISS (except if such third party is a Supervisory Authority). LISS will not unreasonably withhold its consent to a third party auditor. Any third party auditor must execute a written confidentiality agreement reasonably acceptable to LISS or otherwise be bound by statutory or other comparable confidentiality obligations.

7.3. Requesting an Audit

To request an audit, Client must submit a detailed proposed audit plan to LISS at least sixty (60) days in advance of the proposed audit date. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. LISS will review the proposed audit plan and provide Client with any proposed revisions. LISS will work cooperatively with Client to agree on a final audit plan.

7.4. Audit Procedures

The audit shall be conducted during regular business hours and may not unreasonably interfere with LISS' business activities. Upon completion of the audit, Client will provide LISS with a copy of the audit report, which LISS shall treat as confidential information.

7.5. Audit Costs

Each party will bear its own costs in relation to the audit, unless otherwise agreed in the audit plan. If LISS is requested to perform additional services in connection with the audit, then LISS shall be entitled to be reimbursed by Client for the reasonable cost thereof.

7.6. Existing Audit Report

Notwithstanding the foregoing, if the requested audit scope is addressed in an SOC, ISO, NIST, PCI-DSS, HIPAA or similar audit report issued by a qualified third party auditor within the prior twelve months and LISS provides such report to Client together with a written certification that there are no known material changes in the controls audited, then Client agrees to accept the findings presented in the third party audit report in lieu of an audit of the same controls covered by the report.

8. INCIDENT MANAGEMENT AND BREACH NOTIFICATION

8.1. Controls

LISS has implemented controls designed to detect and respond to incidents that create suspicion of or indicate unauthorized destruction, loss, alteration, disclosure of, or access to Personal Data in the possession of LISS (a "Security Incident"). To the extent within the reasonable control of LISS and subject to the limitations on liability found in the Service Contract, LISS will take commercially reasonable measures designed to identify cause(s), mitigate any possible adverse effects and prevent a recurrence of Security Incidents. Client agrees to coordinate with LISS concerning the content of any of public statements or notices to the affected Data Subjects and/or the relevant Supervisory Authority regarding any Security Incident involving LISS.

8.2. Notice

LISS shall notify Client promptly after LISS becomes aware of a Security Incident involving LISS or its sub-Processors that impacts Personal Data provided to LISS by Client. Such notification may be sent by any means provided for in the Service Contract.

9. RETURN OR DELETION OF PERSONAL DATA

Upon the termination of a Service Contract, any Personal Data in the possession of LISS shall be deleted or returned to Client in accordance with section 4.5.3 of the MSA (subject to any additional rights that Client might have under Clause 8.5 of Module Two or the Clauses generally).

10. LEGAL REQUIREMENTS

LISS may be obligated to provide access to Client's data in order to comply with a subpoena or other process, to respond to governmental or regulatory requests, including requests made for national security and/or law enforcement purposes, or otherwise comply with legal requirements. LISS will promptly inform Client of requests to provide access to Client's data and comply with Client's reasonable instructions with respect to such requests, to the extent permitted by law.

11. MISCELLANEOUS**11.1. Liability and Indemnity**

To the maximum extent permitted by the GDPR, any claims brought under this DPA shall be subject to the same terms and conditions, including exclusions and limitations of liability on the part of LISS, as are set forth in the applicable Service Contract.

11.2. Interpretation

In the event of a conflict between the terms of this DPA and the terms of the applicable Service Contract that relates to the handling of Personal Data, the terms of this DPA shall be controlling.

11.3. Changes in the GDPR

The parties agree to negotiate modifications to this DPA if required to continue to comply with changes in the GDPR or the legal interpretation thereof.

[Signature lines in Annex I.A of Appendix]

SAMPLE

APPENDIX

ANNEX I

A. LIST OF PARTIES

DATA EXPORTER

Name: (CLIENT)	
Contact person's name, position and contact details:	
Activities relevant to the data transferred:	The data is being transferred in connection with the retention of LISS to provide Managed IT Support and/or related services, as more particularly described in the applicable Service Contracts.
Signature and date:	
Role:	

DATA IMPORTER

Name: (LISS)	The LISS affiliate that is party to the relevant Service Contract
Address:	15 Bryant Avenue, Suite 100, Roslyn, New York 11576 (U.S.A.)
Contact person's name, position and contact details:	Eyal Isaac, CEO of LISS Technologies, legal@lisstech.com
Activities relevant to the data transferred:	Provision of Managed IT Support and related services.
Signature and date:	
Role:	

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred [To be supplied by CLIENT]

Categories of personal data transferred [To be supplied by CLIENT]

Sensitive data transferred (if applicable) [To be supplied by CLIENT]

[If Sensitive Data will in fact be transferred, then both the nature of the data and the appropriate safeguards that will be implemented should be described]

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

Nature of the processing

Personal Data may be processed as an incident to the provision of the Managed IT Support and/or related services that are identified in the applicable Service Contracts.

Purpose(s) of the data transfer and further processing

Personal data will not be directly processed, but may be processed as an incident of providing the Services detailed above under the heading 'NATURE OF THE PROCESSING'.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

For the duration of the applicable Service Contract between the parties.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Personal Data may be transferred to sub-Processors if and to the extent necessary to provide the services described in the Service Contracts (e.g. Data Backup, Private Cloud Hosting, etc.) Personal Data will not be transferred for purposes of direct processing, but only as an incident to the provision of the described services. The duration of the sub-Processing will be the same as the term of the Service Contracts in question.

C. COMPETENT SUPERVISORY AUTHORITY

Identify the competent supervisory authority/ies in accordance with Clause 13 [To be identified by CLIENT]

ANNEX II**TECHNICAL AND ORGANIZATIONAL MEASURES [TO ENSURE THE SECURITY OF THE DATA]**

In addition to any measures described in the applicable Service Contract, LISS currently observes the information security practices and procedures described in the Information Security Policy and supporting documents that make up LISS's Written Information Security Program, which may be found at lisstech.com/wisp. LISS may modify or update these practices and procedures at its discretion provided that such modification or update does not result in a material degradation in the protection offered by these practices.

Add if applicable, "In addition the parties have agreed upon the following practices and procedures:

ANNEX III**LIST OF SUB-PROCESSORS**

Not Applicable in light of the parties' agreement that there will be a general authorization in accordance with paragraph 9(a) of the Clauses, Option 2.

[End of Appendix]