

CLASSMARKER DATA PROTECTION ADDENDUM

This Data Protection Addendum ("**Addendum**") dated 20 September 2020 forms part of the Terms and Conditions ("**Terms**") between (i) ClassMarker Pty Ltd, 15 Belar Ave Newcastle, NSW Australia, 2306, and (ii) _____ acting on its own behalf and in the name and on behalf of each Client Affiliate, if any, (collectively, "**Client**"), each being a "**Party**" and together the "**Parties**".

The Parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Terms and references in this Addendum to the Terms are to the Terms as amended by, and including, this Addendum.

1. Definitions

- 1.1. In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:
- (a) "**Addendum Effective Date**" has the meaning given to it in section 2;
 - (b) "**Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with either Client or ClassMarker (as the context allows), where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;
 - (c) "**CCPA**" means the California Consumer Privacy Act of 2018, as amended from time to time.
 - (d) "**Client Personal Data**" means any Personal Data Processed by ClassMarker (i) on behalf of Client or any Client Affiliate, or (ii) otherwise Processed by ClassMarker, in each case pursuant to or in connection with instructions given by Client consistent with the Terms;
 - (e) "**Controller to Processor SCCs**" means the Standard Contractual Clauses (processors) for the purposes of Article 26(2) of Directive 95/46/EC set out in Decision 2010/87/EC as the same are revised or updated from time to time by the European Commission;
 - (f) "**Data Protection Laws**" means, with respect to a party, all privacy, data protection and information security-related laws and regulations applicable to such party's Processing of Personal Data, including, where applicable, EU Data Protection Law and the CCPA;
 - (g) "**Data Subject**" means the identified or identifiable natural person who is the subject of Personal Data.
 - (h) "**EU Data Protection Law**" means European Union Regulation 2016/679 ("GDPR") and any national legislation implementing GDPR, as amended from time to time; and, where the Client is subject to the European Union Regulation (EU) 2018/1725, that law as amended from time to time.
 - (i) "**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.
 - (j) "**Personal Data**" means "personal data", "personal information", "personally identifiable information" or similar information defined in and governed by Data Protection Laws.

- (k) “**Security Incident**” means any confirmed unauthorised or unlawful breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Data being Processed by ClassMarker. Security Incidents do not include unsuccessful attempts or activities that do not compromise the security of Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks or other network attacks on firewalls or networked systems.
- (l) “**Services**” means the services to be supplied by ClassMarker to Client and/or Client Affiliates pursuant to the Terms.
- (m) “**Subprocessor**” means any third party authorised by ClassMarker or its Affiliates to Process any the Client Personal Data.
- (n) “**Third Party Subprocessor**” means any Subprocessor who is not an Affiliate of ClassMarker.

1.2. Capitalised terms not otherwise defined in this Addendum shall have the meanings ascribed to them in the Terms.

2. Formation of this Addendum

2.1. This Addendum is deemed agreed by the Parties, and comes into effect, on the “Addendum Effective Date”, being the earlier of (i) the date that this Addendum is signed by Client; and (ii) thirty calendar days after the date on which this Addendum is sent by ClassMarker to Client (“Reception Date”).

2.2. This Addendum forms part of the Terms and except as expressly set forth in this Addendum, the Terms remains unchanged and in full force and effect. If there is any conflict between this Addendum and the Terms, this Addendum shall govern.

2.3. Any liabilities arising under this Addendum are subject to the limitations of liability in the Terms.

2.4. This Addendum will be governed by and construed in accordance with governing law and jurisdiction provisions in the Terms, unless required otherwise by applicable Data Protection Laws.

2.5. This Addendum will automatically terminate upon expiration or termination of the Terms.

3. Scope of this Addendum

3.1. This Addendum applies to ClassMarker’s Processing of the Client Personal Data under the Terms, except that Annex 3 (EU Annex) to this Addendum applies only to such Processing of the Client Personal Data governed by EU Data Protection Law and Annex B (California Annex) to this Addendum applies only to such Processing of the Client Personal Data governed by the CCPA.

4. Roles of the Parties

4.1. The Parties expressly agree that Client shall be solely responsible for ensuring timely communications to Client’s Affiliates who receive the Services, insofar as such communications may be required or useful in light of applicable Data Protection Laws to enable Client’s Affiliates to comply with such Laws.

4.2. ClassMarker will Process the Client Data only in accordance with the Client’s instructions. By entering into the Terms, the Client instructs ClassMarker to Process the Client Data to provide the Services and pursuant to any other written instructions given by the Client and acknowledged in writing by ClassMarker as constituting instructions for purposes of this Addendum. The Client acknowledges and agrees that such instruction authorises ClassMarker to Process the Client Data

(a) to perform its obligations and exercise its rights under the Terms; and (b) to perform its legal obligations and to establish, exercise or defend legal claims in respect of the Terms.

5. Subprocessing

5.1. The Client specifically authorizes ClassMarker to use its Affiliates as Subprocessors, and generally authorizes ClassMarker to engage Third Party Subprocessors to Process the Client Personal Data. ClassMarker:

- (a) shall enter into a written agreement with each Subprocessor, imposing data protection obligations substantially similar to those set out in this Addendum; and
- (b) remains liable for compliance with the obligations of this Addendum and for any acts or omissions of the Subprocessor that cause ClassMarker to breach any of its obligations under this Addendum.

5.2. A list of ClassMarker's Subprocessors, including their functions and locations, is included in Annex 2 to this Addendum and may be updated by ClassMarker from time to time in accordance with this Addendum.

5.3. When any new Third Party Subprocessor is engaged, ClassMarker will notify the Client of the engagement, which notice may be given by updating the Subprocessor Page and via a message through the Client's ClassMarker Workspace. ClassMarker will give such notice at least ten (10) calendar days before the new Subprocessor Processes any the Client Personal Data, except that if ClassMarker reasonably believes engaging a new Subprocessor on an expedited basis is necessary to protect the confidentiality, integrity or availability of the Client Personal Data or avoid material disruption to the Services, ClassMarker will give such notice as soon as reasonably practicable. If, within five (5) calendar days after such notice, the Client notifies ClassMarker in writing that the Client objects to ClassMarker's appointment of a new Third Party Subprocessor based on reasonable data protection concerns, the parties will discuss such concerns in good faith and whether they can be resolved. If the parties are not able to mutually agree to a resolution of such concerns, the Client, as its sole and exclusive remedy, may terminate the Terms for convenience.

6. Security

6.1. ClassMarker shall implement and maintain technical and organizational security measures designed to protect the Client Personal Data from Security Incidents and to preserve the security and confidentiality of the Client Personal Data, in accordance with ClassMarker's security standards referenced in the Terms and Annex 1 of this Addendum ("Security Measures").

6.2. The Client is responsible for reviewing the information made available by ClassMarker relating to data security and making an independent determination as to whether the Services meet the Client's requirements and legal obligations under Data Protection Laws. The Client acknowledges that the Security Measures may be updated from time to time upon reasonable notice to the Client to reflect process improvements or changing practices (but the modifications will not materially decrease ClassMarker's obligations as compared to those reflected in such terms as of the Effective Date).

6.3. Upon becoming aware of a confirmed Security Incident, ClassMarker shall notify the Client without undue delay unless prohibited by applicable law. A delay in giving such notice requested by law enforcement and/or in light of ClassMarker's legitimate needs to investigate or remediate the matter before providing notice shall not constitute an undue delay. Such notices will describe, to the extent possible, details of the Security Incident, including steps taken to mitigate the potential risks and steps ClassMarker recommends the Client take to address the Security Incident. Without prejudice to ClassMarker's obligations under this Clause 6.3, the Client is solely responsible for complying with Security Incident notification laws applicable to the Client and fulfilling any third party notification obligations related to any Security Incidents.

ClassMarker's notification of or response to a Security Incident under this Clause 6.3 will not be construed as an acknowledgement by ClassMarker of any fault or liability with respect to the Security Incident.

- 6.4. The Client agrees that, without limitation of ClassMarker's obligations under this Clause 6, the Client is solely responsible for its use of the Services, including (a) making appropriate use of the Services to ensure a level of security appropriate to the risk in respect of the Client Data; (b) securing the account authentication credentials, systems and devices the Client uses to access the Services; (c) securing the Client's systems and devices that it uses with the Services; and (d) maintaining its own backups of the Client Data.

7. Data Subject Requests

- 7.1. The Client is able to control the data so as to be able to comply with its obligations under Data Protection Laws including to respond to requests from individuals to exercise their rights under Data Protection Laws. ClassMarker shall upon the Client's request (and at the Client's expense) provide the Client with such assistance as it may reasonably require to comply with its obligations under Data Protection Laws to respond to requests from individuals to exercise their rights under Data Protection Laws (e.g., rights of data access, rectification, erasure, restriction, portability and objection) in cases where the Client cannot reasonably fulfill such requests independently by using the self-service functionality of the Services. If ClassMarker receives a request from a Data Subject in relation to the Client Personal Data, ClassMarker will advise the Data Subject to submit their request to the Client, and the Client will be responsible for responding to any such request.

8. Return or Deletion of Data

- 8.1. ClassMarker shall, within sixty (60) days after request by the Client following the termination or expiration of the Agreement, delete or return all of the Client Personal Data from ClassMarker's systems.
- 8.2. Notwithstanding the foregoing, the Client understands that ClassMarker may retain the Client Personal Data if required by law, which data will remain subject to the requirements of this Addendum.

Annex 1: Technical and Organisational Security Measures

Web Traffic

- All traffic is encrypted with HTTPS
- All HTTP traffic is redirected to HTTPS
- ClassMarker IPs hidden behind Cloudflare.com services
- Firewall (*ConfigServer Firewall*)

Availability

- A High availability load balanced hosting solution is used

Server Access controls

- Only authorised ClassMarker staff have server access and authorised LiquidWeb.com staff as required
- *Strong* passwords are enforced
- root SSH access is disabled
- SSH access are on random *non* 22 ports only
- SSH access limited to approved IPs only or VPN access
- FTP/SFTP access disabled

Server Software Updates

- Security updates and patches are applied regularly.

Backups

- Data is stored securely and encrypted offsite for disaster recovery purposes

Disaster recovery

- ClassMarker has staff on call 24/7 for Disaster Recovery procedures.

Secure Data Center

- ClassMarker.com is hosted www.liquidweb.com
- Liquid web provide on-site security highlighted by motion-detecting CCTV security cameras monitoring the entirety of their data centers, man traps, employee-only access, 24/7/365 manned security, the latest security system controls as well as reinforced poured concrete walls

Annex 2: Sub-processors

Name	Address	Server Location
liquidweb.com (data hosting)	2703 Ena Dr. Lansing, MI 48917, US	United States
amazon.com (Image and Document storage)	410 Terry Ave. N Seattle, WA 98109, US	United States
cloudflare.com (CDN)	101 Townsend St San Francisco, CA 94107, US	United States
stripe.com (Payment gateway)	185 Berry Street, Suite 550 San Francisco, CA 94107, US	United States
google.com (Analytics)	1600 Amphitheatre Parkway Mountain View, CA 94043, US	United States
db-ip.com (Ip Location)	Eris Networks SAS 62 boulevard Jean Mermoz 22700 Perros-Guirec France	France
grasshopper.com (Voicemail service)	333 Summer Street, Boston, MA 02210, US	United States

Annex 3 – EU Annex

1. Definitions

- 1.1. Definitions. For purposes of this Annex 3, the terms “controller”, “processor” and “supervisory authority” have the meanings given in EU Data Protection Law; “Standard Contractual Clauses” means the Standard Contractual Clauses for Processors as approved by the European Commission under Decision 2010/87/EU in the form made accessible in the Client’s ClassMarker Workspace; and “data importer” and “data exporter” have the meanings given in the Standard Contractual Clauses.

2. Subject Matter and Details of Processing.

- 2.1. The parties acknowledge and agree that:

- (a) the subject matter of the Processing under the Terms is ClassMarker’s provision of the Services, including administering tests on behalf of the Client;
- (b) the duration of the Processing is from ClassMarker’s receipt of the Client Personal Data until deletion of all the Client Personal Data by ClassMarker in accordance with the Terms or for a period of 1-3 years since the account was last logged into by Account Administrator;
- (c) the nature and purpose of the Processing is to provide the Services including Administering tests on behalf of Clients and performing online tests and showing the test results;
- (d) the Data Subjects to whom the Processing pertains are the Client’s customers, end users or other individuals to whom the Client Personal Data pertains; and
- (e) the categories of the Client Personal Data are such categories as the Client is authorised to include into the Services under the Terms, including First name, last name, IP address, e-mail address, organisation, test location, test results Client’s customers, end users or other individuals to whom the Client Personal Data pertains.

3. Roles and Regulatory Compliance; Authorization.

- 3.1. The parties acknowledge and agree that (a) ClassMarker is a processor of Client Personal Data under EU Data Protection Law; (b) the Client is a controller of the Client Personal Data under EU Data Protection Law; and (c) each party will comply with the obligations applicable to it in such role under EU Data Protection Law with respect to the Processing of the Client Personal Data.

4. ClassMarker’s Compliance with Instructions.

- 4.1. ClassMarker will only Process Client Personal Data in accordance with the Client’s instructions as provided for in this Addendum unless EU Data Protection Law requires otherwise, in which case ClassMarker will notify the Client (unless that law prohibits ClassMarker from doing so).
- 4.2. The Client may terminate the Terms where the has been substantial non-compliance by Classmarker that has been notified to ClassMarker and remains unremedied within a reasonable time.

5. Data Security

5.1. ClassMarker Security Measures, Controls and Assistance

ClassMarker will (taking into account the nature of the Processing of the Client Personal Data and the information available to ClassMarker) provide the Client with reasonable assistance necessary for the Client to comply with its obligations in respect of the Client Personal Data under EU Data Protection Law, including Articles 32 to 34 (inclusive) of the GDPR, by (a) implementing and maintaining the Security Measures; (b) complying with the terms of Clause 6 of this Addendum; and (c) complying with this Annex 3.

5.2. ClassMarker will grant access to the Client Personal Data only to personnel who need such access for the scope of their job duties, and are subject to appropriate confidentiality obligations.

6. Audits and Reviews of Compliance.

6.1. To the extent applicable Data Protection Laws include a right for the Client to audit ClassMarker's Processing of the Client Personal Data, the Client will exercise such audit right, and ClassMarker will fulfill its corresponding obligations, as follows:

- (a) ClassMarker shall make available to the Client relevant information regarding ClassMarker's Processing of the Client Personal Data under this Addendum.
- (b) Not more than once per calendar year and at the Client's expense, the Client may audit ClassMarker's Processing of the Client Personal Data for compliance with its obligations under this Addendum by submitting reasonable requests for information, including security and audit questionnaires. ClassMarker will provide written responses to the extent the requested information is necessary to confirm ClassMarker's compliance with this Addendum.

6.2. If a third party is to conduct an audit under this Clause 6, ClassMarker may object to the auditor if the auditor is, in ClassMarker's reasonable opinion, not independent, a competitor of ClassMarker or otherwise unqualified. Such objection by ClassMarker will require the Client to appoint another auditor or conduct the audit itself.

6.3. The Client will promptly notify ClassMarker of any non-compliance discovered during the course of an audit and provide ClassMarker any audit reports generated in connection with any audit under this Clause 6, unless prohibited by EU Data Protection Law or otherwise instructed by a supervisory authority. The Client may use the audit reports only for the purposes of meeting the Client's regulatory audit requirements and confirming that ClassMarker's Processing of the Client Personal Data complies with this Addendum.

6.4. The Client shall reimburse ClassMarker for any time expended by ClassMarker or its Subprocessors in connection with any audits under this Clause 6 at a reasonable rate taking into account the expertise of the personnel involved. the Client will be responsible for any fees charged by any auditor appointed by the Client to execute any such audit. Nothing in this Addendum shall be construed to require ClassMarker to furnish more information about its Third Party Subprocessors in connection with such audits than such Third Party Subprocessors make generally available to their customers. Nothing in this Clause 6 shall require ClassMarker to breach any duties of confidentiality.

7. Impact Assessments and Consultations

7.1. ClassMarker may (taking into account the nature of the Processing and the information available to ClassMarker) reasonably assist the Client in complying with the Client's obligations under Articles 35 and 36 of the GDPR, by (a) making available documentation describing relevant aspects of ClassMarker's information security program and the security measures applied in connection therewith; and (b) providing the other information contained in

the Terms, including this Addendum.

8. **Data Transfers**

8.1. **Data Processing Facilities.** ClassMarker may, subject to Clause 8.2 to this Annex 3, store and Process the Client Personal Data in the United States or anywhere ClassMarker or its Subprocessors maintain facilities. Subject to ClassMarker's obligations in this Clause 8, the Client is responsible for ensuring that its use of the Services complies with any cross-border data transfer restrictions of EU Data Protection Law.

8.2. **Standard Contractual Clauses.**

If the Client is established in the EU and transfers the Client Personal Data out of the EU to ClassMarker in a country not deemed by the European Commission to have adequate data protection, such transfer will be governed by the Standard Contractual Clauses, the terms of which are hereby incorporated into this Addendum. In furtherance of the foregoing, the parties agree that:

- (a) for purposes of the Standard Contractual Clauses, the Client will act as the data exporter and ClassMarker will act as the data importer;
- (b) for purposes of Appendix 1 to the Standard Contractual Clauses, the Data Subjects, categories of data, and the processing operations shall be as set out in Clause 2. to this Annex 3;
- (c) for purposes of Appendix 2 to the Standard Contractual Clauses, the technical and organizational measures shall be the Security Measures;
- (d) upon data exporter's request under the Standard Contractual Clauses, data importer will provide the copies of the Subprocessor agreements that must be sent by the data importer to the data exporter pursuant to Clause 5(j) of the Standard Contractual Clauses, and data importer may remove or redact all commercial information or clauses unrelated to the Standard Contractual Clauses or their equivalent beforehand;
- (e) the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be performed in accordance with Clause 6 of this Annex 3;
- (f) Client's authorizations in Clause 5 of this Addendum (Subprocessing) will constitute the Client's prior written consent to the subcontracting by ClassMarker of the Processing of the Client Personal Data if such consent is required under Clause 5(h) of the Standard Contractual Clauses;
- (g) certification of deletion of the Client Personal Data as described in Clause 12(1) of the Standard Contractual Clauses shall be provided only upon the Client's request; and
- (h) the Standard Contractual Clauses shall automatically terminate once the Client Personal Data transfer governed thereby becomes lawful under Chapter V of the GDPR in the absence of such Standard Contractual Clauses on any other basis.

Annex 4 - California Annex

1. For purposes of this Annex B, the terms “business”, “commercial purpose”, “service provider”, “sell” and “personal information” have the meanings given in the CCPA.
2. With respect to the Client Personal Data, ClassMarker is a service provider under the CCPA.
3. ClassMarker will not (a) sell the Client Personal Data; (b) retain, use or disclose any the Client Personal Data for any purpose other than for the specific purpose of providing the Services, including retaining, using or disclosing the Client Personal Data for a commercial purpose other than providing the Services; or (c) retain, use or disclose the Client Personal Data outside of the direct business relationship between ClassMarker and the Client.
4. The parties acknowledge and agree that the Processing of the Client Personal Data authorised by the Client’s instructions described in Clause 5 of this Addendum is integral to and encompassed by ClassMarker’s provision of the Services and the direct business relationship between the parties.
5. Notwithstanding anything in the Terms entered in connection therewith, the parties acknowledge and agree that ClassMarker’s access to the Client Personal Data does not constitute part of the consideration exchanged by the parties in respect of the Terms.
6. To the extent that any Usage Data (as defined in the Terms) is considered Personal Data, ClassMarker is the business with respect to such data and shall Process such data in accordance with its Privacy Policy, which can be found at [ClassMarker.com//privacy](https://www.classmarker.com/privacy).