



## Master Services Agreement

This Master Services Agreement (“**Agreement**”) is entered into by and between CRESCENDOAI INC., a Delaware corporation (“**Crescendo**”), and the customer identified in the initial SOW entered into by the Parties (“**Customer**”). Crescendo and Customer may each be referred to herein as a “**Party**” and collectively as the “**Parties**.” The Parties enter into this Agreement as of the effective date set forth in the initial SOW (the “**Effective Date**”).

### 1. Definitions

- 1.1. Capitalized terms herein shall have the meanings set forth in this Section 1 or Exhibit 1, unless defined elsewhere.

“**Applicable Data Protection Laws**” means the privacy, data protection and data security laws and regulations of any jurisdiction directly applicable to Crescendo’s Processing of Customer Personal Data under the Agreement (including, as and to the extent applicable, the CCPA and GDPR).

“**Authorized User**” means an employee or contractor of Customer who is authorized by Customer to access and use the Service on behalf of and solely for the benefit of Customer.

“**Customer Personal Data**” means any Personal Data contained within Customer Data and Processed by Crescendo in order to perform the Service.

“**Customer Data**” means all data and content submitted, transmitted, or uploaded into the Service by Customer, Authorized Users, or End-Users

“**Documentation**” means the documentation, specifications, and policies, as may be updated from time to time, that describe the functionality, features, operation, or use of the Service and that are made available by Crescendo to Customer.

“**End-User**” means an individual end-user who is authorized by Customer to access and use the Service or to whom the Customer makes the Service available.

“**End-user Support Services**” means any support services, such as messaging support, email support, and phone support, provided by Crescendo to Customer’s End-Users as expressly identified in a SOW.

“**Output**” means all data and content generated by one or more Third-Party Services and made available via the Service in response to prompts or other input submitted by Customer, Authorized Users, or End-Users.

“**Personal Data**” means “personal data,” “personal information,” “personally identifiable information” or similar term as defined in Applicable Data Protection Laws.

“**Process**” and inflections thereof 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.

“**Professional Services**” means any professional services related to Customer’s use of the Service, such as configuration, implementation, or training services, provided by Crescendo to Customer as expressly identified in a SOW.

“**Service**” means, collectively, as identified in a SOW, Crescendo’s provision of: (a) its software-as-a-service platform to Customer; and (b) End-User Support Services. Any references to the “Service” in this Agreement includes the Documentation but excludes Third-Party Services.

“**SOW**” means each statement of work entered into and executed by each of the Parties that references this Master Services Agreement. Each SOW forms a part of, and is incorporated into, this Master Services Agreement.

“**Third-Party Services**” means any third-party provided applications, software, products, or services which Crescendo embeds in, incorporates into, or otherwise leverages in connection with its provision of, the Service.

“**Third-Party Service Provider**” means the applicable third-party provider of a Third-Party Service.

## **2. Crescendo Responsibilities**

- 2.1. **Provision of the Service.** Subject to the terms and conditions of this Agreement and during the Term, Crescendo will: (a) make the Service available to Customer for use by (i) Authorized Users solely for the internal business operations of Customer and (ii) End-Users via Customer’s website and mobile application as described in the applicable SOW; (b) provide Customer with Crescendo’s standard support services and Documentation to assist Customer in its use of the Service; (c) if purchased by Customer in a SOW, provide to Customer the Professional Services described in such SOW; (d) provide the End-User Support Services in accordance with the applicable SOW; and (e) use commercially reasonable efforts to make the Service available during the times set forth on the SOW, except for planned downtime which, to the extent exceeding fifteen (15) continuous minutes, Crescendo gives at least 48 hours’ advance notice to Customer via the Service.
- 2.2. **Updates and Upgrades.** The terms of this Agreement will also apply to updates and upgrades of the Service subsequently provided by Crescendo. Crescendo may update the functionality, user interfaces, usability, and Documentation from time to time in its sole discretion as part of its ongoing mission to improve the Service.
- 2.3. **Compliance with Laws.** Crescendo will comply with all laws applicable to Crescendo’s provisioning of the Service to its customers generally (i.e., without regard to the specific nature of the Customer Data or Customer’s or any End-User’s particular use of the Service).
- 2.4. **Customer Personal Data.** If and to the extent Applicable Data Protection Laws govern Crescendo’s Processing of Customer Personal Data in performance of the Service as a ‘processor’, ‘service provider’ or similar role defined under Applicable Data Protection Laws, the Parties agree to the terms of Crescendo’s data processing addendum (“**DPA**”), attached hereto as Exhibit 1, which shall be deemed part of and incorporated within the Agreement.

## **3. Access to and Use of the Service**

- 3.1. **Service Accounts.** Customer must identify a primary Authorized User who will be responsible for Customer’s master administrator account and for creating Authorized User accounts for the Service. Authorized User accounts may not be shared or used by more than one Authorized User. As between the Parties, Customer is responsible for (i) maintaining the confidentiality of its logins, passwords, and accounts and for all activities that occur under Authorized User accounts, (ii) securing the systems and devices Customer and Authorized Users use to access the Service, and (iii) backing up Customer Data.
- 3.2. **Customer Responsibilities.** Customer will: (a) provide all required notices and obtain any licenses, permissions, and consents required, including (without limitation) under Applicable Data Protection Laws, from all End-Users, Authorized Users and others, for the collection of Customer Data, including (without limitation) any Customer Personal Data, under this Agreement and to enable Crescendo’s access to, and Crescendo’s use and other processing of such Customer Data in connection with the Service; (b) be responsible for Authorized Users’ and End-Users’ compliance with this Agreement; (c) be responsible for the accuracy, completeness, appropriateness, and legality of Customer Data; (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and promptly notify Crescendo of any such unauthorized access or use; and (e) use the Service in accordance and compliance with all applicable laws and government regulations.
- 3.3. **End-User Terms.** Prior to each End-User’s initial access of the Service, Customer shall ensure that such End-User agrees to and is bound by an agreement (either an online click-to-accept style agreement allowing for tracking of acceptance or a written agreement) with Customer that is at least as protective of Crescendo as this Agreement and allows Customer to comply with its obligations under this Agreement (“**End-User Terms**”).
- 3.4. **Usage Restrictions.** Customer may not, and shall ensure that Authorized Users and End-Users do not, directly or indirectly: (a) make the Service or Output available to, or use the Service for the benefit of, anyone other than Customer, its Authorized Users, and the End-Users; (b) upload, post, transmit, email, convey, or otherwise make available to Crescendo or the Service any content that (i) is unlawful or tortious or (ii) that infringes, misappropriates, or otherwise violates any intellectual property, privacy, publicity, or other proprietary rights of any person; (c) sublicense, resell, time share, or similarly exploit the Service or Output; (d) upload, post, transmit, or otherwise make available any content or information designed to

interrupt, interfere with, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (e) reverse engineer, modify, adapt, or hack the Service, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks; (f) access the Service to build a competitive product or service.; or (g) provide or otherwise make available to Crescendo or the Service any Customer Data that contains any (i) Social Security numbers or other government-issued identification numbers; (ii) protected health information subject to the Health Insurance Portability and Accountability Act (HIPAA) or other information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; (iii) health insurance information; (iv) biometric information; (v) passwords to any online accounts not relevant for use of the Service; (vi) credentials to any financial accounts; (vii) Personal Data of children under 16 years of age; or (viii) data relating to criminal convictions and offenses (together, "**Restricted Data**").

- 3.5. Customer Enabled Third-Party Provided Products, Services, and Data. If Customer elects to enable or use any third-party provided products, services, or data for use with the Service: (a) any use by Customer, its Authorized Users, or End-Users of such products, services, or data is solely the responsibility of Customer and is subject to the agreements and terms with the applicable providers thereof; (b) Crescendo does not guarantee, warrant, or offer support for any such products, services, or data; (c) Customer acknowledges that the providers of such products, services, and data may have access to Customer Data in connection with the interoperation of such products, services, or data with the Service, and Crescendo will not be responsible for any use, disclosure, modification or deletion of such Customer Data.
- 3.6. Third-Party Services. The Service may include certain features, including chatbot functionality, that leverage Third-Party Services that utilize artificial intelligence technology ("**AI Features**"). Customer agrees, and shall cause End-Users to agree in the End-User Terms, that such party is solely responsible for its use of AI Features. Customer accepts that, as AI Features utilize artificial intelligence technology, such features may provide Output that is inaccurate or inappropriate as a response to the prompts or input provided. Customer agrees, and shall cause its End-Users to agree in the End-User Terms, that Crescendo shall have no responsibility or liability arising from the provision of inaccurate or inappropriate Output or any decisions made in reliance on such Output, and that such decisions are made at its own risk. Customer acknowledges and agrees that the use of Third-Party Services, including the transmission of certain Customer Data to such Third-Party Services, is an integral and necessary part of Crescendo's delivery of the Service. Accordingly, Customer agrees, and shall cause its End-Users to agree in the End-User Terms, that Crescendo shall have no responsibility or liability arising from any use, storage, data breach, or deletion of such Customer Data by Third-Party Service Providers. Crescendo cannot guarantee the continued availability of Third-Party Services and may temporarily or permanently cease providing, without entitling Customer to refund, credit, or compensation, any particular Third-Party Services if the applicable Third-Party Service Provider suspends, modifies, or alters such Third-Party Services.

#### 4. Fees

- 4.1. Fees, Invoicing, and Payment. Customer will pay all fees specified in the SOWs. Payment obligations are non-cancelable and, except as expressly set forth herein, fees paid are non-refundable. All fees will be invoiced by Crescendo in accordance with the terms set forth in the SOW. Full payment for invoices issued must be received within thirty (30) days from Customer's receipt of the invoice. If any fees owed by Customer (excluding amounts disputed in reasonable and good faith) have not been paid by the applicable due date, Crescendo reserves the right to apply a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, and be reimbursed for all expenses of collection.
- 4.2. Taxes. The fees are exclusive of, and Customer will be solely responsible for, all applicable taxes in connection with this Agreement, including any sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties (but excluding taxes based on Crescendo's net income).

#### 5. Proprietary Rights

- 5.1. Crescendo Property. Subject to the limited rights expressly granted to Customer hereunder, Crescendo reserves and retains, and as between Crescendo and Customer, Crescendo exclusively owns, all rights, title, and interest in and to the Service and the Output, including, in each case, all modifications, derivative works, upgrades, and updates thereto, and all related intellectual property rights therein. No rights are granted by Crescendo hereunder other than as expressly set forth herein. If Customer, any Authorized User, or any End-User provides Crescendo any feedback or suggestions regarding the Service, then Customer grants or, as applicable, shall cause such End-User to grant Crescendo an unlimited, irrevocable,

perpetual, sublicensable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to such party. Unless otherwise expressly set forth in a SOW, Crescendo retains exclusive ownership of all work product created by Crescendo in connection with its performance of End-User Support Services or Professional Services.

- 5.2. **Customer Data.** As between Customer and Crescendo, Customer owns all rights, title, and interest in and to the Customer Data. Customer hereby grants, and shall cause all End-Users to grant, to Crescendo a worldwide, irrevocable, non-exclusive, fully paid, royalty-free, transferable, and perpetual right and license, with rights to sublicense through multiple tiers of sublicensees, to access, use, copy, create derivative works from, distribute, perform, and display Customer Data for all lawful purposes, including to provide, maintain, train, and improve the Service, other Crescendo offerings, and Third-Party Services. Customer further grants Crescendo the right to create and/or derive from Customer Data deidentified, anonymized and/or aggregated data ("**Anonymized Data**") that does not identify Customer or any End-User and, both during and after the Term, to use, publicize, or share with third parties such Anonymized Data to improve Crescendo's products and services, including for training purposes, and for its other legitimate business purposes. Anonymized Data shall be considered Crescendo's data.

## 6. Confidentiality

- 6.1. **Definition.** "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all copies thereof. Confidential Information of Crescendo includes the Service (including its software and content), the Output, and the work product created from its performance of any Professional Services or End-User Support Services. However, Confidential Information will not include any information that: (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party. For purposes of this Agreement, Confidential Information shall not include Customer Personal Data, which is addressed separately in the DPA.
- 6.2. **Protection.** The Receiving Party will: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose not permitted by this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of the Receiving Party's employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations at least as restrictive as those herein. The Receiving Party will provide prompt written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Upon request of the Disclosing Party during the Term, the Receiving Party will promptly return, or at the Disclosing Party's option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party's possession or under its control.
- 6.3. **Compelled Disclosure.** The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the access or disclosure.

## 7. Representations, Warranties, and Disclaimers

- 7.1. **Mutual Representations.** Each Party represents that: (a) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (b) the execution, delivery, and performance of this Agreement are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.
- 7.2. **Crescendo Warranties.** Crescendo warrants that: (a) the Service will perform materially in accordance with the applicable Documentation; (b) Crescendo will not materially decrease the functionality of the Service; and (c) Crescendo will perform the End-User Support Services and the Professional Services in a professional manner. If Crescendo breaches any of the foregoing warranties in this Section, Customer's

exclusive remedy and Crescendo's entire liability will be the correction of the breach, or if Crescendo cannot substantially correct the breach within a commercially reasonable amount of time, Customer may terminate this Agreement and Crescendo will refund to Customer any prepaid fees covering the period remaining in the Term after the effective date of such termination.

- 7.3. Customer Warranty. Customer warrants that: (a) it has obtained and will maintain all rights, consents, and permissions necessary for Customer and the Authorized Users and End-Users to make available to Crescendo, and for Crescendo to use as contemplated herein, all Customer Data; and (b) the Customer Data will not infringe, misappropriate, or otherwise violate any intellectual property, privacy, publicity, or other proprietary rights of any person, or violate any applicable laws or government regulations.
- 7.4. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN SECTION 7.2, THE SERVICE AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND CRESCENDO EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CRESCENDO DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR WILL MEET CUSTOMER'S OR ANY END-USER'S REQUIREMENTS.

## **8. Indemnification**

- 8.1. Crescendo Indemnification. Crescendo will defend Customer from and against any lawsuit or proceeding brought by a third party to the extent alleging that Customer's use of the Service as permitted hereunder infringes or misappropriates such third party's intellectual property rights, and Crescendo will indemnify Customer for any damages and any reasonable attorneys' fees finally awarded against it arising from such lawsuit or proceeding; provided, however, that Crescendo will have no liability under this Section to the extent any such lawsuit or proceeding arises from: (a) Customer Data, any Third-Party Services, or any other third-party provided products, services, or data; (b) Customer's, any of its Authorized Users', or any End-Users' negligence, misconduct, or breach of this Agreement or any End-User Terms; or (c) any modification or combination of the Service that is not performed by Crescendo.
- 8.2. Customer Indemnification. Customer will defend Crescendo from and against any lawsuit or proceeding brought by a third party to the extent alleging that: (a) any Customer Data infringes, misappropriates, or otherwise violates the rights, including privacy and publicity rights, of any other party; ) Customer has breached any of its obligations under Section 3; or (c) Customer's or any Authorized User's or End-User's particular use of the Service or use or provision of any Customer Data violates any applicable laws or government regulations. Customer will indemnify Crescendo and its Affiliates for any damages and any reasonable attorneys' fees finally awarded against them arising from such lawsuit or proceeding; provided, however, that Customer will have no liability under this Section to the extent any such lawsuit or proceeding arises from Crescendo's negligence, misconduct, or breach of this Agreement.
- 8.3. Procedures. The indemnified Party will provide the indemnifying Party with: (a) prompt written notice of any matter that is subject to indemnification hereunder; (b) the right to assume the exclusive defense and control of any such matter (provided that the indemnified Party may participate in the defense at its own expense); and (c) cooperation with any reasonable requests assisting the indemnifying Party's defense of such matter. The indemnifying Party may not settle any such lawsuit or proceeding without the indemnified Party's prior written consent.

## **9. Limitation of Liability**

- 9.1. Exclusion of Certain Damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2. Liability Cap. EXCEPT FOR CUSTOMER'S LIABILITY FOR ITS PAYMENT OBLIGATIONS UNDER SECTION 4 OR A PARTY'S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, ITS BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6, OR ITS WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO CRESCENDO HEREUNDER IN THE TWELVE

(12) MONTHS PRECEDING THE DATE ON WHICH THE FIRST CLAIM GIVING RISE TO LIABILITY AROSE.

- 9.3. Scope. For the avoidance of doubt, the exclusions and limitations set forth in Section 9.1 and Section 9.2 will apply with respect to all legal theories of liability, whether in contract, tort, or otherwise. The Parties agree that the exclusions and limitations set forth in Section 9.1 and Section 9.2 allocate the risks between the Parties under this Agreement, and that they have relied on these exclusions and limitations in determining whether to enter into this Agreement.

## **10. Term, Termination, and Suspension**

- 10.1. Term of the Agreement. The term of this Agreement commences on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, will continue until the last SOW expires or is earlier terminated in accordance with this Agreement (the “**Term**”).
- 10.2. Suspension. Crescendo may suspend Customer’s or any or all Authorized Users’ access to the Service, in whole in part, if: (a) Customer or any Authorized User is using the Service in violation of this Agreement or any applicable law; (b) Customer’s or any Authorized Users’ systems or accounts have been compromised or unlawfully accessed; (c) suspension of the Service is necessary, in Crescendo’s reasonable discretion, to protect the security of the Service or the infrastructure of Crescendo or its Affiliates; (d) suspension is required by applicable law; or (e) any fees owed by Customer (excluding amounts disputed in reasonable and good faith) are thirty (30) days or more overdue.
- 10.3. Termination for Cause. Either Party may terminate this Agreement, effective thirty (30) days’ after written notice, if the other Party materially breaches this Agreement and such breach is not cured within such thirty (30)-day period. Upon any such termination for cause by Customer, Crescendo will promptly refund Customer any prepaid fees covering the period remaining in the Term after the effective date of such termination. Upon any such termination for cause by Crescendo, Customer will promptly pay Crescendo any unpaid fees covering the period remaining in the Term after the effective date of such termination.
- 10.4. Effects of Termination. In no event will any termination of this Agreement relieve Customer of its obligation to pay any fees payable to Crescendo for the period of time prior to the effective date of such termination. Upon any termination of this Agreement, Customer and all Authorized Users and End-Users must immediately cease all use of the Service and Output. Subject to the terms of this Agreement, upon any termination of this Agreement and the Disclosing Party’s request, the Receiving Party will promptly return, or at the Disclosing Party’s option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party’s possession or under its control.
- 10.5. Survival. The sections titled “Usage Restrictions,” “Customer Enabled Third-Party Provided Products, Services, and Data,” “Third-Party Services,” “Fees,” “Proprietary Rights,” “Confidentiality,” “Indemnification,” “Limitation of Liability,” “Termination for Cause,” “Effects of Termination,” “Survival,” and “General Provisions” will survive any termination of this Agreement.

## **11. General Provisions**

- 11.1. Attribution. Customer agrees that Crescendo may use Customer’s name and logo to indicate that Customer is a customer of Crescendo for the Service on Crescendo’s website, marketing materials, and in communications with existing or prospective Crescendo customers. Any such attribution will be consistent with Customer’s style guidelines or requirements as communicated to Crescendo by Customer.
- 11.2. Force Majeure. Except for payment obligations, neither Party will be liable hereunder by reason of any failure or delay in the performance of its obligations due to events beyond the reasonable control of such Party, which may include natural disasters, fires, epidemics, pandemics, riots, war, terrorism, denial of service attacks, internet outages, labor shortages, and judicial or government action.
- 11.3. Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement in its entirety, without the consent of the other Party, in connection with a merger or sale of all or substantially all of its assets. Any purported assignment in violation of this Section will be null and void. This Agreement will bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.
- 11.4. Governing Law; Venue. This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of Delaware, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The state and federal courts

located in New Castle County, Delaware, will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

- 11.5. Notices. All notices under this Agreement will be in writing addressed to the Parties at the addresses set forth on the latest SOW and will be deemed to have been duly given: (a) upon receipt if personally delivered or sent by certified or registered mail with return receipt requested; and (b) the first business day after sending by email or by next day delivery by a recognized overnight delivery service.
- 11.6. Relationship of the Parties; Third Party Beneficiaries. The Parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third party beneficiaries to this Agreement.
- 11.7. Waiver. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.
- 11.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect.
- 11.9. Entire Agreement. This Agreement, including all SOWs, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter herein. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by each of the Parties. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any SOW, the terms of the body of this Agreement will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Customer purchase order or other Customer order documentation (excluding SOWs) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void. As used herein, the words "include" and "including" shall be deemed to be followed by the words "without limitation."

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## Exhibit 1

### DATA PROCESSING ADDENDUM (“DPA”)

This Data Processing Addendum, including its Annexes, (“DPA”) sets forth the terms and conditions governing the privacy, security, and Processing of Customer Personal Data and is incorporated into and forms a part of the Agreement.

#### HOW AND WHEN THIS DPA APPLIES

- This DPA applies only if and to the extent Applicable Data Protection Laws govern Company’s Processing of Customer Personal Data in performance of the Service as a ‘processor’, ‘service provider’ or similar role defined under Applicable Data Protection Laws.
- Accordingly, this DPA does **not** apply to Crescendo’s Processing of any Personal Data for its own business/customer relationship administration purposes, its own marketing or service analytics (e.g., involving data collected by Crescendo relating to Customer’s Authorized Users’ use of the Service), its own information and systems security purposes supporting the operation of the Service, nor its own legal, regulatory or compliance purposes.

#### 1. DEFINITIONS

- 1.1 Capitalized terms in this DPA shall have the meanings set out in this Section 1 or the Agreement, unless expressly stated otherwise:
- (a) “**CCPA**” means the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 (the “CPRA”), and any binding regulations promulgated thereunder.
  - (b) “**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, including, as applicable, any “business” as that term is defined by Applicable Data Protection Laws.
  - (c) “**Data Subject**” means the identified or identifiable natural person to whom Customer Personal Data relates.
  - (d) “**Data Subject Request**” means the exercise by a Data Subject of its rights in accordance with Applicable Data Protection Laws in respect of Customer Personal Data and the Processing thereof.
  - (e) “**GDPR**” means, as and where applicable to Processing concerned: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) (“**EU GDPR**”); and/or (ii) the EU GDPR as it forms part of UK law (as amended from time to time) (“**UK GDPR**”).
  - (f) “**Personal Data Breach**” means a breach of Crescendo’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Personal Data in Crescendo’s possession, custody or control and that compromises the confidentiality, security, integrity, or accuracy of Customer Personal Data. For clarity, Personal Data Breach does not include unsuccessful attempts or activities that do not compromise the confidentiality, security, integrity, or accuracy of Customer Personal Data (such as unsuccessful log-in attempts, pings, port scans, denial of service attacks, or other network attacks on firewalls or networked systems).
  - (g) “**Personnel**” means a person’s employees, agents, consultants, contractors or other staff.
  - (h) “**Processor**” means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller, including, as applicable, any “service provider” as that term is defined by Applicable Data Protection Laws.



- (i) **“Restricted Transfer”** means the disclosure, grant of access or other transfer of Customer Personal Data to any person located in: (i) in the context of the EU GDPR, any country or territory outside the European Economic Area (the **“EEA”**), which does not benefit from an adequacy decision from the European Commission (an **“EEA Restricted Transfer”**); and (ii) in the context of the UK GDPR, any country or territory outside the UK, which does not benefit from an adequacy decision from the UK Government (a **“UK Restricted Transfer”**), which would be prohibited without a legal basis under Chapter V of the GDPR.
- (j) **“SCCs”** means the standard contractual clauses approved by the European Commission pursuant to implementing Decision (EU) 2021/914.
- (k) **“Sub-Processor”** means any third party appointed by or on behalf of Crescendo to Process Customer Personal Data.
- (l) **“Supervisory Authority”**: means any entity with the authority to enforce Applicable Data Protection Laws.
- (m) **“UK Transfer Addendum”** means the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with section 119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of the UK Mandatory Clauses included in Part 2 thereof (the **“UK Mandatory Clauses”**).

1.2 Unless otherwise defined in this DPA, all capitalized terms in this DPA shall have the meaning given to them in the Agreement.

## 2. APPLICATION OF THIS DATA PROCESSING ADDENDUM

- 2.1 Annex 2 (California Annex) applies only if and to the extent Crescendo’s Processing of Customer Personal Data on behalf of Customer under the Agreement is subject to the CCPA.
- 2.2 Annex 3 (European Annex) applies only if and to the extent Company’s Processing of Customer Personal Data under the Agreement is subject to the GDPR.

## 3. PROCESSING OF CUSTOMER PERSONAL DATA

- 3.1 The Parties acknowledge and agree that the details of Crescendo’s Processing of Customer Personal Data (including the respective roles of the Parties relating to such Processing) are as described in Annex 1 (Data Processing Details) to the DPA.
- 3.2 Crescendo shall not Process Customer Personal Data other than: (a) on Customer’s instructions; or (b) as required by applicable laws provided that, in such circumstances, Crescendo shall inform Customer in advance of the relevant legal requirement requiring such Processing if and to the extent Crescendo is: (i) required to do so by Applicable Data Protection Laws; and (ii) permitted to do so in the circumstances. Customer instructs Crescendo to Process Customer Personal Data to provide the Service to Customer and perform its obligations and exercise its rights under the Agreement. The Agreement is a complete expression of such instructions, and Customer’s additional instructions will be binding on Crescendo only pursuant to any written amendment to this DPA signed by both Parties. Where required by Applicable Data Protection Laws, if Crescendo receives an instruction from Customer that, in its reasonable opinion, infringes Applicable Data Protection Laws, Crescendo shall notify Customer.
- 3.3 The Parties acknowledge that Crescendo’s Processing of Customer Personal Data authorized by Customer’s instructions stated in this DPA is integral to the Service and the business relationship between the Parties. Access to Personal Data does not form part of the consideration exchanged between the Parties in respect of the Agreement or any other business dealings.

#### 4. CRESCENDO PERSONNEL

Crescendo shall take commercially reasonable steps designed to ascertain the reliability of any Crescendo Personnel who Process Customer Personal Data. Crescendo shall ensure its Personnel who are authorized to Process Customer Personal Data are subject to appropriate confidentiality obligations in the event that they are not otherwise subject to professional or statutory obligations of confidentiality.

#### 5. SECURITY

5.1 Crescendo shall implement and maintain technical and organizational measures in relation to Customer Personal Data designed to protect Customer Personal Data against Personal Data Breaches as described in Annex 4 (Security Measures) (the “**Security Measures**”).

5.2 Crescendo may update the Security Measures from time to time, provided the updated measures do not materially decrease the overall protection of Customer Personal Data.

#### 6. DATA SUBJECT REQUESTS

6.1 Crescendo, taking into account the nature of the Processing of Customer Personal Data, shall provide Customer with such assistance as may be reasonably necessary and technically feasible to assist Customer in fulfilling its obligations to respond to Data Subject Requests. If Crescendo receives a Data Subject Request, Customer will be responsible for responding to any such request.

6.2 Crescendo shall: (a) promptly notify Customer if it receives a Data Subject Request; and (b) not respond to any Data Subject Request, other than to advise the Data Subject to submit the request to Customer, except as required by Applicable Data Protection Laws.

#### 7. PERSONAL DATA BREACH

7.1 Crescendo shall notify Customer without undue delay upon Crescendo’s confirmation of a Personal Data Breach affecting Customer Personal Data. Crescendo shall provide Customer with information (insofar as such information is within Crescendo’s knowledge) designed to allow Customer to meet its obligations under the Applicable Data Protection Laws to report the Personal Data Breach. Crescendo’s notification of or response to a Personal Data Breach shall not be construed as Crescendo’s acknowledgement of any fault or liability with respect to the Personal Data Breach.

7.2 Customer is solely responsible for complying with applicable laws (including notification laws) and fulfilling any third-party notification obligations related to any Personal Data Breaches.

#### 8. SUB-PROCESSING

8.1 Customer generally authorizes Crescendo to appoint Sub-Processors in accordance with this Section 8. Information about Crescendo’s Sub-Processors, including their functions and locations is as shown in the Sub-Processor list shown from time to time at <https://www.crescendocx.ai/subprocessors> or any successor page (the “**Sub-Processor Site**”). Without limitation, Customer authorizes the engagement of the Sub-Processors listed on the Sub-Processor Site as of the Addendum Effective Date.

8.2 Crescendo shall give Customer prior written notice of the appointment of any proposed new or additional Sub-Processor, including reasonable details of the Processing to be undertaken by the Sub-Processor by updating Sub-Processor Site and providing a means by which Customers may subscribe to receive notice of such updates – Customer agrees that Customer is solely responsible for ensuring that it subscribes to such updates – or otherwise providing written notice. If, within fourteen (14) days of receipt of that notice, Customer notifies Crescendo in writing of any objections (on reasonable grounds related to protection of Customer Personal Data) to the

proposed appointment: (a) the Parties will work together in good faith to find a mutually agreeable alternative solution; and (b) where no such solution can be reached within fourteen (14) days from Crescendo's receipt of Customer's notice, then Customer may terminate that portion of the Service that requires use of such Sub-Processor by written notice to Crescendo as its sole and exclusive remedy.

- 8.3 If Customer does not object to Crescendo's appointment of a Sub-Processor during the objection period referred to in Section 8.2, Customer shall be deemed to have approved the engagement and ongoing use of that Sub-Processor.
- 8.4 With respect to each Sub-Processor, Crescendo shall maintain a written contract between Crescendo and the Sub-Processor that includes terms which offer at least an equivalent level of protection for Customer Personal Data as those set out in this DPA. Crescendo shall remain liable for any breach of this DPA caused by a Sub-Processor.

## 9. COMPLIANCE REVIEW

- 9.1 Crescendo shall make available to Customer on request, such information as is reasonably necessary to demonstrate its compliance with this DPA and its performance of its obligations under this DPA is consistent with Crescendo's obligations under Applicable Data Protection Laws.
- 9.2 Subject to Sections 9.3 to 9.5, in the event that Customer (acting reasonably) is able to provide documentary evidence that the information made available by Crescendo pursuant to Section 9.1 is not sufficient in the circumstances to demonstrate Crescendo's compliance with this DPA, Crescendo shall allow for and contribute to audits, including on-premise inspections of Crescendo's facilities, by Customer or an auditor mandated by Customer in relation to the Processing of Customer Personal Data by Crescendo.
- 9.3 Customer shall give Crescendo reasonable notice of any audit or inspection to be conducted under Section 9.2 (which shall in no event be less than fourteen (14) days' notice) and shall use its best efforts (and ensure that each of its mandated auditors uses its best efforts) to avoid causing any destruction, damage, injury or disruption to Crescendo's premises, equipment, Personnel, data, and business (including any interference with the confidentiality or security of the data of Crescendo's other customers or the availability of Crescendo's services to such other customers).
- 9.4 If the controls or measures to be assessed in the requested audit are assessed in a SOC 2 Type 2, ISO, NIST or similar audit report performed by a qualified third-party auditor within twelve (12) months of Customer's audit request ("**Audit Report**") and Crescendo has confirmed in writing that there have been no known material changes in the controls audited and covered by such Audit Report(s), Customer agrees to accept provision of such Audit Report(s) in lieu of requesting an audit of such controls or measures. Crescendo shall provide copies of any such Audit Reports to Customer upon request; provided that they shall constitute the confidential information of Crescendo, which Customer shall use only for the purposes of confirming compliance with the requirements of this DPA or meeting Customer's obligations under Applicable Data Protection Laws.
- 9.5 Crescendo need not give access to its premises for the purposes of such an audit or inspection: (a) where an Audit Report is accepted in lieu of such controls or measures in accordance with Section 9.4; (b) to any individual unless they produce reasonable evidence of their identity; (c) to any auditor whom Crescendo has not approved in advance (acting reasonably); (d) to any individual who has not entered into a non-disclosure agreement with Crescendo on terms acceptable to Crescendo (acting reasonably); (e) outside normal business hours at those premises; or (f) on more than one occasion in any calendar year during the term of the Agreement, except for any audits or inspections which Customer is required to carry out by a Supervisory Authority. Nothing in this DPA shall require Crescendo to furnish more information about its Sub-Processors in connection with such audits than such Sub-Processors make generally available to their customers. Nothing in this Section 9 shall be construed to obligate Crescendo to breach any duty of confidentiality.

## 10. RETURN AND DELETION

10.1 Upon expiration or earlier termination of the Agreement, Crescendo shall return and/or delete all Customer Personal Data in Crescendo's care, custody or control in accordance with Customer's instructions as to the post-termination return and deletion of Customer Personal Data expressed in the Agreement. To the extent that deletion of any Customer Personal Data contained in any back-ups maintained by or on behalf of Crescendo is not technically feasible within the timeframe set out in Customer's instructions, Crescendo shall (a) securely delete such Customer Personal Data in accordance with any relevant scheduled back-up deletion routines (e.g., those contained within Crescendo's relevant business continuity and disaster recovery procedures); and (b) pending such deletion, put such Customer Personal Data beyond use.

10.2 Notwithstanding the foregoing, Crescendo may retain Customer Personal Data where required by applicable laws, provided that Crescendo shall Process the Customer Personal Data only as necessary for the purpose(s) and duration specified in the applicable law requiring such retention.

## 11. LIABILITY

The total aggregate liability of either Party towards the other Party, howsoever arising, under or in connection with this DPA will under no circumstances exceed any limitations or caps on, and shall be subject to any exclusions of, liability and loss agreed by the Parties in the Agreement; **provided that**, nothing in this Section 11 will affect any person's liability to Data Subjects under relevant third-party beneficiary provisions of Applicable Data Protection Laws (if and as they apply).

## 12. VARIATION

Either Party agree to negotiate in good faith any amendments to this DPA that may be necessary to address the requirements of Applicable Data Protection Laws from time to time (including by varying or replacing the SCCs in the manner described in Paragraph 2.5 of Annex 3 (European Annex)) and/or to reflect any relevant changes in the Service and Processing of Customer Personal Data as part thereof.

## 13. INCORPORATION AND PRECEDENCE

In the event of any conflict or inconsistency between: (a) this DPA and the Agreement, this DPA shall prevail; or (b) any SCCs entered into pursuant to Paragraph 2 of Annex 3 (European Annex) and this DPA and/or the Agreement, the SCCs shall prevail in respect of the Restricted Transfer to which they apply.

**Annex 1**  
**Data Processing Details**

**Note:** this Annex 1 (Data Processing Details) to the DPA includes certain details of the Processing of Customer Personal Data, including as required by Article 28(3) GDPR and to populate the Appendix to the SCCs in the manner described in Paragraph 2.2(d) of Annex 3 (European Annex).

**CRESCENDO DETAILS**

<b>Name:</b>	Crescendo, Inc., a Delaware corporation.
<b>Address:</b>	201 Spear Street, Suite 1100, San Francisco, CA 94105, United States
<b>Contact Details for Data Protection:</b>	Name: Slava Zhakov Role: Chief Technology Officer Email: Slava.zhakov@crescendocx.ai
<b>Crescendo Activities:</b>	Crescendo provides a cloud-based customer services SaaS platform for businesses, including cloud-based customer support live chat platform and other customer support features. Further information can be found online at <a href="https://www.crescendocx.ai/">https://www.crescendocx.ai/</a>
<b>Role:</b>	Processor

**CUSTOMER DETAILS**

<b>Name:</b>	The entity or other person who is a counterparty to the Agreement.
<b>Address:</b>	Customer's address is the address shown in or determined by the Agreement (including in any SOW); or if no such address is contained within the Agreement, Customer's principal business trading address – unless otherwise notified to Crescendo's contact point noted above.
<b>Contact Details for Data Protection:</b>	Crescendo's primary point of contact with Customer; or any other email notified by Customer for the purpose of providing it with data protection-related communications or alerts.  (Customer agrees that it is solely responsible for ensuring that such contact details are valid and up to date and will direct relevant communications to the appropriate individual within its organization.)
<b>Customer Activities:</b>	Customer's activities relevant to this DPA are the use and receipt of the Service as part of its ongoing business operations under and in accordance with the Agreement.
<b>Role:</b>	<ul style="list-style-type: none"><li>• Controller – in respect of any Processing of Customer Personal Data in respect of which Customer is a Controller in its own right; and/or</li><li>• Processor – in respect of any Processing of Customer Personal Data in respect of which Customer is itself acting as a Processor on behalf of any other person (including its affiliates, if and where applicable).</li></ul>

## DETAILS OF PROCESSING

<b>Categories of Data Subjects:</b>	<p>Any individuals whose Personal Data is comprised within data submitted to the Service by or on behalf of Customer under the Agreement, which will depend upon the nature of the use/deployment of those Service and any systems, platforms or technologies with which Customer integrates the Service and the configuration(s) of such integration(s) – but may include:</p> <ul style="list-style-type: none"> <li>• Customer’s own employees, service providers, business partners, vendors, and any natural person(s) authorized by Customer to use the Service.</li> <li>• End-Users authorized by Customer to access and use the Service whose data is processed in any databases connected to the Service or otherwise Processed or made available to the Service.</li> </ul> <p>Where any of the above is a business or organization, it includes their Personnel or other relevant natural persons. Each category includes current, past and prospective Data Subjects.</p>
<b>Categories of Personal Data:</b>	<p>Any Personal Data comprised within data submitted to Service by or on behalf of Customer under the Agreement, which will depend upon the nature of the use/deployment of those Service and any systems, platforms or technologies with which Customer integrates the Service and the configuration(s) of such integration(s) – but may include:</p> <ul style="list-style-type: none"> <li>• <b>Personal details</b> – for example any information that identifies the Data Subject and their personal characteristics, name and username.</li> <li>• <b>Contact details</b> – for example email address, telephone details and other contact information.</li> <li>• <b>Communication details</b> – for example, communications during support services, such as messaging support, email support, and phone support.</li> <li>• <b>Technological details</b> – for example internet protocol (IP) addresses, unique identifiers and numbers (including unique identifier in tracking cookies or similar technology), pseudonymous identifiers, imprecise location data, internet / application / program activity data, and device IDs and addresses.</li> <li>• <b>Any other details</b> – for example any Personal Data relating to relevant Data Subjects included in text fields or contained in any databases submitted to the Service or otherwise Processed by Crescendo to perform the Services, or made available by or on behalf of the Customer to the Services.</li> </ul>
<b>Sensitive Categories of Data, and associated additional restrictions/safeguards:</b>	<p><u>Categories of sensitive data:</u></p> <p>None – as noted in Section 3.4 of the Agreement, Customer agrees that Restricted Data, must <b>not</b> be submitted to the Services.</p> <p><u>Additional safeguards for sensitive data:</u></p> <p>N/A</p>
<b>Frequency of transfer:</b>	<p>Ongoing – as initiated by Customer in and through its use, or use on its behalf, of the Service.</p>
<b>Nature of the Processing:</b>	<p>Processing operations required in order to provide the Service in accordance with the Agreement.</p>
<b>Purpose of the Processing:</b>	<p>Customer Personal Data will be processed as set forth in Section 3 of this DPA.</p>
<b>Duration of Processing / Retention Period:</b>	<p>For the period determined in accordance with the Agreement and DPA, including Section 10 of the DPA.</p>

<b>Transfers to (sub)-processors:</b>	Transfers to Sub-Processors are as, and for the purposes, described from time to time in the Sub-Processor Site (as may be updated from time to time in accordance with Section 8 of the DPA).
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## Annex 2

### California Annex

1. In this Annex 2, the terms “**business**,” “**business purpose**,” “**commercial purpose**,” “**consumer**,” “**sell**,” “**share**,” and “**service provider**” shall have the respective meanings given thereto in the CCPA; and “**personal information**” shall mean Customer Personal Data that constitutes “personal information” as defined in and that is subject to the CCPA.
2. The business purposes and services for which Crescendo is Processing personal information are for Crescendo to provide the services to and on behalf of Customer as set forth in the Agreement, as described in more detail in Annex 1 (Data Processing Details) to the DPA.
3. It is the Parties’ intent that with respect to any personal information, Crescendo is a service provider. Crescendo (a) acknowledges that personal information is disclosed by Customer only for limited and specific purposes described in the Agreement; (b) shall comply with applicable obligations under the CCPA and shall provide the same level of privacy protection to personal information as is required by the CCPA; (c) agrees that Customer has the right to take reasonable and appropriate steps under and subject to Section 9 (Compliance Review) of the DPA to help ensure that Crescendo’s use of personal information is consistent with Customer’s obligations under the CCPA; (d) shall notify Customer in writing of any determination made by Crescendo that it can no longer meet its obligations under the CCPA; and (e) agrees that Customer has the right, upon notice, including pursuant to the preceding clause, to take reasonable and appropriate steps to stop and remediate unauthorized use of personal information.
4. Crescendo shall not (a) sell or share any personal information; (b) retain, use or disclose any personal information for any purpose other than for the business purposes specified in the Agreement, including retaining, using, or disclosing the personal information for a commercial purpose other than the business purpose specified in the Agreement, or as otherwise permitted by CCPA; (c) retain, use or disclose the personal information outside of the direct business relationship between Crescendo and Customer; or (d) combine personal information received pursuant to the Agreement with personal information (i) received from or on behalf of another person, or (ii) collected from Crescendo’s own interaction with any consumer to whom such personal information pertains.
5. Crescendo shall implement reasonable security procedures and practices appropriate to the nature of the personal information received from, or on behalf of, Customer, in accordance with Section 5 (Security Measures) of the DPA.
6. When Crescendo engages any Sub-Processor, Crescendo shall notify Customer of such Sub-Processor engagements in accordance with Section 8 (Sub-Processing) of the DPA and that such notice shall satisfy Crescendo’s obligation under the CPRA to give notice of such engagements.
7. Crescendo agrees that Customer may conduct audits, in accordance with Section 9 of the DPA, to help ensure that Crescendo’s use of personal information is consistent with Crescendo’s obligations under the CCPA.
8. The parties acknowledge that Crescendo’s retention, use and disclosure of personal information authorized by Customer’s instructions documented in the Agreement and DPA are integral to Crescendo’s provision of the Service and the business relationship between the Parties.



## European Annex

**9. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION**

Company, taking into account the nature of the Processing and the information available to Company, shall provide reasonable assistance to Customer, at Customer's cost, with any data protection impact assessments and prior consultations with Supervisory Authorities which Customer reasonably considers to be required of it by Article 35 or Article 36 of the GDPR, in each case solely in relation to Processing of Customer Personal Data by Company.

**10. RESTRICTED TRANSFERS****10.1 Entry into Transfer Mechanisms**

- (a) EEA Restricted Transfers. To the extent that any Processing of Customer Personal Data under this DPA involves an EEA Restricted Transfer from Customer to Company, the Parties shall comply with their respective obligations set out in the SCCs, which are hereby deemed to be: (i) populated in accordance with Section 2.2 of this Annex 3 (European Annex); and (ii) entered into by the Parties and incorporated by reference into this DPA.
- (b) UK Restricted Transfers. To the extent that any Processing of Customer Personal Data under this DPA involves a UK Restricted Transfer from Customer to Company, the Parties shall comply with their respective obligations set out in the SCCs, which are hereby deemed to be: (i) varied to address the requirements of the UK GDPR in accordance with the UK Transfer Addendum and populated in accordance with Sections 2.2 and 2.3 of this Annex 3 (European Annex); and (ii) entered into by the Parties and incorporated by reference into this DPA.

**10.2 Population of SCCs**

- (a) Signature of SCCs. Where the SCCs apply in accordance with Paragraph 2.1(a) and/or Paragraph 2.1(b) of this Annex 3 (European Annex), each of the Parties is hereby deemed to have signed the SCCs at the relevant signature block in Annex I to the Appendix to the SCCs.
- (b) Modules of SCCs. As and where relevant: Module Two of the SCCs applies to any EEA Restricted Transfer involving Processing of Personal Data in respect of which Customer is a Controller in its own right; and/or Module Three of the SCCs applies to any EEA Restricted Transfer involving Processing of Personal Data in respect of which Customer is a Processor.
- (c) Population of body of SCCs. As and where applicable to the relevant Module and the Clauses thereof: (i) in Clause 7: the 'Docking Clause' is not used; (ii) in Clause 9: 'Option 2: General Written Authorisation' applies, and the minimum time period for advance notice of the addition or replacement of Sub-Processors shall be the advance notice period set out in Section 8.2 of the DPA; (iii) in Clause 11: the optional language is not used; (iv) in Clause 13: all square brackets are removed and all text therein is retained; (v) in Clause 17: 'OPTION 1' applies, and the Parties agree that the SCCs shall be governed by the law of Ireland in relation to any EEA Restricted Transfer; and (vi) in Clause 18(b): the Parties agree that any dispute arising from the SCCs in relation to any EEA Restricted Transfer shall be resolved by the courts of Ireland.
- (d) Population of Appendix to SCCs. Annex I to the Appendix to the SCCs is populated with the corresponding information detailed in Annex 1 (Data Processing Details) to the DPA, with: Customer being 'data exporter' and Company being 'data importer'; and Part C to that Annex 1 is populated with: the competent Supervisory Authority shall be determined as follows: (i) where Customer is established in an EU Member State: the competent Supervisory Authority shall be the Supervisory Authority of that EU Member State in which Customer is established; and (ii) where Customer is not established in an EU Member State, Article 3(2) of the GDPR applies and Customer has appointed an EEA Representative under Article 27 of the GDPR: the competent Supervisory Authority shall be the Supervisory Authority of the

EU Member State in which Customer's EEA Representative relevant to the Processing hereunder is based (from time-to-time), which Customer shall notify to Company in writing – Customer agrees that it is solely responsible for making such notification and its accuracy. Annex II shall be populated with reference to the information contained in or determined by Section 2.3 of the DPA (including the Security Measures).

### 10.3 UK Restricted Transfers

- (a) UK Transfer Addendum. Where relevant in accordance with Section 2.1(b) of this Annex 3 (European Annex), the SCCs apply to any UK Restricted Transfers as varied by the UK Transfer Addendum in the following manner: (i) 'Part 1 to the UK Transfer Addendum': (A) the Parties agree: Tables 1, 2 and 3 to the UK Transfer Addendum are deemed populated with the corresponding details set out in Annex 1 (Data Processing Details) to the DPA and Section 2.2 of this Annex 3 (European Annex); and (B) Table 4 to the UK Transfer Addendum is completed with 'Data Importer' only; and (ii) 'Part 2 to the UK Transfer Addendum': the Parties agree to be bound by the UK Mandatory Clauses of the UK Transfer Addendum and that the SCCs shall apply to any UK Restricted Transfers as varied in accordance with those Mandatory Clauses.
- (b) Interpretation. As permitted by section 17 of the UK Mandatory Clauses, the Parties agree to the presentation of the information required by 'Part 1: Tables' of the UK Transfer Addendum in the manner determined by 2.3(a) of this Annex 3 (European Annex); **provided that** the Parties further agree that nothing in the manner of that presentation shall operate or be construed so as to reduce the Appropriate Safeguards (as defined in section 3 of the UK Mandatory Clauses). In relation to any UK Restricted Transfer to which they apply, where the context permits and requires, any reference in the DPA to the SCCs, shall be read as a reference to those SCCs as varied in the manner set out in this Section 2.3 of this Annex 3 (European Annex).

### 10.4 Operational Clarifications

- (a) When complying with its transparency obligations under Clause 8.3 of the SCCs, Customer agrees that it shall not provide or otherwise make available, and shall take all appropriate steps to protect Company's and its licensors' trade secrets, business secrets, confidential information and/or other commercially sensitive information.
- (b) Where applicable, for the purposes of Clause 10(a) of Module Three of the SCCs, Customer acknowledges and agrees that there are no circumstances in which it would be appropriate for Company to notify any third-party Controller of any Data Subject Request and that any such notification shall be the sole responsibility of Customer.
- (c) For the purposes of Clause 15.1(a) of the SCCs, except to the extent prohibited by applicable law and/or the relevant public authority, as between the Parties, Customer agrees that it shall be solely responsible for making any notifications to relevant Data Subject(s) if and as required.
- (d) The terms and conditions of Section 8 of the DPA apply in relation to Company's appointment and use of Sub-Processors under the SCCs. Any approval by Customer of Company's appointment of a Sub-Processor that is given expressly or deemed given pursuant to that Section 8 constitutes Customer's documented instructions to effect disclosures and onward transfers to any relevant Sub-Processors if and as required under Clause 8.8 of the SCCs.
- (e) The audits described in Clauses 8.9(c) and 8.9(d) of the SCCs shall be subject to any relevant terms and conditions detailed in Section 9 of the DPA.
- (f) Certification of deletion of Personal Data as described in Clauses 8.5 and 16(d) of the SCCs shall be provided only upon Customer's written request.

- (g) In respect of any given Restricted Transfer, if requested of Customer by a Supervisory Authority, Data Subject or further Controller (where applicable) – on specific written request; accompanied by suitable supporting evidence of the relevant request), Company shall provide Customer with an executed version of the relevant set(s) of SCCs responsive to the request made of Customer (amended and populated in accordance with relevant provisions of this DPA in respect of the relevant Restricted Transfer) for countersignature by Customer, onward provision to the relevant requestor and/or storage to evidence Customer's compliance with Applicable Data Protection Laws.

#### 10.5 Adoption of new transfer mechanism

Company may on notice vary this DPA and replace the relevant SCCs with: (a) any new form of the relevant SCCs or any replacement therefor prepared and populated accordingly (e.g., standard data protection clauses adopted by the European Commission for use specifically in respect of transfers to data importers subject to Article 3(2) of the EU GDPR (if/where applicable)); or (b) another transfer mechanism other than the SCCs, which enables the lawful transfer of Customer Personal Data by Customer to Company under this DPA in compliance with Chapter V of the GDPR.

#### **Annex 4**

#### **Security Measures**

As from the Addendum Effective Date, Crescendo will implement and maintain the Security Measures as set out in this Annex 4.

1. Organizational management and dedicated staff responsible for the development, implementation and maintenance of Crescendo's information security program.
2. Audit and risk assessment procedures for the purposes of periodic review and assessment of risks to Crescendo's organization, monitoring and maintaining compliance with Crescendo's policies and procedures, and reporting the condition of its information security and compliance to internal senior management.
3. Data security controls which include at a minimum logical segregation of data, restricted (e.g. role-based) access and monitoring, and utilization of commercially available and industry standard encryption technologies for Customer Personal Data.
4. Logical access controls designed to manage electronic access to data and system functionality based on authority levels and job functions.
5. Password controls, specifically for Crescendo's internal information technology systems, designed to manage and control password strength, expiration and usage.
6. System audit or event logging and related monitoring procedures to proactively record user access and system activity.
7. Physical and environmental security of production resources relevant to the Service is maintained by Google (and their vendors) engaged by Crescendo to host those resources. Crescendo takes steps to review whether Google provides appropriate assurances and certifications that evidence such physical and environmental security – including security of data centre, server room facilities and other areas containing Customer Personal Data designed to: (a) protect information assets from unauthorized physical access; (b) manage, monitor and log movement into and out of Google's facilities; and (c) guard against environmental hazards such as heat, fire and water damage.
8. Change management procedures and tracking mechanisms designed to test, approve and monitor all material changes to Crescendo's technology and information assets.
9. Incident management procedures designed to allow Crescendo to investigate, respond to, mitigate and notify of events related to Crescendo's technology and information assets.
10. Vulnerability assessment and threat protection technologies and scheduled monitoring procedures designed to identify, assess, mitigate and protect against identified security threats, viruses and other malicious code.
11. Business resiliency/continuity and disaster recovery procedures designed to maintain service and/or recovery from foreseeable emergency situations or disasters.

Crescendo may freely update or modify these Security Measures from time to time **provided that** such updates and modifications do not materially decrease the overall security of Service and/or relevant Customer Personal Data.