CLASSMARKER DATA PROTECTION ADDENDUM

Parties

Full Name	ClassMarker Pty Ltd	Australian Company Number: 140 552 389
Short Name	ClassMarker	

and

Full Name	
Short Name	Client

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.

Client enters into this Addendum for itself and its Affiliates. The provisions of this Addendum bind Client and each of its Affiliates.

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) "**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;

(b) **"Client Personal Data"** means any Personal Data Processed by ClassMarker:

   (a) on behalf of Client or any Client Affiliate, or

   (b) otherwise Processed by ClassMarker, in each case pursuant to or in connection with instructions given by Client consistent with the Terms;

(c) "**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;

(d) "**Data Subject**" means the identified or identifiable natural person who is the subject of Personal Data.

(e) **Europe** means the European Economic Area (and its member states) and Switzerland.

(f) **European Data Protection Law** means all data protection laws and regulations applicable to Europe, including:

   (a) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (**GDPR**);

   (b) Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector; and

   (c) Applicable national implementations of a) and b),

as updated from time to time.

(g) **EU Standard Contractual Clauses or EU SCCs** means standard contractual clauses adopted on by the European Commission in its Implementing Decision (EU) 2021/91 of 4 June 2021 available here;

(h) **Other Data Protection Laws** means all data protection laws and regulations applicable to a party's processing of Client Personal Data under this Addendum (other than the European Data Protection Laws and the UK Data Protection Laws) including where applicable the:

  (a) Swiss Federal Act on Data Protection;

  (b) Californian Consumer Privacy Act ("**CCPA**");

  (c) Canadian Personal Information Protection and Electronic Documents Act;

  (d) Brazilian General Data Protection Law; and

  (e) Australian Privacy Act,

as updated 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 Client Personal Data.

(n) "**Third Party Subprocessor**" means any Subprocessor who is not an Affiliate of ClassMarker.

(o) **UK** means the United Kingdom

(p) **UK Addendum** means the International Data Transfer Addendum (version B1.0) issued by the UK Information Commissioner's Office under section 119(A) of the UK Data Protection Act 2018, as updated or amended from time to time.

(q) **UK Data Protection Laws** means the GDPR as it forms part of UK law by virtue of:

  (a) Section 3 of the UK European Union (Withdrawal) Act 2018

  (b) The UK Data Protection Act 2018; and

  (c) The UK Addendum

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

1.3. Terms used in this Addendum that are not defined in this Addendum or the Terms but are defined in the GDPR have the meaning given to them in the GDPR

2. Formation of this Addendum

2.1. This Addendum is deemed agreed by the parties, and comes into effect, on the date that this Addendum is signed by Client. If this Addendum is not signed by Client and uses or continues to use the ClassMarker Platform, Client will be deemed to have agreed to this Addendum.

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 prevail to the extent of such conflict.

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. Transfers of Personal Data

3.1. ClassMarker may process Client Personal Data in the United States and elsewhere in the world where ClassMarker and its Affiliates or its Subprocessors maintain data processing operations and for this purpose transfer Client Personal Data to those data processing operations. Such transfers will be made in compliance with all applicable laws relating to protection of Personal Data and this Addendum

3.2. To the extent that ClassMarker is a recipient of Client Personal Data protected by:

(a) European Data Protection Laws;

(b) UK Data Protection Laws; and

(c) The Swiss Federal Act on Data Protection

in a country outside of Europe and the UK, that is not recognized as providing an adequate level of protection for Personal Data (as described in laws relating to protection of personal data), the parties will in relation the processing of Client Personal Data, comply with the EU SSCs.

3.3. The EU SSCs are deemed to be incorporated into and form part of this Addendum, subject to clauses 3.4, 3.5 and 3.6.

3.4. In relation to transfers of Client Personal Data protected by European Data Protection Law:

(a) and processed in accordance with clauses 4 and 5 of this Addendum the EU SSCs will apply, completed as follows:

Module Two	Applies as applicable.
Module Three	Applies as applicable.
Clause 7	Docking clause applies.

Clause 9	Option 2 applies.
	The time period for prior notice of Sub-processor changes will be as set out in clause 5.3 of this Addendum.
Clause 11	Optional language does not apply.
Clause 17	Option 1 applies.
	EU SSCs, relating to transfers of Client Personal Data from Europe, will be governed by the law of Eire.
	EU SSCs, relating to transfers of Client Personal Data from the UK, will be governed by the law of England and Wales
Clause 18(b)	Disputes, relating to transfers of Client Personal Data from Europe, will be resolved before the courts of Eire.
	Disputes, relating to transfers of Client Personal Data from the UK, will be resolved before the courts of England.
Annex I	Deemed completed with the information set out in Annex A.
Annex II	Deemed completed with the information set out in Annex B.

(b) and processed in accordance with clauses 4 and 5 of this Addendum, the EU SSCs will apply, completed as follows:

Module One	Applies.
Clause 7	Docking clause applies.
Clause 11	Optional language does not apply.
Clause 17	Option 1 applies.
	EU SSCs relating to transfers of Client Personal Data from Europe, will be governed by law of Eire.
	EU SSCs relating to transfers of Client Personal Data from the UK, will be governed by the law of England and Wales.
Clause 18(b)	Disputes, relating to transfers of Client Personal Data from Europe, will be resolved before the courts of Eire.
	Disputes, relating to transfers of Client Personal Data from the UK, will be resolved before the courts of England.
Annex I	Deemed completed with the information set out in Annex A.
Annex II	Deemed completed with the information set out in Annex B.

3.5.   In relation to transfers of Client Personal Data protected by UK Data Protection Law, the EU SCCs:

(a) apply as completed in accordance with clauses 3.4(a) and (b); and

(b) are deemed amended as specified by the UK Addendum, which is deemed to be incorporated into and form part of this Addendum.

In addition:

(c) Tables 1 to 3 in Part 1 of the UK Addendum are deemed completed respectively with the information set out in:

      i.   Clauses 3.4(a) and (b); and

      ii.   Annex A and B;

(d) Table 4 in Part 1 of the UK Addendum is deemed completed by selecting "neither party"; and

(e) any conflict between the terms of the EU SCCs and the UK Addendum will be resolved in accordance with Section 10 and Section 11 of the UK Addendum.

3.6. In relation to transfers of Client Personal Data, protected by the Swiss Federal Act on Data Protection, the EU SCCs will apply as completed in accordance with clauses 3.4(a) and (b), with the following modifications:

(a) references in the EU SCCs to "Directive 95/46/EC" or "Regulation (EU) 2016/679" will be interpreted as references to the Swiss Federal Act on Data Protection; and

(b) references to specific Articles of "Regulation (EU) 2016/679" will be replaced with the equivalent article or section of the Swiss Federal Act on Data Protection;

(c) references to "EU", "Union", "Member State" and "Member State law":

      i.   will be interpreted as references to Switzerland and Swiss law, as the case may be; and

      ii.   will not be interpreted in such a way as to exclude Data Subjects in Switzerland from exercising their rights in their place of habitual residence in accordance with Clause 18(c) of the EU SCCs;

(d) clause 13 and Part C of Annex 1 of the EU SCCs are modified to provide that the Federal Data Protection and Information Commissioner of Switzerland (**FDPIC**) will have authority over data transfers governed by this Addendum;

(e) subject to clause 3.6(d), all other requirements of clause 13 of the EU SCCs will be observed;

(f) references to the "competent supervisory authority" and "competent courts" will be interpreted as references to the FDPIC and competent courts in Switzerland;

(g) in clause 17 of the EU SCCs, the governing law will be the laws of Switzerland; and

(h) in clause 18(b) disputes will be resolved before the applicable courts of Switzerland.

3.7. It is not the intention of either party to contradict or restrict any of the provisions set forth in the EU SCCs. If, and to the extent the EU SCCs conflict with any provision of this Addendum, the EU SCCs prevail to the extent of such conflict.

3.8. To the extent that ClassMarker is the recipient of Client Personal Data protected by the CCPA, the following provisions apply:

(a) For purposes of this clause 3.8, the terms "business", "commercial purpose", "service provider", "sell" and "personal information" have the meanings given in the CCPA.

(b) With respect to Client Personal Data, ClassMarker is a service provider under the CCPA.

(c) ClassMarker will not:

    i.   sell Client Personal Data;

    ii.   retain, use or disclose any Client Personal Data for any purpose other than for the specific purpose of providing the Services, including retaining, using or disclosing Client Personal Data for a commercial purpose other than providing the Services; or

    iii.   retain, use or disclose Client Personal Data outside of the direct business relationship between ClassMarker and Client.

(d) The parties acknowledge and agree that the Processing of Client Personal Data authorised by 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.

(e) Notwithstanding anything in the Terms entered in connection therewith, the parties acknowledge and agree that ClassMarker's access to Client Personal Data does not constitute part of the consideration exchanged by the parties in respect of the Terms.

(f) 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/online-testing/privacy.

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 Client Personal Data only in accordance with Client's instructions.

4.3. By entering into the Terms, Client instructs ClassMarker to Process Client Personal Data to provide the Services.

4.4. Client acknowledges and agrees that such instruction authorises ClassMarker to Process Client Personal 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.

4.5. In providing Client Personal Data, Client will comply with all applicable laws relating to protection of Personal Data and with this Addendum. This includes obtaining all consents necessary for ClassMarker to process such Client Personal Data pursuant to the Terms

5. Subprocessing

5.1.   Client gives to ClassMarker general authorisation for the engagement of Subprocessor(s) from the list of Subprocessors available here (**Subprocessor List**).

5.2.   ClassMarker shall:

(a) enter into a written agreement with each Subprocessor, imposing data protection obligations substantially similar to those set out in this Addendum; and

(b) remain 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**.**

5.3.   When any new Third Party Subprocessor is engaged, ClassMarker will notify Client of the engagement, by updating the Subprocessor Page and via a message through Client's ClassMarker Workspace. ClassMarker will give such notice at least ten (10) calendar days before the new Subprocessor Processes any 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 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, Client notifies ClassMarker in writing that 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, 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 Client Personal Data from Security Incidents and to preserve the security and confidentiality of Client Personal Data, in accordance with ClassMarker's security standards here ("Security Measures").

6.2.   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 Client's requirements and legal obligations under Data Protection Laws.

6.3.   Client acknowledges that the Security Measures may be updated from time to time upon reasonable notice to 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).

6.4.   Upon becoming aware of a confirmed Security Incident, ClassMarker shall notify 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 Client take to address the Security Incident. Without prejudice to ClassMarker's obligations under this Clause 6.3, Client is solely responsible for complying with Security Incident notification laws applicable to 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.

6.5.   Client agrees that, without limitation of ClassMarker's obligations under this Clause 6, 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 Client Data; (b) securing the

account authentication credentials, systems and devices Client uses to access the Services; (c) securing Client's systems and devices that it uses with the Services; and (d) maintaining its own backups of Client Data.

7.   Data Subject Requests

7.1.   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.

7.2.   ClassMarker shall upon Client's request (and at Client's expense) provide 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 Client cannot reasonably fulfill such requests independently by using the self-service functionality of the Services.

7.3.   If ClassMarker receives a request from a Data Subject in relation to Client Personal Data, ClassMarker will advise the Data Subject to submit their request to Client, and 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 Client following the termination or expiration of this Addendum, delete or return all of Client Personal Data from ClassMarker's systems.

8.2.   Notwithstanding the foregoing, Client understands that ClassMarker may retain Client Personal Data if required by law, which data will remain subject to the requirements of this Addendum.

Annex A: Details of Parties

Data Exporter [Note: Complete with details of Client in Addendum]	Data Importer
Name:	**Name**: ClassMarker Pty Ltd
Address/Email Address:	**Address/Email Address**: 22 Hickson St, Merewether NSW 2291 Australia. info@classmarker.com
Contact Person's Name, position, and contact details:	**Contact Person's Name, position, and contact details:** Trent Williams, Director info@classmarker.com
Activities relevant to the transfer: See Annex B	**Activities relevant to the transfer**: See Annex B
Role: See Annex B	**Role**: See Annex B

Annex B: Description of Processing and Transfer (as applicable)

ClassMarker's processing of Personal Data will include Client Personal Data (if any) supplied by Client from time to time for the purposes of, or otherwise in connection with, ClassMarker providing Services to Client.

Set out below are descriptions of the processing and transfers of Personal Data as contemplated as of the date of this Addendum. Such descriptions are subject to change or may be supplemented pursuant to clause1.7 of this Addendum.

Description of Processing and Transfer (as applicable) for Modules 2 and 3 of the EU SCCs

ClassMarker Platform	
Categories of data subjects	• Client's customers - where they are natural persons. • Clients' employees and contractors - where they are natural persons.
Categories of Personal Data transferred	• Full name • Email address • IP Address • Company/Organisation. • Test location • Test results
Transfer of Sensitive Data	No.
Frequency of the transfer	Continuous
Nature of processing	Providing the Services.
Purpose of Personal Data transfer	Providing the Services, including allowing the collaboration and maintaining proper access controls and user permissions.
Duration of processing	In accordance with the Terms.

Request a Signed version of this DPA from ClassMarker to Countersign and return to us.