LAUNCHMETRICS

Data Processing Addendum

This Data Processing Addendum ("**Addendum**") forms part of the name of the agree ("**Principal Agreement**") between: (i) ("**Vendor**") acting on its own behalf and as agent for each Vendor Affiliate; and (ii) Fashion GPS Inc. DBA Launchmetrics ("**Company**") acting on its own behalf and as agent for each Company Affiliate.

The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Principal Agreement. Except as modified below, the terms of the Principal Agreement shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement. Except where the context requires otherwise, references in this Addendum to the Principal Agreement are to the Principal Agreement as amended by, and including, this Addendum.

How to execute this Addendum:

1. This Addendum consists of two parts: the main body of the Addendum, and Annexes 1, 2, 3 (including Appendices 1 to 2), 4 and 5.

2. This Addendum has been pre-signed on behalf of Company.

3. The Standard Contractual Clauses in Annex 3 have been presigned by Company as the data exporter.

4. To complete this Addendum, Vendor must:

    a. Complete the information in the signature box and sign on Page 9.

    b. Complete the information in the signature box and sign on Pages 20 and provide the required information on Pages 21, 22, 23 and 24.

    c. Send the completed and signed Addendum to Company by email to legal@launchmetrics.com. Upon receipt of the validly completed Addendum by Company at this email address, this Addendum will become legally binding.

1. Additional Definitions

1.1 In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

    1.1.1 "**Applicable Laws**" means (a) European Union or Member State laws with respect to any Company Personal Data in respect of which any Company Group Member is subject to "**Data Protection Laws**" (EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country**)** and "**EU Data Protection Laws**" (EU Directive 95/46/EC as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the EU General Data Protection Regulation 2016/679 ("**GDPR**") and laws implementing or supplementing the GDPR; and EU Directive 2002/58/EC ("**e-directive**") as amended, replaced or superseded from time to time); and (b) any other applicable law with respect to any Company Personal Data in respect of which any Company Group Member is subject.

    1.1.1 "**Authorized Persons**" means (i) "**Authorized Employees**" (Vendor's employees who have a need to know or otherwise access Company Personal Data to enable Vendor to perform its obligations under the Principal Agreement); and (ii) Vendor's subcontractors, agents, resellers, and auditors who have a need to know or otherwise access Company Personal Data to enable Vendor to comply with the Principal Agreement, and who are bound in writing by confidentiality obligations sufficient to protect Company Personal Data in accordance with the terms hereof.

1.1.2 **"Company Affiliate"** means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Company, 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;

1.1.3 **"Company Group Member"** means Company or any Company Affiliate;

1.1.4 **"Company Personal Data"** means any Personal Data Processed by a Contracted Processor on behalf of a Company Group Member pursuant to or in connection with the Principal Agreement;

1.1.5 **"Contracted Processor"** means Vendor or a Subprocessor;

1.1.6 **"Delete"** means to remove or obliterate Personal Data such that it cannot be recovered or reconstructed;

1.1.7 **"EEA"** means the European Economic Area;

1.1.8 **"Services"** means the services and other activities to be supplied to or carried out by or on behalf of Vendor for Company Group Members pursuant to the Principal Agreement;

1.1.9 **"Standard Contractual Clauses"** means the contractual clauses set out in Annex 2;

1.1.10 **"Subprocessor"** means any person (including any third party and any Vendor Affiliate, but excluding an employee of Vendor or any of its sub-contractors) appointed by or on behalf of Vendor or any Vendor Affiliate to Process Personal Data on behalf of any Company Group Member in connection with the Principal Agreement; and

1.1.11 **"Vendor"** includes **"Vendor Affiliate"** which means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Vendor, 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.

1.2 The terms, **"Commission"**, **" Controller"**, "Processor", **"Data Subject"**, **"Member State"**, **"Personal Data"**, **"Personal Data Breach"**, **"Processing"** and **"Supervisory Authority"** shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

1.3 The parties acknowledge that for the purposes of the EU Data Protection Laws, Company (or, if applicable, the relevant Company Affiliate) is the Controller and Vendor (or, if applicable, the relevant Vendor Affiliate) is the Processor.

1.4 The word **"include"** shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

2. **Authority**

Vendor warrants and represents that, before any Vendor Affiliate Processes any Company Personal Data on behalf of any Company Group Member, Vendor's entry into this Addendum

as agent for and on behalf of that Vendor Affiliate will have been duly and effectively authorised (or subsequently ratified) by that Vendor Affiliate.

3.   Standard of Care

3.1.   Vendor agrees to comply with this Addendum in its collection, receipt, transmission, accessing, storage, disposal, use, disclosure, or other operation or set of operations performed upon Company Personal Data (collectively, "Processing"). Vendor shall be responsible for any Processing, whether authorized or unauthorized, of Company Personal Data while such Company Personal Data is under Vendor's or Vendor Affiliate's control or in its possession.

3.2.   Without limiting the generality of the foregoing, Vendor shall: (i) maintain all Company Personal Data in strict confidence, through implementation of appropriate Security Measures (including those set out in Annex 2 to this Addendum); (ii) use and disclose Company Personal Data solely and exclusively for the purposes for which the Company Personal Data, or access thereto, is provided, and not sell, rent, transfer, distribute, make available or otherwise Process Company Personal Data for Vendor's or Vendor Affiliate's own purposes or for the benefit of anyone other than Company, in each case, without Company's prior express written consent; and (iii) not, directly or indirectly, disclose Company Personal Data to any person other than Authorized Employees without Company's prior express written consent. Vendor shall be responsible for the acts and omissions of Authorized Persons and any other of its subcontractors, independent contractors, and other service providers, as if those actions were its own.

4.   Processing of Company Personal Data

4.1   Vendor and each Vendor Affiliate shall:

4.1.1   comply with all applicable requirements of the Data Protection Laws in the Processing of Company Personal Data; and

4.1.2   not access or use Company Personal Data except as necessary to maintain or provide the Services for which the Principal Agreement was signed, or as necessary to comply with Applicable Laws.

4.1.3   not Process, Company Personal Data other than on the relevant Company Group Member's written instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case Vendor or the relevant Vendor Affiliate shall to the extent permitted by Applicable Laws inform the relevant Company Group Member of that legal requirement before the relevant Processing of that Personal Data,

4.2   Company is entitled to terminate this Addendum and the Principal Agreement if Vendor declines to follow instructions requested by Customer that are outside the scope of, or changed from, those give or agreed to be given in this Addendum.

4.3   Each Company Group Member:

4.3.1   instructs Vendor and each Vendor Affiliate (and authorises Vendor and each Vendor Affiliate to instruct each Subprocessor) to:

4.3.1.1   Process Company Personal Data in accordance with this Addendum and the Principal Agreement; and

4.3.1.2   subject to section 10 of this Addendum, transfer Company Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the Principal Agreement; and

4.3.2   warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 4.3.1 on behalf of each relevant Company Affiliate.

4.4   Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Company Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Company may make reasonable amendments to Annex 1 by written notice to Vendor from time to time as Company reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this section 4.3) confers any right or imposes any obligation on any party to this Addendum.

5.   Security

5.1   Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Vendor and each Vendor Affiliate shall in relation to the Company Personal Data implement appropriate technical and organizational measures [reviewed and approved by Company] to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

5.2   In assessing the appropriate level of security, Vendor and each Vendor Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

6.   Personal Data Breach Procedures

6.1   In the event of a Personal Data Breach, Vendor shall:

6.1.1   notify Company without undue delay upon Vendor or any Subprocessor becoming aware of a Personal Data Breach affecting Company Personal Data, but in any event, within forty-eight (48) hours after becoming aware of a Personal Data Breach, of any actual, alleged, or potential unauthorised disclosure, loss, destruction, compromise, damage, alteration, or theft of Company Personal Data (including unauthorised access to or use of Company's systems or data, improper handling or disposal of data, theft of information or technology assets, and/or the inadvertent or intentional disclosure of Company Personal Data). It is Vendor's sole responsibility to ensure Vendor's administrators maintain accurate contact information;

6.1.2   take reasonable steps to mitigate the effects and to minimize any damage resulting from the Personal Data Breach;

6.1.3   provide Company with sufficient information to allow each Company Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws;

6.1.4   update Company of any additional discoveries regarding the Personal Data Breach within a reasonable period of time;

6.1.5   co-operate with Company and each Company Group Member and take such reasonable commercial steps as are directed by Company to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

7. Subprocessing

7.1   Vendor and each Vendor Affiliate shall not engage Subprocessors acting as a Company's Personal Data processor without prior written authorization of the Company.

7.2   Vendor and each Vendor Affiliate may continue to use those Subprocessors already engaged by Vendor or any Vendor Affiliate as at the date of this Addendum, subject to Vendor and each Vendor Affiliate in each case as soon as practicable meeting the obligations set out in section 7.4.

7.3   Vendor shall give Company prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within 30 days of receipt of that notice, Company notifies Vendor in writing of any objections (on reasonable grounds) to the proposed appointment:

7.3.1   Vendor shall work with Company in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Subprocessor; and

7.3.2   where such a change cannot be made within 30 days from Vendor's receipt of Company's notice, notwithstanding anything in the Principal Agreement, Company may by written notice to Vendor with immediate effect terminate the Principal Agreement to the extent that it relates to the Services which require the use of the proposed Subprocessor.

7.4   With respect to each Subprocessor, Vendor or the relevant Vendor Affiliate shall:

7.4.1   before the Subprocessor first Processes Company Personal Data (or, where relevant, in accordance with section 7.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Company Personal Data required by the Principal Agreement;

7.4.2   ensure that the arrangement between on the one hand (a) Vendor, or (b) the relevant Vendor Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand, the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Company Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;

7.4.3   provide to Company for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Company may request from time to time.

7.4.4   maintain an up-to-date list of Subprocessors (see Annex 4) specifying (i) their name and details, as well as (ii) the nature of the tasks entrusted to them, (iii) the location of the Processing and (iv) the dates of previous audits.

7.5   Vendor and each Vendor Affiliate shall ensure that each Subprocessor performs the obligations under sections 4.1, 5, 6.1.5, 8.1, 9, 10, 11 and 12.1, as they apply to Processing of Company Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place

of Vendor.

Vendor will remain responsible for its compliance with the obligations of this Addendum and for any acts or omissions of the Subprocessor that cause Vendor to breach any of Vendor's obligations under this Addendum.

8. Data Subject Rights

8.1   Taking into account the nature of the Processing, Vendor and each Vendor Affiliate shall assist each Company Group Member by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Company Group Members' obligations, as reasonably understood by Company, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

8.2   Vendor shall:

8.2.1   promptly notify Company if any Contracted Processor receives a request from a Data Subject under any Data Protection Law to exercise their rights in respect of Company Personal Data;

8.2.2   assist Company, at the Company's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and

8.2.3   ensure that the Contracted Processor does not respond to that request except on the documented instructions of Company or the relevant Company Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case Vendor shall to the extent permitted by Applicable Laws inform Company of that legal requirement before the Contracted Processor responds to the request.

9. Vendor and Vendor Affiliate Authorized Employees

9.1   Vendor and each Vendor Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

10. Data Transfers

10.1   **Transfer Mechanisms.** Vendor shall not transfer any Personal Data outside the EEA unless the prior written consent of Company has been obtained and the following conditions are fulfilled:

10.1.1   Vendor has provided appropriate safeguards (such as binding corporate rules, the Model Clauses, the Privacy Shield, etc.) in relation to the transfer as per Article 46 GDPR;

10.1.2   the Data Subject has enforceable rights and effective legal remedies;

10.1.3   Vendor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

10.1.4   Vendor complies with reasonable instructions notified to it in advance by the Company with respect to the processing of the Personal Data.

10.2   **Application of Standard Contractual Clauses.** Subject to the Vendor using Binding Corporate Rules for Processors or an alternative method which complies with the requirements of the GDPR to lawfully transfer the Customer Personal Data outside the EEA, the Standard Contractual Clauses (attached in Annex 3) will apply to Company Personal Data that is transferred outside the EEA by Vendor, either directly or via onward transfer, to any country not recognized by the European Commission as providing an adequate level of protection for personal (as described in the GDPR).

10.3   **Transfer for Subprocessors.** If Vendor and each Vendor Affiliate engage a new Subprocessor in accordance with Section 7 that is importing Company Personal Data, Vendor will procure such Subprocessor its own Data Processing Agreement and when applicable with Standard Contractual Clauses.

11.   Deletion or return of Company Personal Data

11.1   At any time during the term of the Principal Agreement, at Company's written request or upon the termination or expiration (the "**Cessation Date**"), of the Principal Agreement for any reason, Vendor and each Vendor Affiliate shall, and shall instruct all Authorized Persons to, promptly and securely return to Company or Delete all copies of Company Personal Data and certify in writing to Company that such actions have been taken securely. Vendor shall comply with all directions provided by Company with respect to the return or disposal of Company Personal Data. Vendor and each Vendor Affiliate shall comply with any such written request within thirty (30) days of the written request or the Cessation Date.

11.2   Each Contracted Processor may retain Company Personal Data only to the extent and for such period as required by Applicable Laws and always provided that Vendor and each Vendor Affiliate shall ensure the confidentiality of all such Company Personal Data and shall ensure that such Company Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

12.   Audit rights

12.1   Vendor and each Vendor Affiliate shall maintain complete and accurate records to demonstrate compliance with this Addendum and make available to each Company Group Member on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Company Group Member or an auditor mandated by any Company Group Member in relation to the Processing of the Company Personal Data by the Contracted Processors. Company's duly authorized representatives shall have access during regular business hours upon reasonable notice, and shall make (and ensure that each of its mandated auditors makes) reasonable endeavors to avoid causing (or, if it cannot avoid, to minimize) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises to examine, review, audit and copy all of Vendor's books and records pertaining to Vendor's provision of Services. These records shall be retained by Vendor for a period of three (3) years after the termination or expiration of the Principal Agreement.

12.2   If any such audit discloses a breach by Vendor or the relevant Vendor Affiliate of this agreement, Vendor shall reimburse the Company's reasonable costs and expenses incurred in connection with such audit.

13. General Terms

13.1 **Governing law and jurisdiction.** Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:

13.1.1 the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Principal Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

13.1.2 this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Principal Agreement.

13.2 **Order of precedence.** Nothing in this Addendum reduces Vendor's or any Vendor Affiliate's obligations under the Principal Agreement in relation to the protection of Company Personal Data or permits Vendor or any Vendor Affiliate to Process (or permit the Processing of) Company Personal Data in a manner which is prohibited by the Principal Agreement. Subject to section 13.4, in the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

13.3 Subject to section 13.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Principal Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

13.4 **Changes in Data Protection Laws.** Company may:

13.4.1 by at least 30 (thirty) calendar days' written notice to Vendor from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under section 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and

13.4.2 propose any other variations to this Addendum which Company reasonably considers to be necessary to address the requirements of any Data Protection Law.

13.5 **Severability.** Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Principal Agreement with effect from the date first set out above.

Fashion GPS Inc. DBA Launchmetrics

Signature _____

Name _____

Title _____

Date Signed _____

Signature _____

Name _____

Title _____

Date Signed _____

ANNEX 1: DETAILS OF PROCESSING OF COMPANY PERSONAL DATA

This Annex 1 includes certain details of the Processing of Company Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Company Personal Data :

The subject matter and duration of the Processing of the Company Personal Data are set out in the Principal Agreement and this Addendum.

The nature and purpose of the Processing of Company Personal Data :

The types of Company Personal Data to be Processed :

The categories of Data Subject to whom the Company Personal Data relates :

The obligations and rights of Company and Company Affiliates :

The obligations and rights of Company and Company Affiliates are set out in the Principal Agreement and this Addendum.

ANNEX 2: DETAILS OF VENDOR SECURITY MEASURES

ANNEX 3: STANDARD CONTRACTUAL CLAUSES

These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law (equivalent UK authority on or after Brexit).

If these Clauses are not governed by the law of a Member State, the terms "Member State" and "State" are replaced, throughout, by the word "jurisdiction".

Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation:

Address:

> Fashion GPS Inc. DBA Launchmetrics and its affiliates and subsidiaries

> (the data **exporter**)

And

> The entity identified as "Vendor" in the Addendum
> (the data **importer**)

> each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Background

The data exporter has entered into a data processing addendum ("DPA") with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such

Services, including the processing of personal data incidental thereto, subject to the data importer's execution of, and compliance with, the terms of these Clauses.

Clause 1

Definitions

For the purposes of the Clauses:

(a)   *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; [*If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words "except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data" are added.*]

(b)   '*the data exporter*' means the controller who transfers the personal data;

(c)   '*the data importer*' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; [*If these Clauses are not governed by the law of a Member State, the words "and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC" are deleted.*]

(d)   '*the subprocessor*' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e)   '*the applicable data protection law*' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f)   '*technical and organisational security measures*' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c)   that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d)   that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e)   that it will ensure compliance with the security measures;

(f)   that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC; [*If these Clauses are not governed by the law of a Member State, the words "within the meaning of Directive 95/46/EC" are deleted.*]

(g)   to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h)   to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i)   that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j)   that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a)   to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b)   that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which

case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c)   that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d)   that it will promptly notify the data exporter about:

      (i)   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

      (ii)   any accidental or unauthorised access, and

      (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e)   to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f)   at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g)   to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h)   that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i)   that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j)   to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1.   The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2.   If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become

insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3.   If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1.   The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a)   to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b)   to refer the dispute to the courts in the Member State in which the data exporter is established.

2.   The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1.   The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2.   The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3.   The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of

the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1.   The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2.   The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:
Name: Fashion GPS Inc. DBA Launchmetrics
Position:
Address:
Other information necessary in order for the contract to be binding (if any):

Signature…………………………………….

On behalf of the data importer:

Name (written out in full):
Position:
Address:
Other information necessary in order for the contract to be binding (if any):

Signature…………………………………….

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter
The data exporter is: Fashion GPS Inc. DBA Launchmetrics

Data importer
The data importer is:

Data subjects
The personal data transferred concern the following categories of data subjects:

Categories of data
The personal data transferred concern the following categories of data:

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data:

Processing operations

The personal data transferred will be subject to the following basic processing activities:

DATA EXPORTER

Name:Fashion GPS Inc. DBA Launchmetrics

Authorised Signature ……………………

DATA IMPORTER
[*Populated with details of, and deemed to be signed on behalf of, the data importer:*]

Name:…………………………….

Authorised Signature ……………………

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

ANNEX 4: LIST OF SUBPROCESSORS

ANNEX 5: LIST OF MANDATED AUDITORS