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## **Data Processing Addendum**

**THIS ADDENDUM** is deemed to be effective on the date of execution of the Merchant Services Agreement (the “**Agreement**”) between the **Merchant** (as defined therein) and **Credorax** (as defined therein), hereinafter collectively referred to as the "Parties"

Whereas, the Parties have entered into the Agreement whereby Credorax shall provide the Merchant with certain Services (as defined therein); and

Whereas, in the course of providing the Service Credorax shall receive or have access to personal data collected by or on behalf of the Merchant; and

Whereas, in accordance with the requirements of applicable Data Protection Laws, the Parties wish to set forth the terms governing the processing by Credorax of such personal data; and

Whereas, this Addendum will be effective, and shall replace any other addendums previously signed by both Parties prior to this Addendum; and

This Addendum defines the data processing relationship between the Parties and sets out the additional terms, requirements and conditions on which Credorax will process personal data for and on behalf of the Merchant when providing services under the Agreement. This Addendum contains the mandatory clauses required by Article 28(3) of the GDPR for contracts between controllers and processors

Now therefore, the Parties have agreed as follows:

## **Definitions**

The following capitalized terms shall bear the meaning ascribed thereto. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

"Addendum" shall mean this addendum in its entirety, including all schedules and annexes thereto, as the same may be amended from time to time.

“Account Data Compromise” or “ADC” definition introduced by the Card Schemes, which means an occurrence that results, directly or indirectly, in the unauthorized access to or disclosure of account data

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of the unauthorized manipulation of account data controls, such as account usage and spending limits.  
ADC does not include Personal Data.

"Controller" shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by EU or Member State laws, the Controller (or the criteria for nominating the Controller) may be designated by those laws.

"Data Breach" shall mean breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed.

"Data Protection Laws" shall mean (i) all Maltese Data Protection Laws; (ii) any other EU legislation relating to personal data; and (iii) all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including without limitation, the privacy of electronic communications); and (iv) the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party; in each case as may be amended, supplemented or replaced from time to time.

"Data Subject" shall have the same meaning as that ascribed to it under Data Protection Laws.

"GDPR" shall mean General Data Protection Regulation (EU) 2016/679 of the European Parliament of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data as in force as amended, replaced or superseded from time to time, including any laws implementing or supplementing GDPR.

"Maltese Data Protection Laws" means all applicable data protection on privacy legislation in force from time to time in Malta, including (i) the Data Protection Act, Chapter 586 of the Laws of Malta; (ii) the GDPR; (iii) all national implementing laws, regulations and secondary legislation applicable in Malta which relate to the processing of personal data, in each case as may be amended, supplemented or replaced from time to time.

"Merchant Data" shall mean any Personal Data provided to Credorax by the Merchant or on its behalf or to which Credorax obtains access solely as a result of, or in connection with, the provision of the Services.

"Personal Data" shall have the meaning set out in the GDPR.

“Potential Account Data Compromise” or “Potential ADC” definition introduced by the Card Schemes, which means an occurrence that could result, directly or indirectly, in the unauthorized access to or disclosure of account data or the unauthorized manipulation of account data controls, such as account usage and spending limits. Potential ADC does not include Personal Data.

“Privacy and Data Protection Requirements” shall refer Data Protection Laws relating to the processing of personal data and privacy in any relevant jurisdiction, and any orders, guidelines and instructions issued under the relevant Supervisory Authority in Malta or the European Union.

“Processor” shall mean a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Merchant.

“Services” means the services as outlined and indicated in the Agreement.

Standard Contractual Clauses (SCC) shall mean the European Commission's Standard Contractual Clauses for the transfer of personal data from the European Union to processors established in third countries, as set out in the Annex to Commission Decision 2010/87/EU, and as may be amended or replaced by the European Commission from time to time.

“Sub-Processor” shall mean a natural or legal person, public authority, agency or any other body contracted by the Processor to process Personal Data for the purpose of carrying out a specific processing activity on behalf of the Controller in connection with the Services.

“Supervisory Authority” means the relevant supervisory authority established by a Member State pursuant to Article 51 of GDPR.

## **General**

1. Both Parties warrant that they will comply with their respective obligations under Data Protection Laws and the terms of this Addendum. As between the Parties, it is hereby agreed that with regard to Merchant Data for the purposes of all Data Protection Laws, the Merchant shall act as Controller and Credorax shall act as Processor.
2. Subject to the provisions of the Agreement and any instruction that may be given from time to time in writing by the Merchant, Credorax is hereby appointed by the Merchant to process Merchant Data on behalf of the Merchant solely for the purpose of performing and fulfilling the Services as

outlined in the Agreement (which, by and large, consists of the provision of acquiring services, which include, but is not limited to, the processing and settlement of payment card Transactions according to regulatory and Card Scheme standards and requirements).

3. The Parties therefore acknowledge and agree that subject to clause 9 of the Agreement (Data Protection and Privacy) the Merchant at all times, retains control of the Merchant Data and as the Controller, remains solely responsible for ensuring and maintaining compliance with any and all obligations which may be imposed upon Controllers of personal data under Data Protection Laws. This includes providing any required notices and mandatory information, and obtaining any required consents from data subjects, and for any and all instructions which it may give from time to time.

### **Merchant Obligations**

The Merchant warrants and represents to Credorax that:

1. it shall be exclusively responsible for ensuring that it complies at all times with any and all obligations which it may have as the Controller of the relevant data under this Addendum and under the Data Protection Laws, and that all Personal and Merchant Data which it processes or gives access to;
2. all Merchant Data is obtained in accordance with Data Protection Laws and in particular, that where it has relied on consent as a means of processing personal data, it has obtained valid consent of the Data Subjects as required in terms of Data Protection Laws;
3. all instructions given to Credorax in terms of this Addendum and the Agreement shall at all times be in accordance with Data Protection Laws, and that the compliance, performance or execution of any and all such instructions will not, at any point in time, cause Credorax to be in breach of any Data Protection Laws;
4. Merchant hereby grants its express consent to Credorax communicating Transaction data to a payment scheme, issuing bank or other participating bank or a regulator, provided it does so in accordance with applicable law and/or as required for the performance of the Agreement;
5. it has provided the Data Subjects with all necessary information about the Processing of the Personal Data in the context of the Agreement as required by Data Protection Laws, including, without limitation, information relating to the appointment of Processors transferring to, and processing personal information by, third parties which may retain or use the personal information for compliance with legal and regulatory requirements;

6. it shall maintain all necessary policies and processes to authorise the access and processing of the relevant data in the full manner contemplated by this Addendum and the Agreement;
7. the Merchant acknowledges that as Controller, it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to Credorax to process Merchant Data for the purposes of carrying out the Services as set out in the Agreement and that it shall stipulate what this lawful process is to the Processor;
8. in case of a Data Breach affecting Merchant Data, Merchant shall notify Credorax immediately of becoming aware of such Breach, including the details of the Data Breach and the affected records. Merchant understands and agrees that Credorax is required to inform the Card Schemes of any Data Breach that is reported to Credorax by Merchant. Merchant shall also provide Credorax any information which may be requested by Credorax, in accordance with the Card Scheme requirements.
9. in case of an ADC event or a Potential ADC event in or affecting any system or environment of the Merchant or Credorax, Merchant shall notify Credorax immediately of becoming aware of such event, including the details and the affected system or environment. Merchant understands and agrees that Credorax is required to inform the Card Schemes of any ADC event or Potential ADC event that is reported to Credorax by Merchant. Merchant shall also provide Credorax with the information which may be requested by Credorax, in accordance with the Card Schemes requirements.

### **Credorax Obligations**

1. Credorax shall only carry out processing of Personal Data in accordance with the written instructions provided by the Merchant and only process same for the performance of the Services, including where relevant for transfers of EEA resident Personal Data outside the EEA or to an international organisation (unless Credorax is otherwise required to process Controller Data by European Union, Member State and/or Maltese law or any regulatory bodies to which Credorax is subject, in which case Credorax shall inform the Controller of that legal requirement unless prohibited by that law on grounds of public interest), and shall immediately inform the Merchant if, in the opinion of Credorax, any instruction given by the Merchant to Credorax infringes Data Protection Laws.
2. Credorax shall comply with its obligations as Processor under the relevant Data Protection Laws.
3. Credorax shall reasonably cooperate with Merchant at Merchant's cost, with fulfilling Merchant's obligations as Controller in respect of Data Subject rights under the Data Protection Laws.

4. Credorax shall take all technical and security measures required pursuant to Article 32 of the GDPR.
5. Where relevant for the processing of Personal Data provided by the Merchant and taking into account the nature of the processing and the information available to Credorax, use all measures to assist the Merchant in ensuring compliance with the obligations of the Merchant to; (i) keep Personal Data secure at all times; (ii) implement and maintain appropriate technical and organizational measures to protect against unauthorized or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of the Personal Data and against accidental or unlawful loss, destruction alteration, disclosure or damage to the Personal data, including but not limited to, the security measures as set out in the Agreement. Credorax shall document such measures in writing and periodically review them to ensure they remain current and complete.
6. In case of a Data Breach, Credorax shall within thirty-six (36) hours of becoming aware, inform the Merchant of any breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access or any other form of unauthorized processing, or of any disruptions endangering the security of the Data Subject's Personal Data, or Merchant Data transmitted, stored or otherwise processed. Credorax accepts and acknowledges that the Merchant may take steps and measures to remedy a breach by Credorax under Data Protection Laws, including but not limited to any communications with a Supervisory Authority, unless otherwise required by law.
7. On expiry or termination of the Agreement, Credorax shall cease to use Merchant Data and shall arrange for its safe return or destruction as shall be required by the Merchant (unless European Union, Member State and/or Maltese Law requires storage of any Merchant Data, or an exemption under GDPR applies).
8. Credorax shall make available to the Merchant all information necessary to demonstrate compliance with the obligations under Data Protection Laws and allow for and contribute to audits, including inspections, conducted by the Merchant or another auditor mandated by the Merchant.

#### **Audit Rights**

1. Upon the Merchant's reasonable prior written request, once a year, Credorax agrees to provide the Merchant with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) which will enable it to

verify and monitor Credorax's compliance with its data protection and security obligations under the terms of this Addendum. Credorax shall provide such information within sixty (60) days of receipt of such request, and notify the Merchant of the person within Credorax's organization who will act as the point of contact for provision of the information required by the Merchant. Any costs incurred with respect to an audit will be borne by the Merchant, depending on the effort estimated by Credorax.

2. Where, in the reasonable opinion of the Merchant, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR, the Merchant will be entitled, upon providing thirty (30) days prior written notice to Credorax and upon reasonable grounds, to conduct an on-site audit of Credorax's premises used in connection with the Service, solely to confirm compliance with its data protection and security obligations under this Addendum. Any such audit will be limited in time and shall last no longer than three (3) business days, during business hours.
3. Any audit carried out by the Merchant will be conducted in a manner that does not disrupt, delay or interfere with Credorax's performance of its business. The Merchant shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the Agreement. Any costs incurred with respect to such an audit will be borne by the Merchant.
4. Any audit right granted to Credorax under the Agreement shall remain in full force and effect. In the event that there is no audit right in favour of Credorax or the audit right contained in the Agreement in favour of Credorax is not sufficient to enable it to verify and monitor the Merchant's compliance with its data protection and security obligations under the terms of this Addendum, then, Credorax shall be entitled to carry out an audit of the Merchant on reciprocal terms as those set out in this clause.

#### **Use of Sub-Processors**

1. The Merchant hereby authorises and grants Credorax a general written authorization to appoint (and permit each Sub-Processor appointed in accordance with this provision to appoint) Sub-Processors in accordance with this provision and any restrictions contained in the Agreement.
2. Credorax shall notify the Merchant of any changes concerning the addition or replacement of Sub-Processors and allow Merchant fifteen (15) days to object such changes. Should Merchant object Credorax's changes, it shall allow Credorax to address Merchant's concerns and mitigate them. Where Merchant's objection persists, it may terminate its Agreement with Credorax.

3. Credorax warrants and undertakes to be liable to the Merchant in the event that the Sub-Processor fails to fulfil its data protection obligations and for all other actions and omissions of the Sub-Processor.
4. Credorax shall bind its Sub-Processors, validly appointed by Credorax in terms of this clause by means of a written contract that contains processing clauses and obligations substantially the same as those set out and imposed in this Addendum.

### **Credorax's Employee's**

1. Credorax shall ensure that all employees and other personnel who are given access to the Merchant Data are adequately and responsibly informed of the confidential nature of the Personal Data and have committed themselves to confidentiality or are under appropriate statutory obligations of confidentiality.
2. Furthermore, such employees shall be aware of Credorax's duties and their personal duties and obligations under the relevant Data Protection Laws and this Addendum.

### **International Transfers of Personal Data**

1. The Parties hereby agree that Credorax may transfer personal outside the EEA (a) on the basis of an adequacy decision; or (b) subject to appropriate safeguards, both as contemplated under GDPR.
2. In relation to point (b) above, namely transfers of personal data subject to adequate safeguards, the Merchant (acting as data exporter) hereby grants a non-revocable general mandate for Credorax to enter into and sign Standard Contractual Clauses for and on its behalf as Controller, or where applicable as Data Subject, with any Sub-Processors (acting as data importers) located outside the EEA.
3. Subject to the above, where Personal Data originating in the EEA is processed by the Processor outside the EEA and in a territory that has not been designated by the European Commission as ensuring an adequate level of protection to data subjects (adequacy decision), the Processor and the Controller agree that the transfer of such personal data between the Processor and any Sub-Processor shall be subject to the Standard Contractual Clauses which shall be deemed to apply in respect of any and all such processing carried out by the Processor outside the EEA.



## **Security**

1. For the avoidance of doubt, both Parties acknowledge that any provisions in relation to PCI-DS Standards used in connection with the Credorax Services under the Agreement shall remain unchanged and in full force and effect.
2. Both Parties warrant and agree that each shall carry out and implement any security measures (technical and organisational) which may be necessary or otherwise mandated under Data Protection Laws (specifically with respect to article 32 of the GDPR) to safeguard the privacy and security of the Personal and Merchant Data, and that these measures shall remain in place for the duration of the Agreement. This will include ensuring that there are sufficient technical and organisational measures to ensure data protection by default and by design.

## **Liability & Indemnity**

Subject to the liability clauses in the Agreement, the Parties agree that they will be held liable for violations of EU Data Protection Laws towards Data Subjects as follows:

1. The Merchant shall be liable for the damage caused by the processing of Merchant Data which infringes EU Data Protection Laws or this Addendum only where it has not complied with obligations of EU Data Protection Laws specifically directed to Controllers.
2. Credorax shall be liable for the damage caused by the processing of Merchant Data which infringes Data Protection Laws or this Addendum only where it has not complied with obligations of Data Protection Laws specifically directed to Processors, or where it has acted in breach of its obligations under this Agreement. In that context, Credorax as Processor will be exempt from liability if it proves that it is not in any way responsible for the event giving rise to the damage.
3. The Merchant shall indemnify, defend, and hold Credorax harmless from and against any and all claims, actions, suits, demands, assessments, or judgments asserted, and any and all losses, liabilities, damages, costs, and expenses (including, without limitation, attorneys fees, accounting fees, and investigation costs to the extent permitted by law) alleged or incurred arising out of or relating to any operations, acts, or omissions of the indemnifying party or any of its employees, agents, and invitees in the exercise of the indemnifying party's rights or the performance or observance of the indemnifying party's obligations under this agreement. Prompt notice must be given of any claim, and the Controller providing the indemnification will have control of any defence or settlement.

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### **Applicable Law and Jurisdiction**

This clause is subject to the conditions stipulated in reciprocal clause in the Agreement.

### **Notice**

Any notice or other communication relating directly to this Addendum are to be given in writing to [DPO@Credorax.com](mailto:DPO@Credorax.com). This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **Miscellaneous**

Where applicable, the Parties agree that if, upon review following GDPR coming into force, the provisions of this Data Processing Addendum do not comply with GDPR then both Parties agree to cooperate in good faith to renegotiate the terms of this Data Processing Addendum to ensure compliance with GDPR.

The Parties hereto have caused this Addendum to be duly accepted and executed by executing the Agreement.

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**ANNEX A – STANDARD CONTRACTUAL CLAUSES**

[https://ec.europa.eu/info/system/files/1\\_en\\_annexe\\_acte\\_autonome\\_cp\\_part1\\_v5\\_0.pdf](https://ec.europa.eu/info/system/files/1_en_annexe_acte_autonome_cp_part1_v5_0.pdf)

**ANNEX B – DESCRIPTION OF ONWARD TRANSFER UNDER STANDARD CONTRACTUAL CLAUSES  
BETWEEN PROCESSOR AND SUB-PROCESSOR**

This Annex forms part of the Standard Contractual Clauses which will be completed and signed between Data Exporter [Processor acting on behalf of Merchant] and Data Importer [Sub-Processors] located outside the EEA.

**Data exporter**

The data exporter is:

Transferring personal data for the provision of services as detailed in the Agreement.

**Data importer**

The data importer is:

Processing personal data to enable and facilitate the provision of the services detailed in the Agreement.

**Data subjects**

The personal data transferred concerns the following categories of data subjects:

Cardholders or shoppers of the Controller; Management personnel of the Controller.

**Categories of data**

The personal data transferred concerns the following categories of data:

Encrypted credit card number, name, email, address, IP address and any other information transferred by the Controller.

**Special categories of data (if appropriate)**

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

N/A

**Processing operations**

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

Processing, storing, analyzing, visualizing, and monitoring data.

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**ANNEX C – TECHNICAL AND ORGANIZATIONAL MEASURES INCLUDING TECHNICAL AND ORGANIZATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

This Annex 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):**

Data encryption as required by applicable by the relevant PCI standards

Compliance program