GDPR Addendum for Transactional Resellers (May 2018)

This GDPR Addendum ("Addendum") is an addendum to the General Terms and Conditions of Business ("Agreement") applicable to you ("Reseller") when you purchase software licenses and/or services from Clearswift. The terms of this Addendum shall apply to all orders placed by you and accepted by Clearswift from the date of your first order after 25 May 2018.

1.   Definitions

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

1.1.1   "**Applicable Laws**" means Data Protection Laws and any other applicable law which may apply in respect of any Personal Data;

1.1.3   "**Personal Data**" means any Personal Data Processed by a Contracted Processor pursuant to or in connection with the Agreement;

1.1.5   "**Contracted Processor**" means the party processing Personal Data for the controlling party;

1.1.6   "**Data Protection Laws**" means the General Data Protection Regulation ("**GDPR**"), the E-Privacy Directive and, to the extent applicable, the data protection or privacy laws of any other country;

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

1.1.8   "**Restricted Transfer**" means a transfer prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under section 6.3.2 or 12 below;

1.1.9   "**Services**" means the services and other activities to be carried out pursuant to the Agreement;

1.1.10   "**Standard Contractual Clauses**" means the latest version of the EU Commission Model Contractual Clauses that apply to transfers of personal data to third countries; and

1.1.11   "**Sub-processor**" means any person including any third party appointed to Process Personal Data on behalf of the processing party acting for the controlling party in connection with the Agreement.

1.2   The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the applicable Data Protection Laws and their similar terms shall be construed accordingly. For the avoidance of doubt where there is any variation in meaning the terms used in the GDPR shall prevail.

2.   Authority

As a reseller of Clearswift products and/or services, you warrant and represent that you will have obtained authorisation from the Data Subject or appropriate authorised representative in accordance with the Date Protection Laws or you have obtained the Personal Data of the Data Subject under some other applicable authority under the Data Protection Laws prior to processing Personal Data and prior to submitting the same Personal Date to Clearswift.

3.   Processing of Personal Data

3.1   The parties agree to comply with all applicable Data Protection Laws associated with the Processing of Personal Data and the parties will not process Personal Data other than as permitted by the Applicable Laws, unless processing is required by the Applicable Laws to which the relevant

Contracted Processor is subject.   The Contracted Processor shall, where permitted by the Applicable Laws, inform the other party of that legal requirement before the processing the Personal Data.

3.2   The parties shall only instruct Sub-processors who abide by the terms of this Addendum and any applicable Data Protection Laws.

3.3   Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws).

4.   Rights and Permissions

The parties shall take reasonable steps to ensure the rights of Data Subjects are adhered to; that the Personal Data is accurate and kept up to date; that Personal Data is not kept for longer than is necessary and all the necessary steps to obtain applicable permission from Data Subjects in relation to processing as per this Agreement and 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, the parties shall in relation to Personal Data implement appropriate technical and organizational measures 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   The parties shall take account of the risks including but not limited to a Personal Data Breach from Processing and ensure that adequate controls exist to notify Data Subjects and the authorities as applicable in the event of a Personal Data Breach.

6.   Sub-processing

6.1   The parties will only transfer Personal Data to a Sub-processor following prior notice and consent of the Data Controller and/or Data Subject as applicable. Full details of proposed Processing activity as listed in Annex 1 is to be provided with requests for consent.

6.2   The parties may continue to use those Sub-processors already engaged as at the date of this Addendum, subject to demonstrating those Sub-processors can comply with the obligations of this Addendum as applicable.

6.3   With respect to each Sub-processor, the parties shall:

6.3.1   before the Sub-processor first processes Personal Data carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Personal Data required by the Agreement and this Addendum;

6.3.2   if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into an agreement between the applicable parties; and

6.3.3   provide for review such copies of the Contracted Processors' agreements with Sub-processors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as may be requested from time to time.

7.   Data Subject Rights

7.1   A party shall assist the other, by responding to requests to exercise Data Subject rights under the Data Protection Laws and shall:

7.1.1   promptly notify the processing party if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Personal Data; and

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

8.   Personal Data Breach

8.1   The processing party shall notify the controlling party immediately upon the processing party or any Sub-processor becoming aware of a Personal Data Breach affecting the Personal Data. The controlling party must be provided with sufficient information to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

8.2   The processing party shall co-operate with the controlling party and take such reasonable commercial steps as are directed by the controlling party to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

9.   Data Protection Impact Assessment and Prior Consultation

The processing party shall provide reasonable assistance to the controlling party with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities as may be required.

10.   Deletion or return of Personal Data

10.1   Subject to sections 10.2 and 10.3, the processing party shall promptly and in any event within 30 calendar days of the date of cessation of any Services involving the processing of the controlling party Personal Data (the "Cessation Date"), permanently delete and destroy and procure the deletion of all copies of the controlling party's Personal Data.

10.2   Each Contracted Processor may retain Personal Data to the extent required by the Applicable Laws and only to the extent and for such period as required by the Applicable Laws and always provided that the confidentiality of all such Personal Data is maintained and that the Personal Data is only processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

10.3   The processing party shall provide written certification to the other that it has fully complied with this section 10 within 30 calendar days of the Cessation Date.

11.   Audit rights

11.1   The processing party shall make available to the controlling party, all information reasonably requested that demonstrates compliance with this Addendum; particularly in relation to the processing of the Personal Data by Contracted Processors.

12.   Restricted Transfers

12.1   Subject to section 12.3, the controlling party (as "data exporter") and each Contracted Processor, that is processing party, as appropriate, (as "data importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that controlling party to that Contracted Processor.

12.2   The Standard Contractual Clauses shall come into effect under section 12.1 on the later of:

12.2.1   the data exporter becoming a party to them;

12.2.2   the data importer becoming a party to them; and

12.2.3   commencement of the relevant Restricted Transfer.

12.3   Section 12.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

13.   General Terms

Governing law and jurisdiction

13.1   The parties to this Addendum hereby submit to the laws and courts of England including disputes regarding its existence, validity or termination or the consequences of its nullity.

Order of precedence

13.2   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 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.

Changes in Data Protection Laws, etc.

13.4   The parties shall not unreasonably withhold or delay agreement to any reasonably required variations to this Addendum proposed to protect Personal Data.

13.5   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.

ANNEX 1: DETAILS OF PROCESSING OF PERSONAL DATA

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

Subject matter and duration of the Processing of Personal Data:

The subject matter and duration of the Processing of the Personal Data are set out in the Agreement and this Addendum. Primarily the Personal Data will include names, addresses, email address and telephone numbers of individuals within customer organisations who purchase Clearswift software or services from Reseller. The duration shall be as long as necessary to fulfil contractual obligations to those customer organisations.

The nature and purpose of the Processing of Personal Data:

The purpose will be for both parties to perform their contractual obligations to the end user customer for the duration of the contract with the end user customer including managing their software license, provision of technical support and maintenance services and for any professional services including education/training

The types of Personal Data to be Processed:

As stated above, this is primarily names, addresses, email address and telephone numbers of individuals within customer organisations who purchase Clearswift software from Reseller

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

individuals within customer organisations who purchase Clearswift software from Reseller.