

OMNY STUDIO
DATA PROTECTION ADDENDUM

DATED

2018

This Data Protection Addendum ("**Addendum**") sets out the Addendum of 121cast Pty Ltd (if you are located in Australia) or 121cast, Inc. (if you are located in any other country) ("**Omny**") in relation to the processing of EU/UK individual personal data and compliance with Data Protection Laws to the extent applicable to the processing of personal information by Omny for the Customer in respect of the Services. References to '**Customer**' includes you and each one of your relevant affiliates (unless otherwise stated or otherwise provided under the Agreement).

Defined Terms in this Addendum have the meaning set out in Section 12 of this Addendum. Capitalized terms not otherwise defined in this Addendum will have the meaning given to them in your Agreement. Except where the context requires otherwise, references in this Addendum to your Agreement are to your Agreement as amended by, and including, this Addendum.

This Addendum applies to all of the Services you acquire from us.

The protection of Personal Data is of critical importance to Omny and the following terms of this Addendum set out the minimum requirements of Omny with respect to you and all of its Customers.

1. Processing of Customer Personal Data

- 1.1 Each Party will comply with its respective obligation under Data Protection Laws in the provision and receipt of the Services under the Agreement and this Addendum.
- 1.2 In the provision of the Services, Customer is at all times the data controller and Omny is a data processor (or sub-processor) acting on Customer's behalf. Accordingly, Omny will not Process Customer Personal Data other than on Customer's documented instructions, and for the purposes defined in writing by Customer, from time to time unless Processing is required by Applicable Laws to which Omny (or its Sub-processor) is subject.
- 1.3 Customer:
 - 1.3.1 instructs Omny (and authorises Omny to instruct each Sub-processor) to:
 - 1.3.1.1 Process Customer Personal Data; and
 - 1.3.1.2 in particular, transfer Customer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with your Agreement; and
 - 1.3.2 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 1.2.1 on behalf of any Customer affiliate.
- 1.4 Appendix 1 to this Addendum sets out certain information regarding Omny 's processing of Customer Personal Data as required by Article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Nothing in Appendix 1 (including as amended pursuant to this Section 1.4) confers any right or imposes any obligation on any party to this Addendum.

2. Omny Personnel

Omny will take reasonable steps to ensure that any of its (or its Sub-Processor's) employees, agents or contractors who have access to Customer Personal Data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Security

- 2.1 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, Omny will in relation to the Customer Personal Data use best endeavours to 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.

In assessing the appropriate level of security, Omny will take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

- 2.2 During the Term, Omny will implement and maintain and will use best endeavours to ensure that each Sub-processor) implements and maintains the technical and organisational measures set out in Appendix 2 to the EU Standard Contractual Clauses with respect to all processing of Customer Personal Data by it. The Customer may implement additional security measures ("**Customer Security Measures**") from time to time (at the Customer's absolute discretion) always provided that:

2.2.1 such Customer Security Measures are compatible with the measures set out in Appendix 2 to the Standard Contractual Clauses as determined by Omny, acting reasonably; and

2.2.2 neither Omny nor any Sub-Processor will be required to change any of the measures set out in Appendix 2 to the Standard Contractual Clauses or to incur any costs implementing or supporting the implementation of Customer Security Measures.

- 2.3 Customer represents, undertakes and warrants that on the date of this Addendum and during the Term of your Agreement:

2.3.1 those technical and organizational measures set out in Appendix 2 to the Standard Contractual Clauses, together with any Customer Security Measures which the Customer may implement from time to time in accordance with section 2.2 above, collectively meet the requirements set out in Applicable Laws for security including Article 32 (GDPR); and

2.3.2 all Customer Personal Data Processed by Omny (and its' Sub-processors) has been and will be collected and processed by the Customer in accordance with all Applicable Laws and, without limitation to the foregoing, Customer will take all steps necessary, including without limitation providing appropriate fair collection notices and ensuring that there is a lawful basis for Omny (and its' Sub-processors) to process Customer Personal Data, to ensure that the processing of Customer Personal Data by Omny (and its' Sub-processors) in accordance with your Agreement is compliant with, and in accordance with, all Applicable Laws.

3. Sub-processing

- 3.1 Customer authorises Omny to appoint (and permit each Sub-processor appointed in accordance with this Section 3 to appoint) Sub-processors in accordance with this Section 3 and any restrictions in your Agreement.

- 3.2 Omny may continue to use those Sub-processors already engaged by Omny as at the date of this Addendum.

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3.3 Omny will provide to Customer prior written notice of the appointment of any *new* Subprocessor, including known details of the processing to be undertaken by the Subprocessor. If, within thirty (30) calendar days of receipt of that notice, Customer notifies Omny in writing of any objections (on reasonable grounds) to the proposed appointment:

3.3.1 Omny will not appoint (or disclose any Customer Personal Data to) that proposed Subprocessor until it has taken reasonable steps to address the objections raised by Customer and provided Customer with a written explanation of the steps taken.

Omny will not appoint (nor disclose any Customer Personal Data to) the proposed Subprocessor except with the prior written consent of Customer. If it is not practicable to do so, then the Customer may terminate the Agreement.

3.4 With respect to each Subprocessor, Omny will:

3.4.1 before the Subprocessor first processes Customer Personal Data (or, where relevant, in accordance with Section 3.3 above), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by your Agreement;

3.4.2 ensure that the arrangement between on the one hand (a) Omny , or (b) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which are not less protective of Customer Personal Data than those set out in this Addendum; and

3.4.3 if that arrangement involves a Restricted Transfer:

3.4.3.1 ensure that the Standard Contractual Clauses are at all relevant times incorporated into your Agreement between, Omny (or first Subprocessor) and the Subprocessor; or

3.4.3.2 before the Subprocessor first Processes Customer Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the Customer (or relevant Customer affiliate, as procured by the Customer).]

4. Data Subject Rights

4.1 Omny will:

4.1.1 promptly (and in any event within 7 days) notify Customer if it or any Sub-processor receives a request from a Data Subject under any Data Protection Law in respect of Customer Personal Data; and

4.1.2 not (and use best endeavours to procure its Sub-Processor will not) respond to that request except on the documented instructions of Customer or as required by Applicable Laws, in which case Omny will to the extent permitted by Applicable Laws inform Customer of that legal requirement before responding to the request.

5. Personal Data Breach

5.1 Omny will without undue delay (and in any event within 3 days) upon becoming aware of a Personal Data Breach affecting Customer Personal Data, provide Customer with information (as and when available) to assist Customer in the Customer's endeavours to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

5.2 Omny will co-operate with Customer and take such reasonable commercial and practicable steps as are directed by Customer to assist in the investigation, prevention (as applicable), mitigation and remediation of each Personal Data Breach. Omny may charge the Customer reasonable fees associated with assisting in any such investigation, mitigation and remediation of a Personal Data Breach.

6. Deletion or return of Customer Personal Data

6.1 Subject to Sections 6.2 and 6.3, Omny will promptly and in any event within 180 days of the date of cessation of any Services involving the processing of Customer Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Customer Personal Data.

6.2 Subject to Section 6.3, Customer may in its absolute discretion by written notice to Omny within one hundred and eighty (180) days of the Cessation Date require Omny to: (a) return a complete copy of all Customer Personal Data to Customer by secure file transfer in such format as is reasonably notified by Customer to Omny ; and (b) delete and procure the deletion of all other copies of Customer Personal Data processed by Omny.

6.3 Omny may not retain Customer Personal Data except to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Omny will ensure the confidentiality of all such Customer Personal Data and will ensure that such Customer Personal Data is only processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

7. Audit rights

7.1 Omny will make available to Customer, on request, all information necessary to demonstrate compliance with this Addendum, and will allow for and contribute to audits, including inspections, by Customer or an auditor mandated by Customer in relation to the processing of the Customer Personal Data by the Omny and/or its subprocessors.

7.2 Information and audit rights of Customer only arise under Section 7.1 to the extent that your Agreement does not otherwise give information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, Article 28(3)(h) of the GDPR).

8. Restricted Transfers

8.1 Subject to Section 8.3, the Customer (or relevant Customer affiliate) (as "**data exporter**") and each of Omny and /or its sub-processor, as appropriate, (as "**data importer**") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from Customer (or relevant Customer affiliate) to that Omny and /or its sub-processor.

8.2 The Standard Contractual Clauses will come into effect under Section 8.1 on the later of:

8.2.1 the data exporter becoming a party to them;

8.2.2 the data importer becoming a party to them; and

8.2.3 commencement of the relevant Restricted Transfer.

8.3 Section 8.1 will 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 Laws.

9. General Terms

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Governing law and jurisdiction

- 9.1 Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:
- 9.1.1 the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in your 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
- 9.1.2 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 your Agreement.

Order of precedence

- 9.2 In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.
- 9.3 Subject to Section 9.2, 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 your Agreement, the provisions of this Addendum will prevail.

Changes in Data Protection Laws

- 9.4 This Addendum may be varied and updated from time to time by Omny as a result of a change in Data Protection Laws, including any variation which is required to the Standard Contractual Clauses.

Severance

- 9.5 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum will remain valid and in force. The invalid or unenforceable provision will 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 in this Addendum.

10. Definitions

In this Addendum, the following terms will have the following meaning:

"Applicable Laws" means: (a) European Union or Member State laws with respect to any Customer Personal Data in respect of which Omny is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Customer Personal Data in respect of which Omny is subject to any other Data Protection Laws; together with all guidelines and other codes of practice issued by an applicable data protection regulator or supervisory authority;

"Omny and/or its subprocessor" means Omny or any of its Sub-processors;

"Customer Affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Customer, 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

"Customer Group Member" means Customer or any Customer affiliate;

"Customer Personal Data" means any EU/UK individual Personal Data Processed by the Omny and/or its subprocessor, on behalf of and under the instructions of Customer in connection with the provision of the Services under your Agreement;

"Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

"EEA" means the European Economic Area;

"EU Data Protection Laws" means 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 GDPR and laws implementing or supplementing the GDPR.

"GDPR" means EU General Data Protection Regulation 2016/679;

"Restricted Transfer" means:

- a) a transfer outside the EEA of Customer Personal Data from Omny and/or its subprocessor; or
- b) an onward transfer of Customer Personal Data from Omny and/or its subprocessor to the Omny and/or its subprocessor (as applicable) (e.g. Omny to its Sub-Processor)

in each case, where such transfer would be 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 this Addendum.

For the avoidance of doubt, where a transfer of Personal Data is of a type authorised by Data Protection Laws in the exporting country; for example in the case of transfers from within the European Union to the US under a scheme (such as the current US Privacy Shield) which is approved by the EU Commission as ensuring an adequate level of protection, or any other transfer which falls within a permitted derogation under EU Data Protection Laws, such transfer will **not** be a Restricted Transfer;

"Services" means the services and other activities to be supplied to or carried out by Omny on behalf of Customer under your Agreement;

"Standard Contractual Clauses" means the EU model contractual clauses set out in Appendix 2, amended as indicated (in square brackets and italics) in that Appendix and under Section 11.4;

"Subprocessor" means any person (including any third party, but excluding an employee of Omny or any of its sub-contractors) appointed by or on behalf of Omny to process Personal Data on behalf of Customer under your Agreement; and

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

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

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APPENDIX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

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

Data exporter

The data exporter is the Customer or its end-users located in the EEA

Data importer

The data importer is:

Where the Customer directly transfers to 121 Cast Pty Limited (Australia) any Customer Personal Data to which Data Protection Legislation applies, the term 'data importer' means 121 Cast Pty Limited (Australia). Where the Customer directly transfers to 121 Cast Inc. (US) any Customer Personal Data to which Data Protection Legislation applies, the term 'data importer' means 121 Cast Inc. (US). Where the Customer directly transfers to any Omny entity any Customer Personal Data to which Data Protection Legislation applies, the term 'data importer' means the relevant Omny entity.

Where a non-EEA Customer imports personal data on behalf of its end-users who are located in the EEA, the term 'data importer' means the Customer.

Data subjects

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

Those individuals whose personal data is provided or made available to 121 Cast Pty Limited (Australia) and/or 121 Cast Inc. (US) by or on behalf of the Customer or any end-user through the use or provision of the Services, including employees, contractors, partners of Customer or end-users, and any end-users who are individuals.

Categories of data

The personal data transferred concern the following categories of data (please specify):

- Full name (first, last and middle name, where applicable);
- Personal contact information (for example, phone number, email address, mailing address);
- Business contact information (for example, phone number, email address, fax number, mailing address);
- Technical ID data (such as IP addresses); and
- Financial / billing data (including bank account numbers).
- Usage data;
- and all other Personal Data provided or made available to 121 Cast Pty Limited (Australia) and/or 121 Cast Inc. (US) and/or any Omny entity by or on behalf of the Customer or any end-user through the use or provision of the Services.

Duration and purpose of Processing

The personal data transferred is being processed for the purposes of (including purposes compatible with the below) providing the Services to Customers under the Agreement and the detection, prevention and resolution of security or other technical issues associated with the Services, each as provided for in the Agreement and for the duration of the Term of the Agreement as determined in accordance with its terms.

Additional information

Data will not be kept in a form that allows individuals to be identified for any longer than is necessary for achieving the purposes for which it was collected, processed or used, or as it is established in the applicable laws related to data retention periods (as further stipulated in the applicable record retention policies).

Contact points for data protection enquiries

Data importer

Name	Email Address	Contact No.

Data exporter

Name	Email Address	Contact No.

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APPENDIX 2: EU STANDARD CONTRACTUAL CLAUSES

[see separate annex]