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Version effective as of May 25, 2018.

By executing a Contract referring to this Data Protection Addendum (“DPA”), you (“Customer”) agree to the terms set forth herein, which are incorporated into the Contract by reference.

## RECITALS

- A. Bombora and Customer, on behalf of itself and its Authorized Affiliates, have entered into one or more order forms, contracts and/or agreements (the “**Contract(s)**”) pursuant to which Bombora has agreed to licence use of Company Surge™, Bombora’s Content Consumption Monitoring Platform (“**Platform**”) and/ or provide related services to the Customer as described in the Contract(s) (collectively, the “**Services**”).
- B. In connection with the Services, the parties will share certain data with each other. The parties therefore wish to define their respective data protection obligations in relation to any data shared or received in connection with the provision or receipt (as applicable) of the Services.

### 1. Definitions

**Affiliate** means any entity that is directly or indirectly controlled by, controlling or under common control with an entity. “**Control**” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**Applicable Privacy Law** means all data protection and privacy laws and regulations applicable to the processing of Personal Information under the Contract(s), including, where applicable, EU Data Protection Law.

**Authorized Affiliate** means any Customer Affiliate permitted to use the Services pursuant to the Contract(s) but has not signed its own agreement with Bombora.

**Bombora Data** means all data processed by Bombora that is not Customer Content, including (but not limited to) (i) data relating to any issue or enhancement to the operation or use of the Services; and/or (iii) any data that Bombora (and/or its third party partners) would otherwise collect and process independently of the Customer’s use of the Services pursuant to the Contract(s).

**Bombora Segments** means any audience segments that Bombora uses in the course of its business, including audience segments Bombora creates from Bombora Data.

**Customer Content** means any and all data provided to Bombora by Customer in connection with the Services or otherwise configured by Customer in the Platform, which data shall include (without limitation) Customer IDs.

**Customer Content Sources** means any digital platforms, including but not limited to websites and mobile websites, mobile applications, ad impressions, email campaigns, Customer Content bases, CRM systems and other agreed upon data sources, that are owned, operated, or otherwise controlled by Customer and which may be identified in the Contract(s).





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**Customer IDs** means Device IDs, hashed email addresses and/or any other mutually agreed identities which are contributed by Customer to the Platform.

**Customer Segments** means any audience segments generated by Bombora from Customer Content.

**Cookies** means for the purpose of this DPA, cookies, SDKs, unique identifiers, tags, web beacons, pixels and/or similar tracking technologies.

**Data** has the meaning given to it in Section 2.2.

**Device ID(s)** a number or other descriptor stored by a web browser, mobile phone or other device that uniquely identifies that device, examples include without limitation unique identifiers stored in cookies, mobile device advertising ID (e.g., Apple IDFA or Android Advertising ID), or other generally accepted unique identifier.

**EU Data Protection Law** means all applicable EU data protection and privacy laws, including (i) prior to 25 May 2018, the EU Data Protection Directive 95/46/EC and, on and after 25 May 2018, the General Data Protection Regulation 2016/679; (ii) the Privacy and Electronic Communications Directive 2002/58/EC; and (iii) any other European Union or EU Member State laws made under or pursuant to (i) and (ii); in each case as such laws may be amended or superseded from time to time.

**Personal Information** means any information relating to an identified or identifiable natural person (which shall include for the avoidance of doubt, any personally identifiable information) unless otherwise defined in Applicable Privacy Laws.

The terms "**controller**", "**processor**", "**data subject**" and "**processing**" will be construed in accordance with Applicable Privacy Law.

## 2. Relationship of the parties

2.1 Each party acknowledges and agrees that: (a) Bombora will be the controller of the Bombora Data and Bombora Segments (to the extent they contain Personal Information); and (b) in the course of providing the Services, Bombora will process Customer Content and Customer Segments (to the extent they contain Personal Information) as a processor acting on behalf of Customer (the "Controller"). In no event will the parties process Personal Information under this Agreement as joint controllers.

2.2 Bombora may provide or make available to Customer certain Personal Information to Customer via the Services, the use of which is governed by the terms of the Contract(s) ("**Data**"). Customer shall process the Data as an independent controller and solely for its own business purposes in accordance with and as permitted by the Contract(s) (including this DPA), except where otherwise required under applicable law. Customer shall not process Data in any way that causes (or is likely to cause) Bombora to breach any of its obligations under Applicable Privacy Laws.

2.3 As a processor of Customer Content, Bombora agrees to comply with the terms set out in Annex A of this DPA.

### 3. Compliance with law

3.1 Each party will separately comply with its obligations under Applicable Privacy Law when processing Personal Information as a controller. Except as otherwise expressly agreed between the parties (including this DPA), neither party shall be responsible for the other party's compliance with Applicable Privacy Laws.

### 4. Security and Security Incidents

4.1 Each party shall implement appropriate technical and organizational measures ("**Security Measures**") to protect the data (including Personal Information) it processes under or in connection with the Contract(s) from (i) accidental or unlawful destruction, (ii) accidental loss, alteration, unauthorized disclosure, or access, and (iii) any other breach of security (each of (i), (ii) and (iii) a "**Security Incident**"). The Security Measures that Bombora shall implement are set out in Appendix 2 of Annex B (Contractual Clauses). Each party shall provide such assistance as is reasonably requested by the other to enable the other to comply with its security obligations under Applicable Privacy Law.

4.2 Upon becoming aware of a Security Incident, each party shall inform the other party without undue delay (and latest within 48 hours) and shall provide such timely information and cooperation as such other party may reasonably require, including without limitation: (A) cooperation reasonably required by the other for the purposes of mitigating the effects of a Security Incident and/or coordinating any notifications to regulators, data subjects and other third parties as may be required by Applicable Privacy Law or which the parties might otherwise consider prudent in the circumstances; and/or (B) updates on an ongoing basis regarding: (i) the nature and categories of the Personal Information concerned; (ii) the numbers of Personal Information records which have or may have been compromised; (iii) complaints and/or queries received in relation to the Security Incident from data subjects, data protection regulators or other third parties; and/or (iv) any other developments regarding the Security Incident. The party responsible for the Security Incident shall further take all such measures and actions as are reasonable and necessary to remedy or mitigate the effects of the Security Incident.

### 5. International transfers

5.1 Where Applicable Privacy Law in the EEA and/or its member states, United Kingdom and/or Switzerland (collectively for the purposes of this DPA, the "**EU**") applies to the Data ("**EU Data**"), neither party shall process any EU Data (nor permit any EU Data to be processed) in a territory outside of the EU unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Privacy Law.

5.2 To the extent Bombora transfers EU Data to Customer located in a territory outside the EU that does not provide adequate protection for Personal Information (as determined by Applicable Privacy Law):

- (a) Customer agrees to abide by and process such EU Data in accordance with the Standard Contractual Clauses for controllers as approved by the European Commission and available at [http://ec.europa.eu/justice/data-protection/international-transfers/files/clauses\\_for\\_personal\\_data\\_transfer\\_set\\_ii\\_c2004-5721.doc](http://ec.europa.eu/justice/data-protection/international-transfers/files/clauses_for_personal_data_transfer_set_ii_c2004-5721.doc) (as amended, superseded or updated from time to time) ("**Model Clauses**"), which are incorporated by reference and form an integral part of this DPA. Customer agrees that it is a "data importer" and Bombora is the "data exporter" under the Model Clauses (notwithstanding that Customer may be an entity located outside of the EU); or



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- (b) to the extent the Customer has self-certified to the EU-US and Swiss- EU Privacy Shield Frameworks, Customer agrees to maintain such Privacy Shield certification and shall abide by and process EU Data in accordance with the Privacy Shield Principles.

## 6. Customer responsibilities

6.1 Customer represents and warrants to Bombora that:

- (a) it will not use any Data made available by Bombora to Customer in connection with the Contract(s) to re-identify any individual to whom that information relates such that it is possible to specifically identify such individual (e.g. by reference to their name or other directly identifying Personal Information), whether from that information itself or by combination with any other information that might be or become available to Customer;
- (b) Customer will not provide to Bombora (i) any Customer Content related to Personal Information that is treated as "sensitive" under Applicable Privacy Law, including (but not limited to) racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preferences or practices, criminal record, health information, genetic information that is not otherwise health information, or biometric information or templates; or (ii) any Customer Content collected from or in connection with any web site, mobile application or other online service that targets or is intended for any individual deemed a child under Applicable Privacy Law;
- (c) the Customer Content was collected in full compliance with all applicable privacy notices, all Applicable Privacy Laws and Customer will ensure the legality, appropriateness, and accuracy of the Customer Content it makes available to Bombora; and
- (d) it will comply with its obligations set out in Section 7 (Cookies).

## 7. Cookies

7.1 In the event the Bombora Services employ the use of Cookies, Customer shall maintain appropriate notice and consent mechanisms as are required by Applicable Privacy Law to enable Bombora to deploy Cookies lawfully on, and collect data from, the devices of individuals who visit Customer Content Sources for the purposes of the Services. Bombora shall provide Customer with such assistance as is necessary (including details about the Cookies it serves) to enable Customer to provide such notice, provided that Customer understands that any assistance, including any suggested language or methods offered by Bombora shall not constitute legal advice or a substitute for legal advice.

## 8. Cooperation and data subjects' rights:

8.1 In the event that either party receives: (i) any request from a data subject to exercise any of its rights under Applicable Privacy Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data (and/or in Bombora's case, Customer Content); (collectively, "Correspondence") then, where such Correspondence



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relates (or also relates) to processing conducted by the other party (and/or in the case of Bombora, Customer Content), it shall promptly inform the other party and the parties shall cooperate in good faith as necessary to respond to such Correspondence and fulfil their respective obligations under Applicable Privacy Law.

**9. Miscellaneous**

9.1 The parties agree that any exclusion or limitation of liability that may apply to limit each party's liability in the Contract(s) shall apply to each party's and its Affiliates liability arising under or in connection with this DPA (including any indemnity), however caused, regardless of how such amounts or sanctions awarded are characterized and regardless of the theory of liability.

9.2 This DPA shall be governed by and construed in all respects in accordance with the governing law and jurisdiction provisions set out in the Contract(s), unless required otherwise by Applicable Privacy Laws.

9.3 Except for the changes made by this DPA, the Contract(s) remains unchanged and in full force and effect. If there is any conflict between any provision in this DPA and any provision in the Contract(s), this DPA controls and takes precedence.

9.4 With effect from the Effective Date, this DPA is a part of and incorporated into the Contract(s) so references to "Contract(s)", "Master Service Agreement", "MSA" or "Agreement" in the Contract(s) shall include this DPA.

9.5 Clause and other headings in this DPA are for convenience of reference only and shall not constitute a part of or otherwise affect the meaning or interpretation of this DPA. Annexes to this DPA shall be deemed to be an integral part of this DPA to the same extent as if they had been set forth verbatim herein.

[ANNEX A FOLLOWS]







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## Annex A C2P Data Processing Terms

The terms in this Annex A where and to the extent that Bombora processes Customer Content (to the extent it includes Personal Information) on behalf of the Customer in the course of providing the Services.

1. **Instructions for processing:** Bombora shall process the Customer Content only on the documented lawful instructions of the Customer, including with regard to transfers of Customer Content to a third country, unless required otherwise in accordance with applicable law; in such event, Bombora shall inform the Customer of the legal requirement before processing, unless that law prohibits the provision of such information to Customer. Bombora shall inform Customer if, in its opinion, Customer's instructions infringe Applicable Privacy Law (but only if Bombora becomes aware of the same); Customer acknowledges that it is Customer's responsibility to ensure that its instructions comply with Applicable Privacy Law, and Bombora shall not have a duty to review and assess Customer's instructions against Applicable Privacy Law. The parties agree that this DPA and the Contract(s) set out the Customer's complete and final instructions to Bombora in relation to the processing of Customer Content and processing outside the scope of these instructions (if any) shall require prior written agreement between Customer and Bombora.

2. **Details of Data Processing:** As a processor, Bombora shall process Customer Content only for the following purposes: (i) processing to provide the Services in accordance with the Contract(s); (ii) processing to perform any steps necessary for the performance of the Contract(s); (iii) processing initiated by Authorized Users in their use of the Services; and (iii) processing to comply with other reasonable instructions provided by Customer (e.g. via email or support tickets) that are consistent with the terms of the Contract(s) (collectively the "**Purpose**"). The subject matter of the processing of Customer Content (to the extent it includes Personal Information) by Bombora is the Purpose. Unless otherwise specified in the applicable Contract(s), the duration of processing, the nature and purpose of the processing, the types of Customer Content (to the extent it includes Personal Information) and the categories of data subjects processed under this DPA are further specified in Appendix 1 to the C2P Model Clauses contained in Annex B of this DPA.

3. **Subprocessing:** For the purposes of this DPA. "**Sub-processor**" means any processor engaged by Bombora or its Affiliates to assist in fulfilling its obligations with respect to providing the Services pursuant to the Contract(s). Bombora shall not sub-process any processing of Customer Content to any Sub-processor without the prior written consent of Customer. Notwithstanding this, Customer consents to Bombora engaging Sub-processor's to process Customer Content provided that:

- (a) Bombora provides at least 30 days prior written notice to Customer of any change in its Sub-processor's (including details of the processing, location and any other information reasonably required by Customer) and Bombora shall update the list of all Sub-processor's engaged to process Customer Content under this DPA at Appendix 1 of this Annex A and send such updated version to Customer prior to the change of Sub-processor;

- (b) Customer may object to the appointment or replacement of a Sub-processor within 10 days after Customer first receives prior notice of such change provided such objection is based on reasonable grounds relating to data protection (e.g. if making Customer Content available to the Sub-processor may violate Applicable Privacy Law or weaken the protections for such Customer Content). In such event, the parties shall discuss in good faith commercially reasonable alternative solutions. If the parties cannot reach resolution within a reasonable period of time, which shall not exceed thirty (30) days, Bombora will either not appoint or replace the Sub-processor or, if this is not possible, either party may terminate the Contract(s) with respect to those Services that cannot be provided without the use of the objected-to-new Sub-processor, by providing written notice to the other party. Customer shall receive a refund of any prepaid fees for the period following the effective date of termination in respect of the terminated Contract(s);
- (c) Bombora imposes data protection terms on any Sub-processor it engages that require it to protect Customer Content to the standard required by Applicable Privacy Law; and
- (d) Bombora remains liable for the acts or omissions of its Sub-processors to the same extent Bombora would be liable if performing the services of each Sub-processor directly under the terms of this DPA.

4. **Security Reports & Inspections:** Bombora shall maintain records of its security standards. Upon Customer's written request, Bombora shall provide (on a confidential basis) copies of relevant external ISMS certifications, audit report summaries and/or other documentation reasonably required by Customer to verify Bombora's compliance with this DPA as it relates to Customer Content. Bombora shall further provide written responses (on a confidential basis) to all reasonable requests for information made by Customer, including responses to information security and audit questionnaires, that Customer (acting reasonably) considers necessary to confirm Bombora's compliance with this DPA as it relates to Customer Content, provided that Customer shall not exercise this right more than once per year.

5. **Security Measures:** Bombora shall implement and maintain appropriate technical and organisational security measures to protect Customer Content against a Security Incident in accordance with Bombora's security measures described in Appendix 2 of the C2P Model Clauses contained in Annex B of this DPA.

6. **Authorized Persons:** Bombora shall ensure that persons authorized to process the Customer Content have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

7. **Data Protection Impact Assessment:** If Customer is required by Applicable Privacy Law to conduct a data protection impact assessment in respect of the Bombora Services, Bombora shall provide all information reasonably requested by the Customer in connection with such assessment.

8. **Deletion or return of Customer Content:** Upon Customer's request, or upon termination or expiry of the Contract(s), Bombora shall destroy or return to Customer all Customer Content (including copies) in its possession or control. This requirement shall not apply to the extent that Bombora is



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required by any applicable law to retain some or all of the Customer Content, or to Customer Content it has archived on back-up systems, which Customer Content Company shall securely isolate and protect from any further processing except to the extent required by such law.

9. **Co-operation:** Bombora will not respond to any correspondence, enquiry or complaint from a data subject, regulator or any other person relating to the processing of Customer Content, unless authorized by Customer (such permission not to be unreasonably withheld or delayed), and Customer agrees that Bombora shall have no obligation to respond on Customer's behalf.

10. **International transfers:** To the extent Customer Content includes EU Data, Bombora agrees to abide by and process such data in accordance with the Standard Contractual Clauses for processors as approved by the European Commission and available at [http://ec.europa.eu/justice/data-protection/international-transfers/files/clauses\\_for\\_personal\\_data\\_transfer\\_processors\\_c2010-593.doc](http://ec.europa.eu/justice/data-protection/international-transfers/files/clauses_for_personal_data_transfer_processors_c2010-593.doc), in the form set out in Appendix 2 to the Annex of this DPA ("**C2P Model Clauses**"). Customer hereby authorizes any transfer of Customer Content to Bombora, or access to Customer Content by Bombora from, any destinations outside the EU, including to Bombora in the United States subject to Bombora complying with the C2P Model Clauses.







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**ANNEX A**  
**Appendix 1 Sub-processors**

Bombora uses its Affiliates and a range of third party Sub-processor's to assist it in processing Customer Content. These Sub-processor's set out below provide cloud hosting and storage services; content delivery and review services.

<b>Sub-processor Name</b>	<b>Sub-processor services</b>	<b>Sub-processor location</b>
Amazon Web Services	Cloud Storage and Processing	Global, primarily US
Google Cloud Platform	Cloud Storage and Processing	Global, primarily US
StorageMadeEasy	Enterprise File Fabric	US
DataRista	Connecting Data Tools	US





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Annex B  
C2P Model Clauses

The most recent version of this document is available at <http://bit.ly/bommie-C2P-Model-Clauses-June-2018>.

