TracPlus Data Processing Addendum (Operational Pi)

1 APPLICATION OF THIS ADDENDUM

1.1 This Data Processing Addendum (**Addendum**) applies if the Processing (as defined below) of Operational PI (as defined below) is governed by the GDPR (as defined below).

1.2 If this Addendum applies, this Addendum forms part of TracPlus' terms and conditions (together, the **Agreement**) between us and you (as defined in TracPlus' terms and conditions) and sets out the parties' agreement in relation to the processing of Operational PI in accordance with the requirements of European Union data protection laws and regulations.

1.3 We are located in New Zealand, which the European Commission has determined adequate protection within the meaning of Article 45 of the GDPR. However, as our primary servers are located in Australia, this Addendum also includes Standard Contractual Clauses (as defined below), which are pre-signed by us. If you would like to opt in to the Standard Contractual Clauses, please complete the necessary details, countersign the Standard Contractual Clauses, and return a counter-signed copy to us at support@tracplus.com.

1.4 Except as varied in this Addendum (including the Standard Contractual Clauses, if applicable) all terms and conditions set out in the Agreement continue to apply.

2 INTERPRETATION

2.1 Unless the context requires otherwise:

a capitalised terms used, but not defined, in this Addendum will have the meanings given to them in the GDPR (or, if not defined in the GDPR, the Agreement);

b the rules of interpretation set out in the Agreement apply to this Addendum; and

c references to *clauses* are references to the clauses in this Addendum.

2.2 In this Addendum:

3 *Applicable Data Protection Laws* means EU Data Protection Laws and any applicable data protection or privacy laws of any other country

4 *EEA* means the European Economic Area

5 *EU Data Protection Laws* means all laws and regulations, including laws and regulations of the European Union, the EEA and their member states and (if the United Kingdom ceases to be a member state) the United Kingdom, that apply to the Processing of Operational PI, including (where applicable) the GDPR

6 *GDPR* means the European Union General Data Protection Regulation 2016/679

7   *Instruction* means the instructions set out in clause 3.3 or agreed under clause 3.4

8   *Operational PI* means Data (as defined in the TracPlus <u>terms and conditions)</u> that is personal data.

9   *Processing* means any operation or set of operations which is performed upon Operational PI, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. *Process* has a consistent meaning

10   *Standard Contractual Clauses* means the standard contractual clauses set out in Schedule 3, as may be amended under clause 12.1.

11   *Sub-Processor* means any person appointed by us or on our behalf to Process Operational PI on your behalf in connection with the Agreement

11.1 If there is any conflict between any of the following, they will have precedence in the descending order of priority set out below:

a   the Standard Contractual Clauses;

b   this Addendum; and

c   the Agreement.

12   PROCESSING OF OPERATIONAL PI

12.1 With respect to the Processing of Operational PI under the Agreement:

a   you act as the Data Controller;

b   we act as the Data Processor; and

c   subject to clause 6, we may engage the Sub-Processors listed in Schedule 2.

12.2 We will comply with all Applicable Data Protection Laws that apply to our Processing of Operational PI on your behalf, including all EU Data Protection Laws that apply to Data Processors.

12.3 You must, when using TracPlus (as defined in TracPlus' terms and conditions), comply with all Applicable Data Protection Laws that apply to your Processing of Operational PI, including all EU Data Protection Laws that apply to Data Controllers.

12.4 You instruct us to Process Operational PI and in particular, subject to clause 6, transfer Operational PI to any country or territory:

a   as reasonably necessary to provide TracPlus in accordance with the Agreement;

b   as initiated through the use of TracPlus by you, your Personnel and other end users you allow to use TracPlus; and

c   to comply with any further instruction from you (including by email or through our support channels) that is consistent with the Agreement and this Addendum.

12.5   This Addendum and the Agreement are your complete and final instructions for the Processing of Operational PI as at the time this Addendum takes effect. Any additional or alternate instructions must be agreed between us and you separately in writing.

12.6   We will not Process Operational PI other than on your Instructions unless required by any law to which we are subject, in which case we will to the extent permitted by applicable law inform you of that legal requirement before we Process that Operational PI.

12.7   As required by article 28(3) of the GDPR (and, if applicable, equivalent requirements of other Applicable Data Protection Laws), the nature and purpose of the Processing, the types of Operational PI and categories of Data Subjects Processed under this Addendum are set out in Schedule 1. We may amend Schedule 1 from time to time on written notice to you as we reasonably consider necessary to meet the requirements of the GDPR (and applicable equivalent requirements of other Applicable Data Protection Laws).

12.8   The duration of Processing is limited to the duration of the Agreement. Our obligations in relation to Processing will continue until the Operational PI has been properly deleted or returned to you in accordance with clause 11 of this Addendum.

12.9   You are solely responsible for ensuring that your Instructions comply with Applicable Data Protection Laws. It is also your responsibility to enter into data processing agreements with other relevant Data Controllers in order to allow us and our Sub-Processors to Process Operational PI in accordance with this Addendum.

12.10   If, in our reasonable opinion, an Instruction infringes Applicable Data Protection Laws, we will notify you as soon as reasonably practicable.

13   DATA SUBJECT REQUESTS

13.1   To the extent permitted by law, we will notify you promptly if we receive a request from a Data Subject to exercise the Data Subject's rights under Applicable Data Protection Laws relating to any Operational PI (**Data Subject Request**).

13.2   Taking into account the nature of the Processing, we will assist you by implementing appropriate technical and organisational measures, to the extent possible, to fulfil your obligation to respond to a Data Subject Request under Applicable Data Protection Laws.

13.3   To the extent you do not have the ability to address a Data Subject Request, we will, on your written request, provide reasonable assistance in accordance with Applicable Data Protection Laws to facilitate that Data Subject Request. You will reimburse us for the costs arising from this assistance.

13.4 We will not respond to a Data Subject Request except on your written request or if required by applicable law.

14 OUR PERSONNEL

14.1 We will:

a   take reasonable steps to ensure the reliability of any of our Personnel engaged in the Processing of Operational PI;

b   ensure that access to Operational PI is limited to our Personnel who require that access as strictly necessary for the purposes of exercising our rights and performing our obligations under the Agreement;

c   ensure that our Personnel engaged in Processing Operational PI are subject to confidentiality undertakings or professional or statutory obligations of confidentiality; and

d   ensure that our Personnel engaged in Processing Operational PI are informed of the confidential nature of the Operational PI and receive appropriate training on their responsibilities.

14.2 We have appointed a data protection officer who can be contacted at privacy@tracplus.com.

15 SUBPROCESSORS

15.1 You acknowledge and agree that we may engage third party Sub-Processors in connection with the provision of TracPlus.

15.2 We have entered into (and will, for any new Sub-Processor, enter into) written agreements with each Sub-Processor containing data protection obligations which offer at least the same level of protection for Operational PI as set out in this Addendum and that meet the requirements of Article 28(3) of the GDPR, as applicable to the nature of the services provided by that Sub-Processor.

15.3 You may request copies of our written agreements with Sub-Processors (which may be redacted to remove confidential information not relevant to this Addendum).

15.4 A list of current Sub-Processors for TracPlus as at 1 August 2018 is set out in Schedule 2. We may update the list of Sub-Processors from time to time and, subject to clause 6.5, we will give at least 30 days' prior written notice of any new Sub-Processor.

15.5 We may engage Sub-Processors as needed to serve as an Emergency Replacement to maintain and support TracPlus. *Emergency Replacement* means a sudden replacement of a Sub-Processor where a change is outside our reasonable control. In this case, we will inform you of the replacement Sub-Processor as soon as reasonably practicable.

15.6 If you object to any new Sub-Processor, you may, despite anything to the contrary in the Agreement, terminate the Agreement and your right to access and use TracPlus without

penalty on written notice, provided (in the case of a new Sub-Processor notified under clause 6.4) your notice of termination is received by us before the effective date of our notice under clause 6.4 or (in the case of a new Sub-Processor notified under clause 6.5) your notice of termination is received by us within 30 days of our notice of the new Sub-Processor. If you do not terminate the Agreement and your right to access and use TracPlus in accordance with this clause, you are deemed to have agreed to the new Sub-Processor.

15.7 We are liable for the acts and omissions of our Sub-Processors to the same extent we would be liable if performing the services of each Sub-Processor directly under the terms of this Addendum, except as otherwise set out in this Addendum.

16 SECURITY

17 We will maintain technical and organisational measures to protect the confidentiality, integrity and security (including protection against unauthorised or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorised disclosure of, or access to, Data) of Operational PI, and to manage data security incidents affecting Operational PI, in accordance with Appendix 2 of the Standard Contractual Clauses.

18 SECURITY BREACH MANAGEMENT

18.1 We will comply with all applicable laws requiring notification to you of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Operational PI Processed by us or our Sub-Processors of which we become aware (**Breach Incident**).

18.2 We will make reasonable efforts to identify the cause of that Breach Incident, notify you within a timely manner to allow you to meet your obligations to report a Breach Incident, and take steps we consider necessary and reasonable to remediate the cause of the Breach Incident, to the extent remediation is within our reasonable control.

19 DATA PROTECTION IMPACT ASSESSMENT

20 Upon your written request, we will provide you with reasonable assistance needed to fulfil your obligation under the GDPR to carry out a data protection impact assessment relating to your use of TracPlus, to the extent you do not otherwise have access to the relevant information.

21 AUDIT AND COMPLIANCE

22 Upon your written request, we will submit to your audits and inspections, and provide you all information necessary, to demonstrate that both you and we are complying with our respective obligations under Applicable Data Protection Laws (including your and our respective obligations under Article 28 of the GDPR).

23 RETURN AND DELETION OF OPERATIONAL PI

23.1 Subject to clauses 11.2 and 11.3, following termination of the Agreement we will delete all Operational PI within a reasonable period from termination of the Agreement.

23.2 Subject to clause 11.3, you may submit a written request to us within 10 working days of the termination of the Agreement requiring us, within 20 working days of your written request, to:

a   return a complete copy of all Operational PI by secure file transfer in a common format; and

b   delete all other copies of Operational PI Processed by us or any Sub-Processor.

23.3 We, or each Sub-Processor, may retain Operational PI to the extent that it is required by applicable laws, provided that we ensure the confidentiality of all such Operational PI and ensure that such Operational PI is only processed as necessary for the purposes required under applicable laws requiring its Processing and for no other purpose.

23.4 You agree that we may satisfy any requirement to delete Operational PI under this clause 10 by anonymising the Operational PI so that it is no longer Personal Data.

24 CHANGES IN DATA PROTECTION LAWS

24.1 We may on at least 30 days' prior written notice to you from time to time, make any variations to this Addendum (including to the Standard Contractual Clauses), which we consider (acting reasonable) are required as a result of any change in, or decision of a competent authority under, Applicable Data Protection Law, to allow transfers and Processing of Operational PI to continue without breach of Applicable Data Protection Law.

24.2 If you object to any variation under clause 12.1, you may, despite anything to the contrary in the Agreement, terminate the Agreement and your right to access and use TracPlus without penalty on written notice, provided your notice of termination is received by us before the effective date of our notice. If you do not terminate the Agreement and your right to access and use TracPlus in accordance with this clause, you are deemed to have agreed to the variation.

25 LIMITATION OF LIABILITY

26   The liability of each party to the other party under or in connection with this Addendum is subject to the limitations and exclusions set out in the Agreement, and any reference in the Agreement to the liability of a party means the aggregate liability of that party under the Agreement and this Addendum together.

27 GENERAL

28   If any provision of this Addendum is, or becomes unenforceable, illegal or invalid for any reason, the relevant provision is deemed to be varied to the extent necessary to remedy the unenforceability, illegality or invalidity. If variation is not possible, the provision must be

treated as severed from this Addendum without affecting any other provisions of this Addendum.

SCHEDULE 1

DETAILS OF PROCESSING

Nature and Purpose of Processing

We will Process Operational PI as necessary to provide TracPlus in accordance with the Agreement, as further specified in our online documentation relating to TracPlus, and as further instructed by you and your personnel and other end users you allow to use TracPlus.

Duration of Processing

Subject to clause 10 of this Addendum, we will Process Operational PI for the duration of the Agreement, unless otherwise agreed upon in writing.

Categories of Data Subjects

You may submit Operational PI to TracPlus, the extent of which is determined and controlled by you in your sole discretion, and which may include, but is not limited to, Operational PI relating to the following categories of data subjects:

▲ your officers, employees, contractors and agents (**Personnel**) who are natural persons

▲ your Personnel's nominated emergency contacts who are natural persons

Type of Operational PI

You may submit Operational PI to TracPlus, the extent of which is determined and controlled by you in your sole discretion, and which may include, but is not limited to, the following categories of personal data:

▲ first and last name

▲ title

▲ contact information (company, email, phone, physical business address)

▲ emergency contact information

▲ location

▲ any personal information contained in messages sent through TracPlus

SCHEDULE 2

LIST OF SUB-PROCESSORS AS AT 1 AUGUST 2018

Third party / service vendor	Purpose	Location of subprocessor	Policy pages
Tech Data Corporation	Data hosting	Australia	https://asia.techdata.com/line-privacy-practices
M2M One NZ	SMS Services	New Zealand	https://www.m2mone.co.nz/m2m-one-privacy-policy/
M2M One AU	SMS Services	Australia	https://www.m2mone.com.au/m2m-one-privacy-policy/
Aeris, Inc.	SMS Services	United States	https://www.aeris.com/legal/privacy-policy/
Bulletin Connect Ltd	SMS Services	New Zealand	https://www.bulletin.net/privacy/
Iridium Communications Inc	Satellite Services	United States	https://www.iridium.com/privacy-policy/
Inmarsat PLC	Satellite Services	United States	https://www.inmarsat.com/privacy-policy/
GEOS Response LLC	Emergency Response Services	United States	http://www.geosresponse.com/privacy.html
ZenDesk, Inc	Website live chat provider	USA	https://www.zendesk.com/company/customers-partners/privacy-policy/
The Rocket Science Group LLC	Email services	USA	https://mailchimp.com/legal/privacy/
Mailgun Technologies, Inc.	Email services	USA	https://www.mailgun.com/gdpr

SCHEDULE 3

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.

[*Customer to complete the details below*]

Name of the data exporting organisation: ....

Address: ....

Tel.: ....; fax: ....; e-mail: ....

Other information needed to identify the organisation

....

(the **data exporter**)

And

Name of the data importing organisation: TracPlus Global Limited

Address: Level 4, 1 Bond Street, Dunedin, 9054, New Zealand

E-mail: support@tracplus.com

Other information needed to identify the organisation:

a New Zealand company, company number 2097409

(the **data importer**)

each a **party**, together the **parties**

have agreed the following Standard Contractual Clauses (**Clauses**) in order to provide 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 of this Schedule 3.

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;

(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;

(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;

(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:

[*Customer to complete the details below*]

Name (written out in full):

Position:

Address:

Signature

On behalf of the data importer:

Name (written out in full): Christopher Warwick Hinch

Position: Chief Innovation Officer

Address: Level 4, 1 Bond Street, Dunedin 9016, New Zealand

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:

[*Customer to complete the details below*]

Name: ....

(please specify briefly your activities relevant to the transfer):

....

Data importer

The data importer is:

TracPlus Global Limited, a New Zealand company, company number 2097409 (**TPG**)

(please specify briefly your activities relevant to the transfer):

TPG provides a cloud based service solution that its customer can use to track certain assets and store that data centrally (**TracPlus**). The provision of TracPlus is governed by the terms and conditions set out at www.tracplus.com/termsandconditions, including the Data Processing Addendum set out at www.tracplus.com/termsandconditions (**Agreement**).

Data subjects

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

29   The data exporter may submit personal data to TracPlus, the extent of which will be determined and controlled by the data exporter in the data exporter's sole discretion, and which may include, but is not limited to, personal data relating to the following categories of data subjects:

▲   the data exporter's officers, employees, contractors and agents (**Personnel**) who are natural persons

▲   the data exporter's Personnel's nominated emergency contacts who are natural persons

Categories of data

30 The data exporter may submit personal data to TracPlus, the extent of which will be determined and controlled by the data exporter in the data exporter's sole discretion, and which may include, but is not limited to, the following categories of personal data:

▲ first and last name

▲ title

▲ contact information (company, email, phone, physical business address)

▲ emergency contact information

▲ location

▲ any personal information contained in messages sent through TracPlus

Special categories of data (if appropriate)

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

The data exporter may submit personal data to TracPlus, the extent of which will be determined and controlled by the data exporter in the data exporter's sole discretion, and which is for the sake of clarity is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

Processing operations

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

The data importer will process personal data to exercise its rights and perform its obligations under the Agreement.

DATA EXPORTER

[*Customer to complete the details below*]
Name: ………………………………………………………..
Signature ………………………………………………………

DATA IMPORTER

Name: Christopher Warwick Hinch

Signature