

## Memorandum

TO	KeenCorp	DATE	29 August 2018
COPY TO		FILE REF	
FROM	Clifford Chance	DIRECT DIAL	+31 20711 9131

---

### Privacy obligations for clients applying KeenCorp's "KeenCorp Index"

- 1.1 Use of the KeenCorp software solution involves processing of personal data. Such processing must be done in accordance with applicable privacy legislation, including the General Data Protection Regulation ("GDPR") that will apply as of 25 May 2018. The GDPR regulates the "processing" of "personal data". "Personal data" means any information relating to an identified or identifiable natural person. The term "processing" is defined broadly as any operation performed on personal data, whether or not by automated means, such as collection, structuring, storage, adaptation, retrieval, consultation, use etc.
- 1.2 Use of the KeenCorp software is permitted under the GDPR, provided that KeenCorp's client complies with the following requirements:
- *Legal basis* – KeenCorp's client should assess whether it has a legitimate interest that overrides the privacy interests of the individuals to use the KeenCorp software, which includes using/processing personal data. This condition entails that there should be no alternative to the envisaged processing in terms of subsidiarity (i.e. a less harmful available option) and proportionality (i.e. a more limited use of personal data).

KeenCorp's customers have general business interests to use KeenCorp's software, as it will serve their business/organizational objectives. The purpose of the KeenCorp software is to calculate the "KeenCorp Index" ("KCI"). On the basis of this KCI, the customer will be able to measure the employee engagement on a daily basis at company and group level and to measure the effects of intervention programs and management decisions. In this way, insight can be gained at an early stage in: (i) employee engagement (measuring employee well-being); (ii) change

212917-4-4-v2.2

55-40653118

CLIFFORD CHANCE LLP IS A LIMITED LIABILITY PARTNERSHIP REGISTERED IN ENGLAND AND WALES UNDER NUMBER 0C323571. THE FIRM'S REGISTERED OFFICE AND PRINCIPAL PLACE OF BUSINESS IS AT 10 UPPER BANK STREET, LONDON, E14 5JJ. THE FIRM USES THE WORD "PARTNER" TO REFER TO A MEMBER OF CLIFFORD CHANCE LLP OR AN EMPLOYEE OR CONSULTANT WITH EQUIVALENT STANDING AND QUALIFICATIONS. CLIFFORD CHANCE LLP IS REGISTERED IN THE NETHERLANDS WITH THE COMMERCIAL REGISTER OF THE CHAMBER OF COMMERCE UNDER NUMBER 34360401.

FOR OUR (NOTARIAL) THIRD PARTY ACCOUNT DETAILS, PLEASE SEE [WWW.CLIFFORDCHANCE.COM/NLREGULATORY](http://WWW.CLIFFORDCHANCE.COM/NLREGULATORY)

and integration (provide insight in the impact of changes, such as reorganizations, on employee well-being); (iii) governance and risk (provide insight for boards in their larger organization and identify risk); and (iv) acquisition and investment (add-on to the due diligence process), with a view to enhancing, modifying or improving these areas.

We understand from KeenCorp that there are no other less privacy intrusive tools currently available on the market that can measure employee engagement and/or effects of intervention programs and management decisions on a daily basis, in real-time which are as unobtrusive for employees as KeenCorp's software. The processing of personal data is at all times kept to a minimum and the software removes any (references to) personal data. The analysis is only performed on patterns of digital written anonymized text and excludes any personal data. No personal data is stored by KeenCorp on its systems.

- *Information obligation* – Under the GDPR the client is required to inform its employees about several aspects of processing personal data, including (i) the purposes of the processing by the KeenCorp software, (ii) the legitimate interests pursued by KeenCorp's client, (iii) the recipient, being KeenCorp, (iv) the existence of the right to request restriction of processing or to object to the processing and (v) the existence of the right to lodge a complaint with the supervisory authority. The employees should be informed prior to application of KeenCorp's software.
- *Employee rights* – Individuals have several rights on the basis of the GDPR. Most notably, the employee could request restriction of processing or object to the processing of his/her personal data by the KeenCorp software.
- *Storage limitation* – Personal data may not be retained for longer than necessary. To this end, the KeenCorp software will immediately delete all text/e-mails after they have been analysed. In addition, no personal data is stored by KeenCorp.
- *Technical and organisational measures* – It is key to implement adequate technical and organisational measures to ensure the security of the personal data. To this end, KeenCorp has taken measures which are aimed at providing such level of security.
- *Privacy by design and by default* – The GDPR provides that the processing (software) should be developed in such a way that the privacy of employees is a key driver. KeenCorp has developed its software with the privacy requirements in mind. Privacy by default requires that the software settings are set in such way

that, by default, only personal data which are necessary for each specific purpose of the processing are processed.

- *Processing agreement* – KeenCorp will need to enter into a data processing agreement with its client. KeenCorp will provide a template agreement in this respect.
- *Records* – The client will be required to keep a record of its processing activities.
- *Personal data breach* – The client has an obligation to notify the supervisory authority of any personal data breach that results in a risk to the rights and freedoms of individuals.
- *Data protection impact assessment* – The GDPR requires companies to carry out a data protection impact assessment when using new technology that is likely to result in a high risk to the rights and freedoms of individuals.
- *Works council* – The client located in the Netherlands will be required to request consent (*instemmingsrecht*) from its works council for using the KeenCorp software. For other countries, similar employee consultation requirements may apply.

\*\*\*