

This **Data Protection and Data Security Appendix** (this “**Appendix**”) is incorporated into the Frame Agreement for Services (the “**Agreement**”) dated [date] executed between Sanoma Corporation (“**Sanoma**”) and [name] (“**Supplier**”), together the “Parties”.

The Parties acknowledge and agree that with regard to the Processing of Personal Data under this Appendix, Sanoma is

- a) a Controller and the Supplier is a Processor; or
- b) when Sanoma is Processing Personal Data on behalf of another Controller, Sanoma is a Processor giving instructions on behalf of the Controller and the Supplier is Sanoma’s Sub-Processor.

Capitalised terms shall have the meanings set out in Annex 2 hereto. Unless otherwise defined in this Appendix including Annex 2, all capitalized terms shall have the meaning assigned to them in the Agreement.

## 1. PROCESSING OF PERSONAL DATA

### 1.1. Sanoma’s obligations

Sanoma is responsible for compliance with its obligations as stipulated in the Laws.

### 1.2. Supplier’s obligations

The Supplier shall without additional charge payable by Sanoma comply with

- (i) the Laws; and
- (ii) written instructions of Sanoma or Supervisory Authority. In cases where the Supplier considers that Sanoma’s instructions are in conflict with the Laws, it shall immediately notify Sanoma;

at Sanoma’s reasonable request, the Supplier shall assist Sanoma

- (iii) with conducting impact assessments for the Processing;
- (iv) when the impact assessment indicates a high risk, with consulting the Supervisory Authority prior to Processing; and
- (v) in compliance with the Laws as required for the purposes of this Appendix.

The Supplier shall not

- (vi) Process Personal Data for other purposes than those specified in this Appendix or in the Agreement;
- (vii) have any rights to Personal Data; and
- (viii) during or after the term of the Services, disclose or transfer, or enable access to or Processing of, Personal Data to or by any Third Party.

The Supplier shall maintain a record in electronic format of the Processing of Personal Data on behalf of Sanoma. Upon Sanoma’s request, the Supplier shall make available such record to Sanoma. In addition, the Supplier shall make available to Sanoma any other information reasonably necessary to demonstrate Sanoma’s compliance with its obligation under the Laws.

**1.3. Use of Sub-Processors by the Supplier**

The Supplier may engage Sub-Processors that Process Personal Data only with Sanoma's prior written approval and provided that

- (i) such engagement will be under a written contract; and
- (ii) the contract will require the Sub-Processor to comply at the minimum level with the same obligations applicable to the Supplier under this Appendix.

Such approval shall be deemed given for all Sub-Processors listed in part D of Annex 1. Supplier shall provide to Sanoma the following information in Annex 1, part D: the name of the legal entity, its registered address, name and contact details of a contact person, Processing location and description of Processing. If the list changes, Supplier shall provide Sanoma, upon request, an updated Annex 1 reflecting such changes.

The Supplier shall always remain fully liable for the acts and omissions of its Sub-Processors as for its own.

**1.4. Data deletion**

Upon termination or expiry of the Services, the Supplier shall

- (i) return to Sanoma all Sanoma's data;
- (ii) destroy any Personal Data from all computer hardware (including storage media), software, and databases used by the Supplier to Process the Personal Data; and
- (iii) confirm in writing that this has been done.

**1.5. Data disclosures**

Unless such notification is prohibited by applicable law, the Supplier shall immediately notify Sanoma of any requests from governmental authorities regarding access to Sanoma's Personal Data, and not respond to such a request without Sanoma's prior written approval.

The Supplier shall, without undue delay, notify Sanoma of any lawsuit or administrative action by Supervisory Authority or other threatening enforcement proceeding against Supplier (or Sub-Processor) related to the Processing of Personal Data under this Appendix.

**2. INTERNATIONAL TRANSFER OF PERSONAL DATA**

2.1 The Supplier shall not transfer or Process Personal Data to a Third Country unless

- (i) Sanoma has given prior written authorization to such transfer. Transfers disclosed in Annex 1 part B are considered to have been approved by Sanoma; and
- (ii) the Suppliers complies with the Laws and other legal requirements regarding the Processing of Personal Data

2.2 Where Sanoma has provided an authorization as prescribed in subsection (i) above, the Parties shall be deemed to have executed the Model Clauses for the transfer of Personal Data to the Third Country with their signature to this Appendix. For the purposes of this Appendix, when the Parties execute the Model Clauses, they acknowledge that:

- (i) the relevant module of the Model Clauses is:
  - a) “MODULE TWO: Transfer controller to processor”, when Sanoma is a Controller and the Supplier is a Processor; or
  - b) “MODULE THREE: Transfer processor to processor”, when Sanoma is a Processor Processing Personal Data on behalf of another Controller, and the Supplier is Sanoma’s Sub-Processor;
- (ii) Sanoma is the “data exporter” and the Supplier is the “data importer” according to Clause 1 and Annex 1 of the Model Clauses;
- (iii) in Clause 7, the Parties choose to include the optional “Docking clause”;
- (iv) in Clause 9 (a), the Parties choose “OPTION 1: SPECIFIC PRIOR AUTHORISATION” and 30 days as the specified time period;
- (v) in Clause 11 (a), the Parties choose not to include the optional complaint mechanism;
- (vi) in Clause 17, the Parties choose “OPTION 1”, and the governing law is specified in section 10 of this Appendix;
- (vii) in Clause 18 (b), the country of the applicable court in respect of any disputes arising from the Model Clauses is specified in section 10 of this Appendix;
- (viii) Annex 1 of this Appendix shall supplement “Annex I” of the Model Clauses; and
- (ix) Section 3 of this Appendix shall supplement “Annex II” of the Model Clauses; and
- (x) part D of Annex 1 shall supplement “Annex III” of the Model Clauses.

2.3 Where necessary, the Parties shall implement additional safeguards to supplement the Model Clauses as agreed between the Parties in Annex 1. The Parties shall commit to implement and update applicable additional safeguards during the term of this Appendix in accordance with guidance provided by Supervisory Authorities under Laws. In addition, use of the Model Clauses are subject to following conditions:

- (i) The Supplier shall, without delay, inform Sanoma of any inability to comply with Model Clauses, including but not limited to local requirements that would require it to provide Personal Data to public authorities in a Third Country;
- (ii) The Supplier shall inform Sanoma about the total number of law enforcement requests received during a calendar year. This obligation can be fulfilled by making available a law enforcement access report; and
- (iii) Sanoma is entitled to suspend the transfer of Personal Data and/or to terminate the relevant agreement with immediate effect in case the Supplier is in breach of this Appendix or unable to comply with this Appendix.

2.4 The Supplier shall cooperate with Sanoma in good faith in case Model Clauses are modified, revoked, or held in a court of competent jurisdiction to be invalid to

- (i) promptly terminate the transfer of Personal Data or

- (ii) to pursue a suitable alternative transfer mechanism that can lawfully support the transfer of Personal Data.

2.5 In case both Sanoma and the Supplier Process Personal Data only within the EEA, but the Supplier uses a Sub-Processor for the processing of Personal Data in a Third Country, the Supplier shall

- (i) only transfer the Personal Data with Sanoma's written authorization;
- (ii) execute the Model Clauses using the module "MODULE THREE: Transfer processor to processor" with such Sub-Processor;
- (iii) make information on the Model Clauses available to Sanoma on request;
- (iv) guarantees that despite the transfer and for the duration of the transfer and Personal Data Processing, the level of protection of Personal Data remains essentially equivalent to that guaranteed within the EU by the GDPR and the Charter of the Fundamental Rights of the European Union as required by the GDPR taking into account the Schrems II CJEU decision, July 2020 (Case C-311/18, Data Protection Commissioner v Facebook Ireland Ltd, Maximillian Schrems) and related European Data Protection Board recommendations/guidance; and
- (v) guarantee that affected natural persons have enforceable rights and effective legal remedies and other requirements set out in the GDPR are complied with.

### 3. DATA SECURITY AND SAFEGUARDS

The Parties agree that the Information Security Requirements Appendix (See Annex 1 part E) shall apply to the Processing of Personal Data. Further, the Supplier shall

- (i) implement and maintain appropriate organizational, operational, managerial, physical and technical measures to protect the Personal Data and any other Sanoma's data against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access, especially where the Processing involves the transmission of data over a network;
- (ii) assess the measures necessary to 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;
- (iii) ensure that all technical measures implemented comply with the Laws and applicable industry standards, such as ISO 27001/27002 or SSAE-16(2);
- (iv) limit access to the Personal Data to authorized and properly trained personnel with a well-defined "need-to-know" basis, and who are bound by appropriate confidentiality obligations;
- (v) ensure by technical and organizational means that Personal Data is not Processed for purposes other than those specified in this Appendix or in the relevant agreement or as required by the Laws. For the sake of clarity, the Supplier is not entitled to Process Personal Data for the Supplier's own purposes or other customer's purposes;

- (vi) ensure that the Personal Data is Processed separately from the data of other Supplier's customers; and
- (vii) take all necessary precautions in performing the Services to prevent: loss and alteration of any data, unauthorized access to Sanoma's IT environment, introduction of viruses to Sanoma's systems, improper access to Sanoma's IT environment and confidential information of Sanoma.

Sanoma is entitled to give additional supplementary instructions in the field of data security. Those shall be documented in Annex 1, Part E where applicable.

#### **4. SELF-ASSESSMENTS AND AUDITS**

- (i) Sanoma, (or an independent Third Party appointed by Sanoma), is entitled to request, once every twelve (12) months, a review of the Supplier's security documentation and/or a written self-assessment report on the Supplier's compliance with this Appendix.
- (ii) In addition Sanoma (or an independent Third Party appointed by Sanoma) is entitled to conduct an audit on the Processing by the Supplier according to an audit plan upon twelve (12) business days' prior written notice.
- (iii) Sanoma is entitled to request Supplier to audit Supplier's Sub-Processors respectively.
- (iv) If such audit reveals that the Services are in not in compliance with this Appendix, the Supplier shall, at its sole expense, take all necessary corrective measures.
- (v) Sanoma is entitled to verify the compliance by conducting another audit at any time after the implementation of such corrective measures.
- (vi) Sanoma shall bear the costs for the audits. However, if the audit reveals any violation or breach of this Appendix by the Supplier, the Supplier shall without delay remedy the breach and reimburse Sanoma for the costs arising from the audit.

#### **5. HANDLING OF PERSONAL DATA BREACHES**

In the event of a Personal Data Breach, the Supplier shall

- (i) provide Sanoma with an accurate written notice at (cert@sanoma.com) promptly and where a Personal Data Breach is likely to require a notification to the Supervisory Authority in no event later than within twenty-four (24) hours upon becoming aware of the Personal Data Breach;
- (ii) work with Sanoma's prior approval for quickly resolving the issue, and preventing further losses;
- (iii) provide Sanoma with the information required for any notices to a Supervisory Authority as mandated by the Laws or if agreed with Sanoma, provide such notice to the Supervisory Authority directly on behalf of Sanoma; and
- (iv) upon Sanoma's prior request, provide any appropriate remedial services to the individuals.

## 6. RIGHTS OF THE DATA SUBJECTS

If requested by Sanoma and to the extent necessary for the Supplier to support Sanoma in its compliance with the Laws, the Supplier shall promptly:

- (i) provide Sanoma with
  - a) a copy of individuals' Personal Data in tangible and/or machine readable form
  - b) such information and cooperation as Sanoma may reasonably request in order to fulfil the Data Subjects' rights, including any services or information given directly by the Supplier to the individual whose Personal Data is being Processed; and
- (ii) correct, block or delete individuals' Personal Data.

The Supplier shall bear the costs incurred under this section 6, unless otherwise agreed in the relevant agreement between the Parties.

## 7. CONFIDENTIALITY

The Supplier shall ensure that personnel required to access Personal Data are subject to a binding duty of confidentiality in respect of such Personal Data and take reasonable steps to ensure the reliability and competence of the personnel who have access to Personal Data. Otherwise, what is agreed on confidentiality in the relevant agreement shall be applied to this Appendix.

## 8. INDEMNIFICATION

The Supplier hereby agrees to indemnify, defend and hold Sanoma harmless from and against all damage, loss, liability, expense (including, without limitation, reasonable expenses of investigation and fees of consultants, auditors and attorneys) or any lack of funds, assets or rights arising out of or resulting from the Supplier's failure to protect Personal Data against a Personal Data Breach or the failure to comply with any of its obligations under this Appendix.

In the event of any Third Party Claim, the Supplier shall give a written notice to Sanoma. Such written notice shall be given within thirty (30) days from the date from which the Supplier became aware of the Third Party Claim. In respect of any such Third Party Claim the Supplier shall:

- (i) not make any admission of liability, agreement, settlement or compromise in relation thereto without obtaining the prior written consent of Sanoma;
- (ii) take such action as Sanoma may request, at Supplier's cost and expense, to avoid, defend or appeal such Third Party Claim; or
- (iii) alternatively permit Sanoma to take or conduct any such action itself in the manner Sanoma deems appropriate, in which event the Supplier shall ensure that Sanoma is given all authorizations and all assistance necessary (including access to relevant information) to enable Sanoma to defend any Third Party Claim and to properly conduct any litigation resulting therefrom. Sanoma shall reimburse the Supplier for any reasonable out-of-pocket expenses incurred by the Supplier in connection therewith.

**9. TERM AND TERMINATION**

This Appendix shall come into effect on the date of acceptance/signature by the Supplier.

As a stand-alone agreement, this Appendix shall remain in full force as long as Personal Data is Processed by the Supplier on behalf of Sanoma. Obligations which by their nature should survive the termination or expiration of the Appendix, shall so survive.

Sanoma is entitled to terminate this Appendix with immediate effect upon written notice to the Supplier if the Supplier is in material breach of the terms and conditions of this Appendix and fails to remedy such breach within thirty (30) days from the date of receipt of a written notice by Sanoma. For instance, Supplier's inability to comply with Model Clauses shall be regarded as a material breach.

**10. GOVERNING LAW AND DISPUTES**

This Appendix shall be governed by and construed in accordance with the laws of Finland, excluding its choice of law provisions. Any dispute, controversy or claim arising out of or relating to this Appendix, or the breach, termination or validity thereof, shall in the first instance be settled by the Helsinki district court.

**11. ORDER OF PRECEDENCE**

In the event of any discrepancy between the relevant agreements concluded between the Parties including any of appendices, annexes attachments, schedules or exhibits, the following order of precedence will govern, with lower numbers governing over higher numbers:

- 1) Model Clauses (Annex 3 including annexes)
- 2) This Appendix (including its Annex 1 and Annex 2)
- 3) The body of the Agreement and any other appendices, annexes, attachments, schedules or exhibits to the Agreement

**SIGNATURES**

Signed on behalf of the Supplier on (date)

Name:

Title:

Signed on behalf of Sanoma on (date)

Name:

Title:

## Annex 1: Instructions for Processing Personal Data

This Annex includes Sanoma's instructions provided to the Supplier for the purposes of Processing Personal Data. The instructions will be provided and/or up-dated during the term of Agreement on the basis of the Services at hand.

### A. LIST OF PARTIES

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]  
Name:

Address:

Contact person's name, position and contact details:

Activities relevant to the data transferred under these Clauses:

Role (controller):

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection. ] Please add parties (by copying the text) if there are several importers.

Name:

Address:

Contact person's name, position and contact details:

Activities relevant to the data transferred under these Clauses:

Role (processor):

### B. DESCRIPTION OF THE PROCESSING & TRANSFER

Please fill in the information below. This part should be filled in all cases, also when no Personal Data is transferred.

Please note that if there are different transfers involved, those need to be filled in separately.

<b>1. Nature of the Data Processing Activities by the Processor:</b> <i>(please specify briefly the Processing activities and operations relevant to your Processing):</i>	
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<p><b>2. Categories of Data Subjects whose data is transferred and whose data is processed:</b> <i>(please specify e.g. Personal Data about employees, B2B contacts, B2C customers, other categories of data subjects):</i></p>	
<p><b>3. Categories of Personal Data processed and possibly transferred</b> <i>(please specify e.g. directly identifying user data, indirectly identifying user data, both directly and indirectly identifying user data, children's data, location data and include a listing of the data types):</i></p>	
<p><b>4. Sensitive data processed and possibly transferred</b> (if applicable)</p> <p><i>(please specify special categories of data as defined by GDPR, e.g. health data)</i></p> <p><i>Please specify applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.:</i></p>	
<p><b>5. Frequency of the transfer (if applicable)</b> <i>(please specify e.g. whether the data is transferred on a one-off or continuous basis).</i></p>	
<p><b>6. Purpose(s) of the data transfer and further processing (if applicable)</b></p>	
<p><b>7. Data retention</b> <i>(please specify the period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period)</i></p>	
<p><b>8. Countries/locations data will be exported to,</b> remotely accessed or hosted from or otherwise Processed by Supplier or its Sub-Processors: <i>(please specify countries / locations):</i></p>	

## C. COMPETENT SUPERVISORY AUTHORITY

*Identify the competent supervisory authority/ies in accordance with Clause 13*

The Supervisory Authority is the Finnish Data Protection Authority.

## D. LIST OF SUB-PROCESSORS

Sanoma authorizes the use of the following Sub-Processors:

<b>1.</b>	
<b>Name of the legal entity</b>	
<b>Address</b>	
<b>Contact person's name, position and contact details</b>	
<b>Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised)</b>	

Please copy for additional Sub-Processors, if needed.

## E. OTHER INSTRUCTIONS

*Please add reference to, or list, instructions received from Sanoma, for example regarding agreed practices on storage, transfer, deletion, encryption or pseudonymization of data*

Further instructions on Processing may also be communicated by email.

**Annex 2: Definitions**

The following terms used in this Appendix shall have the meanings as defined in Article 4 of the EU General Data Protection Regulation 2016/679: "Controller", "Processor", "Process" or Processing "Data Subject", "Personal Data Breach", "Supervisory Authority", and Third Party.

<b>"EEA"</b>	means the European Economic Area.
<b>"GDPR"</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
<b>"Laws"</b>	means applicable laws relating to data protection, privacy and security, including without limitation EU General Data Protection Regulation 2016/679 and Directive 2002/58/EC (collectively the "EU Regulations") and any amendments, replacements or renewals thereof as well as all binding national laws implementing the EU Regulations and other applicable binding data protection, privacy or data security directives, laws, regulations and rulings when Processing Personal Data under the provision of Services.
<b>"Model Clauses"</b>	means the contractual clauses issued by the European Commission by implementing decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.
<b>"Personal Data"</b>	means any information as defined in Article 4 of the EU General Data Protection Regulation (2016/679), relating to a Data Subject which is sent to the Supplier, is accessed by the Supplier or is otherwise Processed by the Supplier on Sanoma's behalf in relation to the Services.
<b>"Services"</b>	means the provision of the services by the Supplier to Sanoma.
<b>"Technical and organizational security measures"</b>	means measures aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing.
<b>"Sub-Processor"</b>	means a Processor acting on behalf of the Data Processor.
<b>"Third Country"</b>	means country that is neither part of the EEA nor has been declared adequate by a decision of the European Commission according to the mechanism lined out in Article 45 of the EU General Data Protection Regulation (2016/679).
<b>"Third Party Claim"</b>	means any claim, action or proceeding by a Third Party, Data subject or Supervisory Authority against the Supplier concerning the infringement of Laws relating to Sanoma employees (current and former), job applicants, external workforce or customers (prospective, current and former).



## Annex 3: Model Clauses

### STANDARD CONTRACTUAL CLAUSES

#### SECTION I

##### *Clause 1*

##### **Purpose and scope**

- a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) <sup>(1)</sup> for the transfer of personal data to a third country.
- b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

##### *Clause 2*

##### **Effect and invariability of the Clauses**

- a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these

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<sup>1</sup> Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

- b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

### **Clause 3**

#### **Third-party beneficiaries**

- a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
  - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
  - (ii) Clause 8 - Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
  - (iii) Clause 9-Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
  - (iv) Clause 12-Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clause 5.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clause 18-Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

### **Clause 4**

#### **Interpretation**

- a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

### **Clause 5**

#### **Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

### **Clause 6**

#### **Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex LB.

**Clause 7 - Optional**

**Docking clause**

- a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

**SECTION II - OBLIGATIONS OF THE PARTIES**

**Clause 8**

**Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**MODULE ONE: Transfer controller to controller**

**8.1 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex LB. It may only process the personal data for another purpose:

- (i) where it has obtained the data subject's prior consent;
- (ii) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iii) where necessary in order to protect the vital interests of the data subject or of another natural person.

**8.2 Transparency**

- a) In order to enable data subjects to effectively exercise their rights pursuant to Clause 10, the data importer shall inform them, either directly or through the data exporter:
  - (i) of its identity and contact details;
  - (ii) of the categories of personal data processed;
  - (iii) of the right to obtain a copy of these Clauses;
  - (iv) where it intends to onward transfer the personal data to any third party/ies, of the recipient or categories of recipients (as appropriate with a view to providing meaningful information), the purpose of such onward transfer and the ground therefore pursuant to Clause 8.7.
- b) Paragraph (a) shall not apply where the data subject already has the information, including when such information has already been provided by the data exporter, or providing the information proves impossible or would involve a disproportionate effort for the data importer. In the latter case, the data importer shall, to the extent possible, make the information publicly available.

- c) On request, the Parties shall make a copy of these Clauses, including the Appendix as completed by them, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the Parties may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.
- d) Paragraphs (a) to (c) are without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

### **8.3 Accuracy and data minimisation**

- a) Each Party shall ensure that the personal data is accurate and, where necessary, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.
- b) If one of the Parties becomes aware that the personal data it has transferred or received is inaccurate, or has become outdated, it shall inform the other Party without undue delay.
- c) The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing.

### **8.4 Storage limitation**

The data importer shall retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures to ensure compliance with this obligation, including erasure or anonymisation <sup>(2)</sup> of the data and all back-ups at the end of the retention period.

### **8.5 Security of processing**

- a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- b) The Parties have agreed on the technical and organisational measures set out in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

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<sup>2</sup> This requires rendering the data anonymous in such a way that the individual is no longer identifiable by anyone, in line with recital 26 of Regulation (EU) 2016/679, and that this process is irreversible.

- c) The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- d) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.
- e) In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify both the data exporter and the competent supervisory authority pursuant to Clause 13. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.
- f) In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature, if necessary in cooperation with the data exporter, together with the information referred to in paragraph (e), points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.
- g) The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

### **8.6 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter 'sensitive data'), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

### **8.7 Onward transfers**

The data importer shall not disclose the personal data to a third party located outside the European Union <sup>(3)</sup> (in the same country as the data importer or in another third country,

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<sup>3</sup> The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

hereinafter 'onward transfer') unless the third party is or agrees to be bound by these Clauses, under the appropriate Module. Otherwise, an onward transfer by the data importer may only take place if:

- (i) it is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679 with respect to the processing in question;
- (iii) the third party enters into a binding instrument with the data importer ensuring the same level of data protection as under these Clauses, and the data importer provides a copy of these safeguards to the data exporter;
- (iv) it is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings;
- (v) it is necessary in order to protect the vital interests of the data subject or of another natural person; or
- (vi) where none of the other conditions apply, the data importer has obtained the explicit consent of the data subject for an onward transfer in a specific situation, after having informed him/her of its purpose(s), the identity of the recipient and the possible risks of such transfer to him/her due to the lack of appropriate data protection safeguards. In this case, the data importer shall inform the data exporter and, at the request of the latter, shall transmit to it a copy of the information provided to the data subject.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

#### **8.8 Processing under the authority of the data importer**

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

#### **8.9 Documentation and compliance**

- a) Each Party shall be able to demonstrate compliance with its obligations under these Clauses. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.
- b) The data importer shall make such documentation available to the competent supervisory authority on request.

### **MODULE TWO: Transfer controller to processor**

#### **8.1 Instructions**

- a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

#### **8.2 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex LB, unless on further instructions from the data exporter.

### 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

### 8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

### 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex LB. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

### 8.6 Security of processing

- a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular

checks to ensure that these measures continue to provide an appropriate level of security.

- b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

### 8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

### 8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union <sup>(4)</sup> (in the same country as the data importer or in another third country, hereinafter 'onward transfer')

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

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<sup>4</sup> The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

### **8.9 Documentation and compliance**

- a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
- d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

## **MODULE THREE: Transfer processor to processor**

### **8.1 Instructions**

- a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.
- b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.
- c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.

- d) The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter <sup>(5)</sup>.

### **8.2 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B., unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

### **8.3 Transparency**

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

### **8.4 Accuracy**

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

### **8.5 Duration of processing and erasure or return of data**

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

### **8.6 Security of processing**

- a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due

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<sup>5</sup> See Article 28(4) of Regulation (EU) 2016/679 and, where the controller is an EU institution or body, Article 29(4) of Regulation (EU) 2018/1725.

account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

- b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

### **8.7 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

### **8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter.

In addition, the data may only be disclosed to a third party located outside the European Union <sup>(6)</sup> (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

### **8.9 Documentation and compliance**

- a) The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.
- b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.
- c) The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.
- d) The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.
- e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.
- f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- g) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

## **MODULE FOUR: Transfer processor to controller**

### **8.1 Instructions**

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<sup>6</sup> The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purposes of these Clauses.

- a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.
- b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.
- c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.
- d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

### **8.2 Security of processing**

- a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data (<sup>7</sup>), the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.
- c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

### **8.3 Documentation and compliance**

- a) The Parties shall be able to demonstrate compliance with these Clauses.
- b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

## **Clause 9**

### **Use of sub-processors**

#### **MODULE TWO: Transfer controller to processor**

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<sup>7</sup> This includes whether the transfer and further processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences.

- a) **OPTION 1: SPECIFIC PRIOR AUTHORISATION** The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the data exporter's prior specific written authorisation. The data importer shall submit the request for specific authorisation at least [*Specify time period*] prior to the engagement of the sub-processor, together with the information necessary to enable the data exporter to decide on the authorisation. The list of sub-processors already authorised by the data exporter can be found in Annex III. The Parties shall keep Annex III up to date.
- OPTION 2: GENERAL WRITTEN AUTHORISATION** The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least [*Specify time period*] in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.
- b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. <sup>(8)</sup> The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent - the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

### **MODULE THREE: Transfer processor to processor**

- a) **OPTION 1: SPECIFIC PRIOR AUTHORISATION** The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the prior specific written authorisation of the controller. The data importer shall submit the request for specific authorisation at least

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<sup>8</sup> This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

*[Specify time period]* prior to the engagement of the sub-processor, together with the information necessary to enable the controller to decide on the authorisation. It shall inform the data exporter of such engagement. The list of sub-processors already authorised by the controller can be found in Annex III. The Parties shall keep Annex III up to date.

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least *[Specify time period]* in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).

- b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. <sup>(9)</sup> The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- c) The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent - the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

## **Clause 10**

### **Data subject rights**

#### **MODULE ONE: Transfer controller to controller**

- a) The data importer, where relevant with the assistance of the data exporter, shall deal with any enquiries and requests it receives from a data subject relating to the processing of his/her personal data and the exercise of his/her rights under these Clauses without undue

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<sup>9</sup> This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

delay and at the latest within one month of the receipt of the enquiry or request. (10) The data importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of data subject rights. Any information provided to the data subject shall be in an intelligible and easily accessible form, using clear and plain language.

- b) In particular, upon request by the data subject the data importer shall, free of charge:
- (i) provide confirmation to the data subject as to whether personal data concerning him/her is being processed and, where this is the case, a copy of the data relating to him/her and the information in Annex I; if personal data has been or will be onward transferred, provide information on recipients or categories of recipients (as appropriate with a view to providing meaningful information) to which the personal data has been or will be onward transferred, the purpose of such onward transfers and their ground pursuant to Clause 8.7; and provide information on the right to lodge a complaint with a supervisory authority in accordance with Clause 12(c)(i);
  - (ii) rectify inaccurate or incomplete data concerning the data subject;
  - (iii) erase personal data concerning the data subject if such data is being or has been processed in violation of any of these Clauses ensuring third-party beneficiary rights, or if the data subject withdraws the consent on which the processing is based.
- c) Where the data importer processes the personal data for direct marketing purposes, it shall cease processing for such purposes if the data subject objects to it.
- d) The data importer shall not make a decision based solely on the automated processing of the personal data transferred (hereinafter 'automated decision'), which would produce legal effects concerning the data subject or similarly significantly affect him/her, unless with the explicit consent of the data subject or if authorised to do so under the laws of the country of destination, provided that such laws lays down suitable measures to safeguard the data subject's rights and legitimate interests. In this case, the data importer shall, where necessary in cooperation with the data exporter:
- a. inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved; and
  - b. implement suitable safeguards, at least by enabling the data subject to contest the decision, express his/her point of view and obtain review by a human being.
- e) Where requests from a data subject are excessive, in particular because of their repetitive character, the data importer may either charge a reasonable fee taking into account the administrative costs of granting the request or refuse to act on the request.
- f) The data importer may refuse a data subject's request if such refusal is allowed under the laws of the country of destination and is necessary and proportionate in a democratic society to protect one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679.
- g) If the data importer intends to refuse a data subject's request, it shall inform the data subject of the reasons for the refusal and the possibility of lodging a complaint with the competent supervisory authority and/or seeking judicial redress.

## MODULE TWO: Transfer controller to processor

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<sup>10</sup> That period may be extended by a maximum of two more months, to the extent necessary taking into account the complexity and number of requests. The data importer shall duly and promptly inform the data subject of any such extension.

- a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

### **MODULE THREE: Transfer processor to processor**

- a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.
- b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

### **MODULE FOUR: Transfer processor to controller**

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

#### **Clause 11**

##### **Redress**

- a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.  
[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body <sup>(11)</sup> at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

### **MODULE ONE: Transfer controller to controller**

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<sup>11</sup> The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

- b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
  - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
  - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

**Clause 12**

**Liability**

**MODULE ONE: Transfer controller to controller**

**MODULE FOUR: Transfer processor to controller**

- a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- e) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

- a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

### **Clause 13**

#### **Supervision**

#### **MODULE ONE: Transfer controller to controller**

#### **MODULE TWO: Transfer controller to processor**

#### **MODULE THREE: Transfer processor to processor**

- a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex LC, shall act as competent supervisory authority.  
[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.  
[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article

3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex LC, shall act as competent supervisory authority.

- b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

### SECTION III - LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

#### **Clause 14**

#### **Local laws and practices affecting compliance with the Clauses**

#### **MODULE ONE: Transfer controller to controller**

#### **MODULE TWO: Transfer controller to processor**

#### **MODULE THREE: Transfer processor to processor**

#### **MODULE FOUR: Transfer processor to controller** *(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)*

- a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
- (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
  - (ii) the laws and practices of the third country of destination- including those requiring the disclosure of data to public authorities or authorising access by such authorities - relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards <sup>(12)</sup>;

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<sup>12</sup> As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior

- (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). [For Module Three: The data exporter shall forward the notification to the controller.]
- f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation [for Module Three: if appropriate in consultation with the controller]. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by [for Module Three: the controller or] the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

### **Clause 15**

#### **Obligations of the data importer in case of access by public authorities**

##### **MODULE ONE: Transfer controller to controller**

##### **MODULE TWO: Transfer controller to processor MODULE THREE: Transfer processor to processor**

##### **MODUL THREE: Transfer processor to processor**

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instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

**MODULE FOUR: Transfer processor to controller** (*where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU*)

### 15.1 Notification

- a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
  - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
  - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.  
[For Module Three: The data exporter shall forward the notification to the controller.]
- b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). [For Module Three: The data exporter shall forward the information to the controller.]
- d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

### 15.2 Review of legality and data minimisation

- a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These

requirements are without prejudice to the obligations of the data importer under Clause 14(e).

- b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. [For Module Three: The data exporter shall make the assessment available to the controller.]
- c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

#### **SECTION IV - FINAL PROVISIONS**

##### ***Clause 16***

##### **Non-compliance with the Clauses and termination**

- a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(t).
- c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
  - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
  - (ii) the data importer is in substantial or persistent breach of these Clauses; or
  - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority [for Module Three: and the controller] of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- d) [For Modules One, Two and Three: Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data.] [For Module Four: Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof.] The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

- e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

**Clause 17**

**Governing law**

**MODULE ONE: Transfer controller to controller**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

[OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_ (specify Member State).]

[OPTION 2 (for Modules Two and Three): These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_ (specify Member State).]

**MODULE FOUR: Transfer processor to controller**

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_\_\_\_(specify country).

**Clause 18**

**Choice of forum and jurisdiction**

**MODULE ONE: Transfer controller to controller**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

- a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- b) The Parties agree that those shall be the courts of \_\_\_\_\_(specify Member State).
- c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- d) The Parties agree to submit themselves to the jurisdiction of such courts.

**MODULE FOUR: Transfer processor to controller**

Any dispute arising from these Clauses shall be resolved by the courts of \_\_\_\_\_(specify country).