DATA PROCESSOR AGREEMENT

This Data Processor Agreement ("**DPA**") is entered into between:

(1) Center for Innovative Therapy Solutions, Inc., Address: 329 S Woodruff Ave Idaho Falls, ID 83401 / USA hereinafter "**CITS**"; and	(2) Name: Address: hereinafter the "**Customer**".

CITS and the Customer are jointly referred to as "**Parties**" or individually a "**Party**".

Preamble

WHEREAS CITS offers cloud-based software (Software as a Service "SaaS") and corresponding courses for occupational therapists for purposes of training and certifying them in the valid use of a CITS assessment tool. An occupational therapist (the "**Customer**") attending an online CITS training and certification course purchases a 1-year subscription to use the Cloud-Based Software (as defined below).

WHEREAS Client Data of the Customer, stored in the cloud-based software, will not be accessed by CITS. To ensure the security and privacy of personal health information, our application employs data anonymization in AWS, along with AWS encryption at rest. The information regarding health status and skill levels is exclusively accessible to the Customer, who will log in to the application using their unique username and password, supplemented by two-factor authentication. The General Data Protection Regulation (GDPR) references a process known as pseudonymization, which involves transforming data so that it cannot be attributed to a specific individual without the use of additional information. Within the AMPS framework, this process is implemented in two key ways:

1. AMPS-certified therapists will be assigned a unique reference ID, instead of using their names when storing data in a database.
2. The system is designed to support minimization and pseudonymization where appropriate. Customer organizations remain responsible for determining whether identifiable client/service-user information is entered into the platform. Where identifiable or re-identifiable data are entered, such data are treated as personal data and, where health-related, special category data.

WHEREAS the Customer has purchased an annual subscription of the cloud-based software, and the Parties have entered into a Software Agreement (the "**Agreement**"). The following DPA, therefore, is an addition to CITS obligations as specified in the Agreement and pertains to the Processing of Rater Data (and other Personal Data, if any) that is transferred by the Customer to CITS and CITS Processing of that Customer's Rater Data.

NOW, THEREFORE, and in order to ensure an adequate level of protection for all Personal Data resulting from the Agreement and compliance with the Data Protection Law (as defined below), the Parties hereto agree as follows.

1. Definitions

"Agreement"	as defined in the Preamble.
"Controller"	means the natural or legal person, public authority, agency or other body that, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by the European Union or EU Member State law, the controller or the specific criteria for its nomination may be provided for by European Union or EU Member State law.
"Controller of the Customer's Rater Data"	means the entity that is the Controller of the Rater Data the Customer transfers to CITS.
"Customer"	as defined in the Preamble.
"Data subject"	means the natural person to whom Personal Data relates.
"Data Protection Law"	means the from time to time applicable laws and regulations with respect to the Processing of Personal Data of European Union citizens, including but not limited to, Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries of the European Parliament and of the Council (the "**GDPR**"), Supervisory Authority's binding decisions, regulations and recommendations and supplementary local adaptions and regulations in respect of data protection.
"Cloud-based software"	means the computer scoring software that CITS grants to Customers trained in the *Assessment of Motor and Process* (AMPS)
"Personal Data"	means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“Processing”	means any operation or set of operations that is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
“Processor”	means a natural or legal person, public authority, agency or other body that processes Personal Data on behalf of the Controller, e.g. CITS when carrying out Rater Data Processing under this DPA.
“Rater Data”	the pseudonymized Personal Data that the Customer submits on the cloud-based software i.e. the Rater Subject’s (i) age, (ii) gender, (iii) general diagnostic category and (iv) test scores; the following are not made accessible to CITS: the Rater Subject’s name, hospital- or government-issued identification number or any other identifier code, specific International Classification of Disease diagnostic codes and the final test reports.
“Rater Subject”	the person (Data Subject) who agreed to be tested by a Customer in order for the Customer to fulfill the requirements for qualifying the Data Subject for services using the AMPS assessment.
“Standard Contract Clauses”, “SCC” or **“the Clauses”**	means European Commission Standard Contractual Clauses, Commission Implementing Decision (EU) 2021/914, Module Two: Controller to Processor , as set out in Appendix 2 herein.
“Sub-processor”	means any Processor engaged by CITS, or by any other Sub-processor of CITS that agrees to receive from CITS or from any other Sub-processor of CITS, Personal Data exclusively intended for Processing activities to be carried out on behalf of the Customer after the transfer in accordance with the Customer’s instructions, the terms of the Clauses and the terms of the written subcontract.
“Supervisory Authority”	means the supervisory authority/supervisory authorities authorized to conduct supervision of Processing of Personal Data or considered to be a supervisory authority concerned under the Data Protection Law.

1.1 Unless otherwise stated, any other term or concept used in capitalized letters in this DPA (except in some cases as part of a heading) shall have the meaning and conception that is established in the Data Protection Law and otherwise in the Agreement, unless the circumstances obviously require another interpretation.

2. Purpose

The purpose of this DPA is to ensure that CITS Processing is carried out in accordance with the applicable requirements for data Processing and obligations under Data Protection Law.

2.1 This DPA ensures the adequate protection of individual's personal integrity and fundamental rights during the transfer of Personal Data from the Customer to CITS, specifically in relation to the Customer's sign-up process and the use of the annual subscription for the cloud-based application.

2.2 Under this DPA, CITS will only process specifically Personal Data, i.e. Rater Data, in order to fulfill CITS obligations to Customers for rater certification required for their use of the cloud-based software in accordance with the Agreement. Hence, it will not be possible for CITS to identify the Data Subject behind the Rater Data without additional information by the Customer or the Controller of the Customer's Rater Data.

3. Responsibilities and instructions

3.1 The Customer is the Controller for the Processing of the Personal Data processed under this DPA. The Customer is therefore responsible for complying with Data Protection Law. If another entity is the Controller for Customer's Rater Data, or if the Customer is joint Controller with another entity for the relevant Personal Data, the Customer shall inform CITS accordingly. If so, the Customer, by transferring Rater Data, hereby confirms that he or she is authorized or otherwise has obtained permission to transfer Rater Data to CITS.

3.2 The type of Personal Data and categories of those Data Subjects that are processed by CITS under this DPA, as well as the purpose, nature, duration and object of the Processing, are described in Appendix 1 (Instructions regarding handling of Personal Data) .

3.3 Personal Data under this DPA may also be processed if such Processing is required by Union or Member law to which CITS or a Sub-processor is subject. If such Processing is required, CITS or the Sub-processor shall inform the Customer of the legal requirement before the Processing, unless such information is prohibited according to a public interest under this law.

3.4 During the term of this DPA and thereafter, CITS has the right to store and, in other ways, to process data that originates from the Customer, provided that such data are aggregated and rendered irreversibly anonymous, i.e. does not contain Personal Data and, therefore, does not constitute Personal Data in format or contents that are subject to such Processing.

4. Applicability of Standard Contractual Clauses

Where Customer Data is transferred from the European Economic Area to CITS in the United States, the Parties agree that the European Commission Standard Contractual Clauses, Commission Implementing Decision (EU) 2021/914, Module Two: Controller to Processor, apply. Where Customer Data is transferred from the United Kingdom to CITS in the United States, the Parties agree that the UK International Data Transfer Addendum to the EU Commission Standard Contractual Clauses, Version B1.0, in force 21 March 2022, applies.

5. Security and confidentiality

5.1 CITS shall implement appropriate technical and organizational measures, as required by the Data Protection Rules, to ensure a level of security appropriate to the risk, to protect Personal Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to such Personal Data. Such measures include measures to protect Personal Data required by article 32 of the GDPR.

5.2 CITS undertakes to ensure that persons authorized to process Personal Data have undertaken confidentiality obligations as regards the Processing of Personal Data. CITS will not disclose Personal Data or other information concerning the Processing of Personal Data to a third party, with the exception of CITS Sub-processors, without explicit instructions from the Customer, and unless such disclosure is required under the Data Protection Rules.

5.3 To fulfill the security requirements provided for in this DPA, CITS has implemented the security measures that are laid out in Appendix 1. The Customer confirms that these measures are, according to the Customer's reasonable judgment, sufficient to meet the Controller's needs. If the Customer requests additional security measures, CITS shall try to meet such requirements as far as possible, with fair compensation by the Customer requesting additional security measures.

6. Assistance

6.1 In the event CITS receives a request for information from a Rater Subject, Supervisory Authority or other third party regarding the Processing of Personal Data, CITS shall, without undue delay, forward such request to the Customer if and to the extent allowed under applicable Data Protection Rules.

6.2 By technical and organizational measures that are appropriate, taking into account the nature of the Processing, CITS shall assist the Customer, insofar as this is possible, for the fulfillment of the Customer's obligation to respond to requests from the Rater Subject when a Rater Subject exercises its rights in accordance with the Data Protection Law.

6.3 CITS shall also, to a reasonable extent, and taking into account the nature of Processing and the information available to CITS, support the Customer in assisting Rater Subjects in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR.

6.4 CITS shall, without delay, inform the Customer of any suspicion of or established data breach as regards the Personal Data that are processed by CITS hereunder and will, with fair compensation, assist the Customer in distributing information and reports as required under Data Protection Rules.

6.5 CITS shall assist the Customer in fulfilling potential duties to enable data portability regarding Rater Data being processed by CITS.

6.6 Due to the nature of the Processing, CITS requires, as a precondition for CITS to be able to fulfill requests according to this section 6, that the Customer provides CITS with the necessary additional information in order to de-pseudonymize the Rater Data, if necessary.

7. Contact with Supervisory Authority

7.1 CITS shall inform the Customer of any contacts from the Supervisory Authority concerning the Processing of Personal Data under this DPA. CITS is not entitled to represent the Customer or act on behalf of the Customer in relation to the Supervisory Authority if not required by Data Protection Law.

8. Subprocessors

8.1 The Customer hereby gives CITS prior general authorization to engage Sub-processors in the Processing of Personal Data, provided that CITS enters into a written agreement that imposes corresponding Data Protection obligations on the Sub-processor as set out in this DPA and the SCC.

8.2 CITS shall inform the Customer of any intended changes concerning the addition or replacement of a Sub-processor by e-mail or through the CITS website www.centerforinnovativetherapysolutions.com, thereby giving the Customer the opportunity to object to such changes. If the Customer objects to CITS using a certain Sub-processor, the Customer shall compensate CITS as set out in Section 12.

8.3 If CITS uses Sub-processors according to article 8.1 above, CITS is responsible for the Sub-processor fulfilling all the obligations and respecting all the limits set out in this DPA towards CITS.

9. Transfers of Personal Data outside the EU/EEA

9.1 CITS is an American corporation established in Idaho, USA. In other words, when signing up for and using the cloud-based software, the Rater Data will be transferred by the Customer to CITS, i.e. transferred outside the EU/EEA. The provisions in this DPA, with appendices, governs such transfer and thus the SCC in Appendix 2 will ensure the adequate level of protection for the transferred Personal Data.

9.2 CITS or a Sub-processor may transfer Rater Data to a place outside the EU/EEA provided that CITS ensures that there is a lawful basis for the transfer under the Data Protection Law, e.g. through the application of the SCC for the transfer of Personal Data to a third country, or provisions that replace these.

10. Audits

10.1 CITS shall provide the Customer with all information required to comply with the obligations according to this DPA and Data Protection Law within reasonable time after such request has been made by the Customer to CITS.

10.2 CITS shall enable and contribute to audits, including inspections carried out by the Customer or by another independent auditor selected by the Customer, and that CITS may reasonably accept. The auditor is required to sign sufficient confidentiality agreements provided by CITS prior to audits. The Customer has the right to perform one audit per year without cost, including audits performed on the Customer's behalf. If the Customer would like to carry out additional audits the Customer must compensate CITS for all costs associated with the audit/audits.

10.3 CITS shall, regarding the obligations stated in section 8 of this DPA, immediately inform the Customer if CITS considers an instruction to be in violation of Data Protection Law.

11. Confidentiality

11.1 CITS shall, where applicable, comply with national legislation applicable to classified or confidential information. CITS undertakes to ensure that personnel authorized to process Personal Data under this DPA have undertaken to observe confidentiality for the Processing or are subject to applicable statutory duty of confidentiality.

11.2 Section 10.1 above does not apply to information requested by a Supervisory Authority in accordance with Data Protection Law or other statutory obligation.

11.3 The confidentiality obligation also applies after the Agreement and/or the DPA has ceased to apply.

12. Compensation

12.1 CITS shall be entitled to fair compensation for all work, costs and expenditures stemming from or related to:

(i) instructions for Processing from the Customer that exceed the functionalities and the level of security that CITS normally offers its clients, or that require CITS to make special adjustments for the Customer in the cloud-based software or otherwise;

(ii) CITS performance of any of its undertakings under sections 5, 6 and 10; or

(iii) the Customer's objection to a new Sub-processor pursuant to section 8.

13. Liability

13.1 If CITS, any person acting under the authority of CITS or a Sub-processor, processes Personal Data in violation of this DPA or contrary to the documented lawful instructions that the Customer has provided CITS, CITS shall, in consideration of the limitation of liability

arising from the Agreement, compensate the Customer for direct damages due to the wrongful Processing.

13.2 During the term of this DPA and thereafter, the Customer shall indemnify and hold CITS harmless from any direct and indirect damage, including claims from Data Subjects and third parties, that CITS has suffered due to unclear, inadequate or unlawful instructions from the Customer, or otherwise, depending on the circumstances deriving from the Customer.

13.3 CITS obligation to pay damages, laid down in section 13.1 above, only applies, provided that i) the Customer without undue delay informs CITS in writing of any claims against the Customer; and ii) the Customer allows CITS to control the defense of the claim and make independent decisions regarding settlement.

13.4 This section 13 shall not be considered as limiting any of the Parties' liability towards Data Subjects set out in Clause 6 of the SCC.

14. Term and Termination

14.1 This DPA enters into force when duly signed by both Parties either separately as an amendment to the Agreement or as a part of the Agreement and remains in force as long as CITS is Processing Personal Data on behalf of the Customer.

14.2 Upon termination of the Agreement or this DPA (depending on which occurs first) , CITS shall, in accordance with the Customer's instructions, delete or return the Personal Data that CITS is Processing to the Customer and make sure that all Sub-processors do the same.

14.3 If the Customer has not requested that the Personal Data should be deleted, CITS shall delete the Personal Data not later than one-hundred-and-eighty (180) days after the termination of the DPA or the Agreement (whichever occurs first) . CITS shall delete any existing copies unless the storage of Personal Data is required by Union law or the national law of the Member State.

14.4 When deleting Personal Data, CITS may, in accordance with section 3.4 of this DPA, aggregate and render Rater Data irreversibly anonymous for development purposes.

15. Transfer of the DPA

15.1 The Customer has the right to transfer the rights and/or obligations under this DPA (including but not limited to the rights and/or obligations as set forth in the SCC) , at any time, to its employer or principal if the Agreement is transferred to such party. If so, the Customer shall notify CITS about the transfer in writing.

16. Amendments

16.1 If any applicable Data Protection Laws are changed during the term of this DPA, or if the Supervisory Authority issues guidelines, decisions or regulations concerning the application of the Data Protection Law that result in this DPA no longer meeting the requirements for a DPA, the Parties shall make the necessary changes to this DPA in order to meet such new or

additional requirements. Such changes shall enter into force no later than thirty (30) days after a Party sends a notice of change to the other Party or otherwise no later than prescribed by the Data Protection Law, guidelines, decisions or regulations of the Supervisory Authority.

16.2 Other amendments to this DPA, in order to be binding, must be made in writing and duly signed by both Parties.

17. Miscellaneous

17.1 This DPA supersedes and replaces all prior DPAs between the Parties and supersedes any deviating provisions of the Agreement concerning the subject matter of this DPA, regardless if otherwise stated in the Agreement.

17.2 In addition, the terms of the Agreement shall also apply to CITS Processing of Personal Data and the obligations under this DPA. However, in the event of contradictions between the provisions of the Agreement and this DPA, the provisions of the DPA will supersede regarding all Processing of Personal Data. The provisions of the Agreement may not restrict or modify any of the obligations of this DPA.

17.3 This DPA, including appendices, shall be governed by the law and subject to the forum(s) set out in the SCC in Appendix 2.

This DPA has been drawn up in duplicates whereof each Party has taken one each.

Place: CITS
Date:
Center for Innovative Therapy Solutions Inc

Signature:

Place:
Date:
Customer (Please print your first and last name):

Signature:

Appendix 1 – Data Processing and IT security measures

In the following data Processing and IT security measures, all capitalized words shall have the same meaning as defined in the DPA, unless otherwise expressly stated.

Data Processing measures

Purposes Please specify all purposes for which the Personal Data will be processed by CITS as the Customer's data Processor	CITS processes Personal Data for the purpose of certifying the occupational therapist Customer in the use of the AMPS assessment tool, fulfilling the service under the Agreement and to enable the Customer to use the Cloud-based Software in professional activities.
Categories of data Please specify the Personal Data that will be processed by CITS as data Processor	CITS processes data regarding Rater Subjects transferred by the Customer to CITS when using CITS services, i.e. Rater Data: i. age, ii. gender, iii. general diagnostic category, and iv. test scores. CITS does not process any Personal Data other than the Rater Data. CITS may process special category health data e.g. diagnosis or diagnostic category, age/date of birth, gender, AMPS task selections, ADL motor/process item scores, ADL motor/process ability measures, reports/outcomes, and clinician/user account information.
Categories of Data Subjects Please specify the categories of Data Subjects whose Personal Data will be processed by CITS as data Processor	CITS processes the following categories of Data Subjects: • Rater Subjects that appear in such material, i.e. Customers will store Rater Subject Data in the Cloud-based Software for 1 month. CITS does not have access to Rater Subject Data during rater training, certification, and professional activities.
Retention requirements Please specify the retention time of Personal Data stored by CITS	The Personal Data must be deleted at the Customer's request and according to the Customer's instructions. CITS has a retention period of one-hundred-and-eighty (180) days after the termination of the Agreement or DPA in accordance with the obligations set forth in the DPA.

IT security measures

Access control	Access to data is limited to CITS staff via account permissions.
Back-up	CITS runs backups daily and monthly. Daily backups are retained for twenty-one (21) days; monthly backups are retained for one-hundred-and-eighty (180) days before they are permanently deleted.
Logging of access to personal data	Administrative and user access events are logged and monitored where technically available, including authentication events, role-based access activity, and relevant system/security events.

Authorization and authorities	Specified CITS staff web application administrators are given role-based access via username/password-protected accounts.
Encryption of data communication	Data are encrypted in transit using TLS/HTTPS and encrypted at rest using AWS-managed encryption mechanisms, where applicable.
Deletion	Upon request from the Customer or a Data Subject, and otherwise one-hundred-and-eighty (180) days after the termination of the DPA or the Agreement, whichever comes first.
Service and repairs of units where personal data are stored	Handled by Subprocessors Amazon Web Services, SoftKraft sp. z o.o., Stripe, LearnWorlds, Amazon SES, DataRep
Firewalls, separation of environments and anti-virus protection	Site is secured by our Subprocessor, LearnWorlds, through their LearnWorlds malware remover and security web application firewall. More information can be found at www.learnworlds.com/data-security. LearnWorlds access is only granted for support as needed. https://www.centerforinnovativetherapysolutions.com/author/pageseditor?page=privacy

Appendix 2 – International Transfer Terms

COMMISSION 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

Where Customer Data is transferred from the European Economic Area to CITS in the United States, the Parties agree that the European Commission Standard Contractual Clauses, Commission Implementing Decision (EU) 2021/914, Module Two: Controller to Processor, apply.

Where Customer Data is transferred from the United Kingdom to CITS in the United States, the Parties agree that the UK International Data Transfer Addendum to the EU Commission Standard Contractual Clauses, Version B1.0, in force 21 March 2022, applies.

The applicable transfer terms are incorporated into this DPA by reference and supplemented by the transfer details listed below.

Appendix 2 – International Transfer Terms

Data exporter:
Customer / healthcare organization

Data importer:
Center for Innovative Therapy Solutions Inc.

Exporter role:
Controller

Importer role:
Processor

Importer country:
United States

SCC module:
Module Two: Controller to Processor

Data subjects:
Clinician users; clients, patients, or service users assessed using AMPS

Categories of data:
User account data; assessment data; demographic data; diagnostic/general health data; AMPS scores; task selections; reports; support and security logs

Special category data:
Health-related data, where entered by the Customer

Purpose of transfer:
AMPS training, scoring, reporting, account administration, technical support, security, maintenance, and service delivery

Subprocessors:
Amazon Web Services (AWS); SoftKraft sp. z o.o.; Stripe, if applicable; LearnWorlds, if applicable; email provider, if applicable

Security measures:
TLS/HTTPS; encryption at rest; role-based access control; MFA/OTP; backups; logging and monitoring; least-privilege access; separate development/environments, staging, and production environments; WAF/security controls, SoftKraft as subprocessor.

UK Addendum:
Applies to UK restricted transfers, where applicable.

Appendix 2 – International Transfer Terms

The full text of the applicable transfer terms is attached to this DPA as Attachment A, European Commission Standard Contractual Clauses, Commission Implementing Decision (EU) 2021/914, and Attachment B, UK International Data Transfer Addendum to the EU Commission Standard Contractual Clauses, Version B1.0, where applicable.

7.6.2021 EN Official Journal of the European Union L 199/31

COMMISSION 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 (General Data Protection Regulation) ([1]), and in particular Article 28(7) and Article 46(2)(c) thereof,

Whereas:

(1) Technological developments are facilitating cross-border data flows necessary for the expansion of international cooperation and international trade. At the same time, it is necessary to ensure that the level of protection of natural persons guaranteed by Regulation (EU) 2016/679 is not undermined where personal data is transferred to third countries, including in cases of onward transfers ([2]). The data transfer provisions in Chapter V of Regulation (EU) 2016/679 are intended to ensure the continuity of that high level of protection where personal data is transferred to a third country ([3]).

(2) Pursuant to Article 46(1) of Regulation (EU) 2016/679, in the absence of an adequacy decision by the Commission pursuant to Article 45(3), a controller or processor may transfer personal data to a third country only if it has provided appropriate safeguards, and on condition that enforceable rights and effective legal remedies for data subjects are available. Such safeguards may be provided for by standard data protection clauses adopted by the Commission pursuant to Article 46(2)(c).

(3) The role of standard contractual clauses is limited to ensuring appropriate data protection safeguards for international data transfers. Therefore, the controller or processor transferring the personal data to a third country (the 'data exporter') and the controller or processor receiving the personal data (the 'data importer') are free to include those standard contractual clauses in a wider contract and to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, the standard contractual clauses or prejudice the fundamental rights or freedoms of data subjects. Controllers and processors are encouraged to provide additional safeguards by means of contractual commitments that supplement the standard contractual clauses ([4]). The use of the standard contractual clauses is without prejudice to any contractual obligations of the data exporter and/or importer to ensure respect for applicable privileges and immunities.

(4) Beyond using standard contractual clauses to provide appropriate safeguards for transfers pursuant to Article 46(1) of Regulation (EU) 2016/679, the data exporter has to fulfil its general responsibilities as controller or processor under Regulation (EU) 2016/679. Those responsibilities include an obligation of the controller to provide data subjects with information about the fact that it intends to transfer their personal data to a third country pursuant to Article 13(1)(f) and Article 14(1)(f) of Regulation (EU) 2016/679. In the case of transfers pursuant to Article 46 of Regulation (EU) 2016/679, such information must include a reference to the appropriate safeguards and the means by which to obtain a copy of them or information where they have been made available.

([1]) OJ L 119, 4.5.2016, p. 1.
([2]) Article 44 of Regulation (EU) 2016/679.
([3]) See also judgment of the Court of Justice of 16 July 2020 in Case C-311/18, *Data Protection Commissioner* v *Facebook Ireland Ltd and Maximillian Schrems ('Schrems II')*, ECLI:EU:C:2020:559, paragraph 93.
([4]) Recital 109 of Regulation (EU) 2016/679.

(5) Commission Decisions 2001/497/EC ([5]) and 2010/87/EU ([6]) contain standard contractual clauses to facilitate the transfer of personal data from a data controller established in the Union to a controller or processor established in a third country that does not offer an adequate level of protection. Those decisions were based on Directive 95/46/EC of the European Parliament and of the Council ([7]).

(6) Pursuant to Article 46(5) of Regulation (EU) 2016/679, Decision 2001/497/EC and Decision 2010/87/EU remain in force until amended, replaced or repealed, if necessary, by a Commission decision adopted pursuant to Article 46(2) of that Regulation. The standard contractual clauses in the decisions required updating in the light of new requirements in Regulation (EU) 2016/679. Moreover, since the decisions were adopted, the digital economy has seen significant developments, with the widespread use of new and more complex processing operations often involving multiple data importers and exporters, long and complex processing chains, and evolving business relationships. This calls for modernisation of the standard contractual clauses to reflect those realities better, by covering additional processing and transfer situations, and to allow a more flexible approach, for example with respect to the number of parties able to join the contract.

(7) A controller or processor may use the standard contractual clauses set out in the Annex to this Decision to provide appropriate safeguards within the meaning of Article 46(1) of Regulation (EU) 2016/679 for the transfer of personal data to a processor or controller established in a third country, without prejudice to the interpretation of the notion of international transfer in Regulation (EU) 2016/679. The standard contractual clauses may be used for such transfers only to the extent that the processing by the importer does not fall within the scope of Regulation (EU) 2016/679. This also includes the transfer of personal data by a controller or processor not established in the Union, to the extent that the processing is subject to Regulation (EU) 2016/679 (pursuant to Article 3(2) thereof), because it relates to the offering of goods or services to data subjects in the Union or the monitoring of their behaviour as far as it takes place within the Union.

(8) Given the general alignment of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([8]), it should be possible to use the standard contractual clauses also in the context of a contract, as referred to in Article 29(4) of Regulation (EU) 2018/1725 for the transfer of personal data to a sub-processor in a third country by a processor that is not a Union institution or body, but which is subject to Regulation (EU) 2016/679 and which processes personal data on behalf of a Union institution or body in accordance with Article 29 of Regulation (EU) 2018/1725. Provided the contract reflects the same data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) Regulation (EU) 2018/1725, in particular by providing sufficient guarantees for technical and organisational measures to ensure that the processing meets the requirements of that Regulation, this will ensure compliance with Article 29(4) of Regulation (EU) 2018/1725. In particular, that will be the case where the controller and processor use the standard contractual clauses in Commission Implementing Decision on standard contractual clauses between controllers and processors under Article 28(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council and Article 29(7) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ([9]).

(9) Where the processing involves data transfers from controllers subject to Regulation (EU) 2016/679 to processors outside its territorial scope or from processors subject to Regulation (EU) 2016/679 to sub-processors outside its territorial scope, the standard contractual clauses set out in the Annex to this Decision should also allow to fulfil the requirements of Article 28(3) and (4) of Regulation (EU) 2016/679.

(10) The standard contractual clauses set out in the Annex to this Decision combine general clauses with a modular approach to cater for various transfer scenarios and the complexity of modern processing chains. In addition to the general clauses, controllers and processors should select the module applicable to their situation, so as to tailor their obligations under the standard contractual clauses to their role and responsibilities in relation to the data processing

([5]) Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries, under Directive 95/46/EC (OJ L 181, 4.7.2001, p. 19).

([6]) Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (OJ L 39, 12.2.2010, p. 5).

([7]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([8]) 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); see recital 5.

([9]) C(2021) 3701.

in question. It should be possible for more than two parties to adhere to the standard contractual clauses. Moreover, additional controllers and processors should be allowed to accede to the standard contractual clauses as data exporters or importers throughout the lifecycle of the contract of which they form a part.

(11) In order to provide appropriate safeguards, the standard contractual clauses should ensure that the personal data transferred on that basis is afforded a level of protection essentially equivalent to that guaranteed within the Union ([10]). With a view to ensuring transparency of processing, data subjects should be provided with a copy of the standard contractual clauses and be informed, in particular, of the categories of personal data processed, the right to obtain a copy of the standard contractual clauses, and any onward transfer. Onward transfers by the data importer to a third party in another third country should be allowed only if the third party accedes to the standard contractual clauses, if the continuity of protection is ensured otherwise, or in specific situations, such as on the basis of the explicit, informed consent of the data subject.

(12) With some exceptions, in particular as regards certain obligations that exclusively concern the relationship between the data exporter and data importer, data subjects should be able to invoke, and where necessary enforce, the standard contractual clauses as third-party beneficiaries. Therefore, while the parties should be allowed to choose the law of one of the Member States as governing the standard contractual clauses, that law must allow for third-party beneficiary rights. In order to facilitate individual redress, the standard contractual clauses should require the data importer to inform data subjects of a contact point and to deal promptly with any complaints or requests. In the event of a dispute between the data importer and a data subject who invokes his or her rights as a third-party beneficiary, the data subject should be able to lodge a complaint with the competent supervisory authority or refer the dispute to the competent courts in the EU.

(13) In order to ensure effective enforcement, the data importer should be required to submit to the jurisdiction of such authority and courts, and to commit to abide by any binding decision under the applicable Member State law. In particular, the data importer should agree to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. In addition, the data importer should have the option of offering data subjects the opportunity to seek redress before an independent dispute resolution body, at no cost. In line with Article 80(1) of Regulation (EU) 2016/679, data subjects should be allowed to be represented by associations or other bodies in disputes against the data importer if they so wish.

(14) The standard contractual clauses should provide for rules on liability between the parties and with respect to data subjects, and rules on indemnification between the parties. Where the data subject suffers material or non-material damage as a consequence of any breach of the third-party beneficiary rights under the standard contractual clauses, he or she should be entitled to compensation. This should be without prejudice to any liability under Regulation (EU) 2016/679.

(15) In the case of a transfer to a data importer acting as a processor or sub-processor, specific requirements should apply in accordance with Article 28(3) of Regulation (EU) 2016/679. The standard contractual clauses should require the data importer to make available all information necessary to demonstrate compliance with the obligations set out in the clauses and to allow for and contribute to audits of its processing activities by the data exporter. With respect to the engagement of any sub-processor by the data importer, in line with Article 28(2) and (4) of Regulation (EU) 2016/679, the standard contractual clauses should in particular set out the procedure for general or specific authorisation from the data exporter and the requirement for a written contract with the sub-processor ensuring the same level of protection as under the clauses.

(16) It is appropriate to provide different safeguards in the standard contractual clauses that cover the specific situation of a transfer of personal data by a processor in the Union to its controller in a third country and reflect the limited self-standing obligations for processors under Regulation (EU) 2016/679. In particular, the standard contractual clauses should require the processor to inform the controller if it is unable to follow its instructions, including if such instructions infringe Union data protection law, and require the controller to refrain from any actions that would prevent the processor from fulfilling its obligations under Regulation (EU) 2016/679. They should also require the parties to assist each other in responding to enquiries and requests from data subjects under the local law applicable

([10]) *Schrems II*, paragraphs 96 and 103. See also Regulation (EU) 2016/679, recitals 108 and 114.

to the data importer or, for data processing in the Union, under Regulation (EU) 2016/679. Additional requirements to address any effects of the laws of the third country of destination on the controller's compliance with the clauses, in particular how to deal with binding requests from public authorities in the third country for disclosure of the transferred personal data, should apply where the Union processor combines the personal data received from the controller in the third country with personal data collected by the processor in the Union. Conversely, no such requirements are justified where the outsourcing merely involves the processing and transfer back of personal data that has been received from the controller and in any event has been and will remain subject to the jurisdiction of the third country in question.

(17) The parties should be able to demonstrate compliance with the standard contractual clauses. In particular, the data importer should be required to keep appropriate documentation for the processing activities under its responsibility and to inform the data exporter promptly if it is unable to comply with the clauses, for whatever reason. In turn, the data exporter should suspend the transfer and, in particularly serious cases, have the right to terminate the contract, insofar as it concerns the processing of personal data under standard contractual clauses, where the data importer is in breach of the clauses or unable to comply with them. Specific rules should apply where local laws affect compliance with the clauses. Personal data that has been transferred prior to the termination of the contract, and any copies thereof, should at the choice of the data exporter be returned to the data exporter or destroyed in their entirety.

(18) The standard contractual clauses should provide for specific safeguards, in particular in the light of the case law of the Court of Justice ([11]), to address any effects of the laws of the third country of destination on the data importer's compliance with the clauses, in particular how to deal with binding requests from public authorities in that country for disclosure of the transferred personal data.

(19) The transfer and processing of personal data under standard contractual clauses should not take place if the laws and practices of the third country of destination prevent the data importer from complying with the clauses. In this context, 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 should not be considered as being in conflict with the standard contractual clauses. The parties should warrant that, at the time of agreeing to the standard contractual clauses, they have no reason to believe that the laws and practices applicable to the data importer are not in line with these requirements.

(20) The parties should take account, in particular, of the specific circumstances of the transfer (such as the content and duration of the contract, the nature of the data to be transferred, the type of recipient, the purpose of the processing), the laws and practices of the third country of destination that are relevant in light of the circumstances of the transfer and any safeguards put in place to supplement those under the standard contractual clauses (including relevant contractual, technical and organisational measures applying to the transmission of personal data and its processing in the country of destination). As regards the impact of such laws and practices on compliance with the standard contractual clauses, different elements may be considered as part of an overall assessment, including reliable information on the application of the law in practice (such as case law and reports by independent oversight bodies), the existence or absence of requests in the same sector and, under strict conditions, the documented practical experience of the data exporter and/or data importer.

(21) The data importer should notify the data exporter if, after agreeing to the standard contractual clauses, it has reason to believe that it is not able to comply with the standard contractual clauses. If the data exporter receives such notification or otherwise becomes aware that the data importer is no longer able to comply with the standard contractual clauses, it should identify appropriate measures to address the situation, if necessary in consultation with the competent supervisory authority. Such measures may include supplementary measures adopted by the data exporter and/or data importer, such as technical or organisational measures to ensure security and confidentiality. The data exporter should be required to suspend the transfer if it considers that no appropriate safeguards can be ensured, or if so instructed by the competent supervisory authority.

([11]) *Schrems II*.

(22) Where possible, the data importer should notify the data exporter and the data subject if it receives a legally binding request from a public (including judicial) authority under the law of the country of destination for disclosure of personal data transferred pursuant to the standard contractual clauses. Similarly, it should notify them if it becomes aware of any direct access by public authorities to such personal data, in accordance with the law of the third country of destination. If, despite its best efforts, the data importer is not in a position to notify the data exporter and/or the data subject of specific disclosure requests, it should provide the data exporter with as much relevant information as possible on the requests. In addition, the data importer should provide the data exporter with aggregate information at regular intervals. The data importer should also be required to document any request for disclosure received and the response provided, and make that information available to the data exporter or the competent supervisory authority, or both, upon request. If, following a review of the legality of such a request under the laws of the country of destination, the data importer concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the third country of destination, it should challenge it, including, where appropriate, by exhausting available possibilities of appeal. In any event, if the data importer is no longer able to comply with the standard contractual clauses, it should inform the data exporter accordingly, including where this is the consequence of a request for disclosure.

(23) As stakeholder needs, technology and processing operations may change, the Commission should evaluate the operation of the standard contractual clauses in the light of experience, as part of the periodic evaluation of Regulation (EU) 2016/679 referred to in Article 97 of that Regulation.

(24) Decision 2001/497/EC and Decision 2010/87/EU should be repealed three months after the entry into force of this Decision. During that period, data exporters and data importers should, for the purpose of Article 46(1) of Regulation (EU) 2016/679, still be able to use the standard contractual clauses set out in Decisions 2001/497/EC and 2010/87/EU. For an additional period of 15 months, data exporters and data importers should, for the purpose of Article 46(1) of Regulation (EU) 2016/679, be able to continue to rely on standard contractual clauses set out in Decisions 2001/497/EC and 2010/87/EU for the performance of contracts concluded between them before the date of repeal of those decisions, provided that the processing operations that are the subject matter of the contract remain unchanged and that reliance on the clauses ensures that the transfer of personal data is subject to appropriate safeguards within the meaning of Article 46(1) of Regulation (EU) 2016/679. In the event of relevant changes to the contract, the data exporter should be required to rely on a new ground for data transfers under the contract, in particular by replacing the existing standard contractual clauses with the standard contractual clauses set out in the Annex to this Decision. The same should apply to any sub-contracting to a (sub-)processor of processing operations covered by the contract.

(25) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42(1) and (2) of Regulation (EU) 2018/1725 and delivered a joint opinion on 14 January 2021 ([12]), which has been taken into consideration in the preparation of this Decision.

(26) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 93 of Regulation (EU) 2016/679,

HAS ADOPTED THIS DECISION:

Article 1

1. The standard contractual clauses set out in the Annex are considered to provide appropriate safeguards within the meaning of Article 46(1) and (2)(c) of Regulation (EU) 2016/679 for the transfer by a controller or processor of personal data processed subject to that Regulation (data exporter) to a controller or (sub-)processor whose processing of the data is not subject to that Regulation (data importer).

2. The standard contractual clauses also set out the rights and obligations of controllers and processors with respect to the matters referred to in Article 28(3) and (4) of Regulation (EU) 2016/679, as regards the transfer of personal data from a controller to a processor, or from a processor to a sub-processor.

([12]) EDPB EDPS Joint Opinion 2/2021 on the European Commission's Implementing Decision on standard contractual clauses for the transfer of personal data to third countries for the matters referred to in Article 46(2)(c) of Regulation (EU) 2016/679.

Article 2

Where the competent Member State authorities exercise corrective powers pursuant to Article 58 of Regulation (EU) 2016/679 in response to the data importer being or becoming subject to laws or practices in the third country of destination that prevent it from complying with the standard contractual clauses set out in the Annex, leading to the suspension or ban of data transfers to third countries, the Member State concerned shall, without delay, inform the Commission, which will forward the information to the other Member States.

Article 3

The Commission shall evaluate the practical application of the standard contractual clauses set out in the Annex on the basis of all available information, as part of the periodic evaluation required by Article 97 of Regulation (EU) 2016/679.

Article 4

1. This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. Decision 2001/497/EC is repealed with effect from 27 September 2021.

3. Decision 2010/87/EU is repealed with effect from 27 September 2021.

4. Contracts concluded before 27 September 2021 on the basis of Decision 2001/497/EC or Decision 2010/87/EU shall be deemed to provide appropriate safeguards within the meaning of Article 46(1) of Regulation (EU) 2016/679 until 27 December 2022, provided the processing operations that are the subject matter of the contract remain unchanged and that reliance on those clauses ensures that the transfer of personal data is subject to appropriate safeguards.

Done at Brussels, 4 June 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

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) ([1]) 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 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;

([1]) 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.

(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 15.1(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 I.B.

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 I. B. 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 ([2]) 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.

(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.

([2]) 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.

8.7 **Onward transfers**

The data importer shall not disclose the personal data to a third party located outside the European Union [3] (in the same country as the data importer or in another third country, 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 I. B, unless on further instructions from the data exporter.

[3] 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.

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 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 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 ([4]) (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 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.

([4]) 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.

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 ([5]).

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).

([5]) 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.

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 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 ([6]) (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;

([6]) 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.

(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**

(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 ([7]), 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

(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. ([8]) 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.

([7]) 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.

([8]) This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

(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 [*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. ([9]) 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.

([9]) This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

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 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:

(i) inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved; and

(ii) 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

(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.

([10]) 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.

(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 ([11]) 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

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.

([11]) 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.

(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 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) 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 I.C, 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 ([12]);

(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

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)*

([12]) 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 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.

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(f).

(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*).

APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. **LIST OF PARTIES**

MODULE ONE: Transfer controller to controller

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller

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*]

1. Name: .....

Address: .....

Contact person's name, position and contact details: .....

Activities relevant to the data transferred under these Clauses: .....

Signature and date: .....

Role (controller/processor): .....

2. .....

Data importer(s): [*Identity and contact details of the data importer(s), including any contact person with responsibility for data protection*]

1. Name: .....

Address: .....

Contact person's name, position and contact details: .....

Activities relevant to the data transferred under these Clauses: .....

Signature and date: .....

Role (controller/processor): .....

2. .....

B. **DESCRIPTION OF TRANSFER**

MODULE ONE: Transfer controller to controller

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller

Categories of data subjects whose personal data is transferred

.....

Categories of personal data transferred

.....

Sensitive data transferred (if applicable) and 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.

.....

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

.....

Nature of the processing

……

Purpose(s) of the data transfer and further processing

……

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

……

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

……

C. **COMPETENT SUPERVISORY AUTHORITY**

MODULE ONE: Transfer controller to controller

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

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

……

ANNEX II

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

MODULE ONE: Transfer controller to controller

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

EXPLANATORY NOTE:

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

[Examples of possible measures:

Measures of pseudonymisation and encryption of personal data

Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services

Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident

Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing

Measures for user identification and authorisation

Measures for the protection of data during transmission

Measures for the protection of data during storage

Measures for ensuring physical security of locations at which personal data are processed

Measures for ensuring events logging

Measures for ensuring system configuration, including default configuration

Measures for internal IT and IT security governance and management

Measures for certification/assurance of processes and products

Measures for ensuring data minimisation

Measures for ensuring data quality

Measures for ensuring limited data retention

Measures for ensuring accountability

Measures for allowing data portability and ensuring erasure]

For transfers to (sub-) processors, alsodescribe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter

ANNEX III

LIST OF SUB-PROCESSORS

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

EXPLANATORY NOTE:

This Annex must be completed for Modules Two and Three, in case of the specific authorisation of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

1. Name: .....

   Address: .....

   Contact person's name, position and contact details: .....

   Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised): .....

2. .....

Standard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018

International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

VERSION B1.0, in force 21 March 2022

This Addendum has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

Part 1: Tables

Table 1: Parties

Start date		
The Parties	**Exporter (who sends the Restricted Transfer)**	**Importer (who receives the Restricted Transfer)**
Parties' details	Full legal name: Trading name (if different): Main address (if a company registered address): Official registration number (if any) (company number or similar identifier):	Full legal name: Trading name (if different): Main address (if a company registered address): Official registration number (if any) (company number or similar identifier):

Key Contact	Full Name (optional): Job Title: Contact details including email:	Full Name (optional): Job Title: Contact details including email:
Signature (if required for the purposes of Section 2)		

Table 2: Selected SCCs, Modules and Selected Clauses

Addendum EU SCCs	☐ The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information: Date: Reference (if any): Other identifier (if any): Or ☐ the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum:

Module	Module in operation	Clause 7 (Docking Clause)	Clause 11 (Option)	Clause 9a (Prior Authorisation or General Authorisation)	Clause 9a (Time period)	Is personal data received from the Importer combined with personal data collected by the Exporter?
1						
2						
3						
4						

Table 3: Appendix Information

"**Appendix Information**" means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

Annex 1A: List of Parties:
Annex 1B: Description of Transfer:
Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data:
Annex III: List of Sub processors (Modules 2 and 3 only):

Table 4: Ending this Addendum when the Approved Addendum Changes

Ending this Addendum when the Approved Addendum changes	Which Parties may end this Addendum as set out in Section 19: ☐ Importer ☐ Exporter ☐ neither Party

Part 2: Mandatory Clauses

Entering into this Addendum

1. Each Party agrees to be bound by the terms and conditions set out in this Addendum, in exchange for the other Party also agreeing to be bound by this Addendum.

2. Although Annex 1A and Clause 7 of the Approved EU SCCs require signature by the Parties, for the purpose of making Restricted Transfers, the Parties may enter into this Addendum in any way that makes them legally binding on the Parties and allows data subjects to enforce their rights as set out in this Addendum. Entering into this Addendum will have the same effect as signing the Approved EU SCCs and any part of the Approved EU SCCs.

Interpretation of this Addendum

3. Where this Addendum uses terms that are defined in the Approved EU SCCs those terms shall have the same meaning as in the Approved EU SCCs. In addition, the following terms have the following meanings:

Addendum	This International Data Transfer Addendum which is made up of this Addendum incorporating the Addendum EU SCCs.
Addendum EU SCCs	The version(s) of the Approved EU SCCs which this Addendum is appended to, as set out in Table 2, including the Appendix Information.
Appendix Information	As set out in Table 3.
Appropriate Safeguards	The standard of protection over the personal data and of data subjects' rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR.
Approved Addendum	The template Addendum issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18.
Approved EU SCCs	The Standard Contractual Clauses set out in the Annex of Commission Implementing Decision (EU) 2021/914 of 4 June 2021.
ICO	The Information Commissioner.
Restricted Transfer	A transfer which is covered by Chapter V of the UK GDPR.
UK	The United Kingdom of Great Britain and Northern Ireland.
UK Data Protection Laws	All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK,

	including the UK GDPR and the Data Protection Act 2018.
UK GDPR	As defined in section 3 of the Data Protection Act 2018.

4. This Addendum must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties' obligation to provide the Appropriate Safeguards.

5. If the provisions included in the Addendum EU SCCs amend the Approved SCCs in any way which is not permitted under the Approved EU SCCs or the Approved Addendum, such amendment(s) will not be incorporated in this Addendum and the equivalent provision of the Approved EU SCCs will take their place.

6. If there is any inconsistency or conflict between UK Data Protection Laws and this Addendum, UK Data Protection Laws applies.

7. If the meaning of this Addendum is unclear or there is more than one meaning, the meaning which most closely aligns with UK Data Protection Laws applies.

8. Any references to legislation (or specific provisions of legislation) means that legislation (or specific provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this Addendum has been entered into.

Hierarchy

9. Although Clause 5 of the Approved EU SCCs sets out that the Approved EU SCCs prevail over all related agreements between the parties, the parties agree that, for Restricted Transfers, the hierarchy in Section 10 will prevail.

10. Where there is any inconsistency or conflict between the Approved Addendum and the Addendum EU SCCs (as applicable), the Approved Addendum overrides the Addendum EU SCCs, except where (and in so far as) the inconsistent or conflicting terms of the Addendum EU SCCs provides greater protection for data subjects, in which case those terms will override the Approved Addendum.

11. Where this Addendum incorporates Addendum EU SCCs which have been entered into to protect transfers subject to the General Data Protection Regulation (EU) 2016/679 then the Parties acknowledge that nothing in this Addendum impacts those Addendum EU SCCs.

Incorporation of and changes to the EU SCCs

12. This Addendum incorporates the Addendum EU SCCs which are amended to the extent necessary so that:

    a. together they operate for data transfers made by the data exporter to the data importer, to the extent that UK Data Protection Laws apply to the data exporter's processing when making that data transfer, and they provide Appropriate Safeguards for those data transfers;

    b. Sections 9 to 11 override Clause 5 (Hierarchy) of the Addendum EU SCCs; and

    c. this Addendum (including the Addendum EU SCCs incorporated into it) is (1) governed by the laws of England and Wales and (2) any dispute arising from it is resolved by the courts of England and Wales, in each case unless the laws and/or courts of Scotland or Northern Ireland have been expressly selected by the Parties.

13. Unless the Parties have agreed alternative amendments which meet the requirements of Section 12, the provisions of Section 15 will apply.

14. No amendments to the Approved EU SCCs other than to meet the requirements of Section 12 may be made.

15. The following amendments to the Addendum EU SCCs (for the purpose of Section 12) are made:

    a. References to the "Clauses" means this Addendum, incorporating the Addendum EU SCCs;

    b. In Clause 2, delete the words:

        "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";

    c. Clause 6 (Description of the transfer(s)) is replaced with:

        "The details of the transfers(s) and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred) are those specified in Annex I.B where UK Data Protection Laws apply to the data exporter's processing when making that transfer.";

    d. Clause 8.7(i) of Module 1 is replaced with:

        "it is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer";

e. Clause 8.8(i) of Modules 2 and 3 is replaced with:

> "the onward transfer is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer;"

f. References to "Regulation (EU) 2016/679", "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)" and "that Regulation" are all replaced by "UK Data Protection Laws". References to specific Article(s) of "Regulation (EU) 2016/679" are replaced with the equivalent Article or Section of UK Data Protection Laws;

g. References to Regulation (EU) 2018/1725 are removed;

h. References to the "European Union", "Union", "EU", "EU Member State", "Member State" and "EU or Member State" are all replaced with the "UK";

i. The reference to "Clause 12(c)(i)" at Clause 10(b)(i) of Module one, is replaced with "Clause 11(c)(i)";

j. Clause 13(a) and Part C of Annex I are not used;

k. The "competent supervisory authority" and "supervisory authority" are both replaced with the "Information Commissioner";

l. In Clause 16(e), subsection (i) is replaced with:

> "the Secretary of State makes regulations pursuant to Section 17A of the Data Protection Act 2018 that cover the transfer of personal data to which these clauses apply;";

m. Clause 17 is replaced with:

> "These Clauses are governed by the laws of England and Wales.";

n. Clause 18 is replaced with:

> "Any dispute arising from these Clauses shall be resolved by the courts of England and Wales. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of any country in the UK. The Parties agree to submit themselves to the jurisdiction of such courts."; and

o. The footnotes to the Approved EU SCCs do not form part of the Addendum, except for footnotes 8, 9, 10 and 11.

Amendments to this Addendum

16. The Parties may agree to change Clauses 17 and/or 18 of the Addendum EU SCCs to refer to the laws and/or courts of Scotland or Northern Ireland.

17. If the Parties wish to change the format of the information included in Part 1: Tables of the Approved Addendum, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.

18. From time to time, the ICO may issue a revised Approved Addendum which:

    a. makes reasonable and proportionate changes to the Approved Addendum, including correcting errors in the Approved Addendum; and/or
    b. reflects changes to UK Data Protection Laws;

    The revised Approved Addendum will specify the start date from which the changes to the Approved Addendum are effective and whether the Parties need to review this Addendum including the Appendix Information. This Addendum is automatically amended as set out in the revised Approved Addendum from the start date specified.

19. If the ICO issues a revised Approved Addendum under Section 18, if any Party selected in Table 4 "Ending the Addendum when the Approved Addendum changes", will as a direct result of the changes in the Approved Addendum have a substantial, disproportionate and demonstrable increase in:

    a its direct costs of performing its obligations under the Addendum; and/or

    b its risk under the Addendum,

    and in either case it has first taken reasonable steps to reduce those costs or risks so that it is not substantial and disproportionate, then that Party may end this Addendum at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved Addendum.

20. The Parties do not need the consent of any third party to make changes to this Addendum, but any changes must be made in accordance with its terms.

Alternative Part 2 Mandatory Clauses:

Mandatory Clauses	Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.