

APPENDIX 5

IF YOU PROCESS PERSONAL DATA ON BEHALF OF THE COMPANY THE FOLLOWING TERMS SHALL APPLY

These terms are supplementary to the Main Terms. All capitalised terms that are not defined in this Appendix shall have the definitions set out in the Main Terms. The particulars of processing under Schedule 1 and its Annexes should be downloaded and modified as appropriate to the processing.

1 Definitions

In this Appendix 5, the following definitions apply:

“**Contract**” means this Agreement.

“**Data**” means all Personal Data collected, generated or otherwise processed by Supplier as a result of, or in connection with, the provision of the Services.

“**Data Processing Form**” means a data processing form in the format set out in the Annex hereto which shall be completed, agreed and signed by both Parties in the event that there is a change to the nature, extent, scope or purpose of the processing of Personal Data under this Appendix 5 or where there is a change to the technical and organisational security measures taken by the Supplier.

“**Data Protection Laws**” means:

- (a) the General Data Protection Regulation (EU 2016/679) (“**GDPR**”) and any legislation which amends, re-enacts or replaces it in an EEA member state or in England and Wales from such time as the United Kingdom ceases to be an EEA member state and unless and until the GDPR is no longer directly applicable in the UK and any national implementing laws, regulations and secondary legislation as amended and updated from time to time in the UK and any successor legislation to the GDPR or the Data Protection Act 2018;
- (b) at all times, any other data protection laws and regulations applicable in an EEA member state or in England and Wales from such time as the United Kingdom ceases to be an EEA member state.

“**Data Exporter**” means an entity transferring Personal Data to an entity situated in a Third Country.

“**Data Importer**” means an entity situated within a Third Country who receives and processes Personal Data from and on behalf of a Data Exporter.

“**Data Protection Officer**” has the meaning given to it under Article 37 of the GDPR.

“**Data Subject**” means an individual who is the subject of Personal Data.

“**Data Subject Request**” means any request from a Data Subject concerning his or her rights of access to, rectification, erasure, objection to or restriction of processing of Data under the Data Protection Laws.

“**Data Transfer Agreement**” means these Standard Contractual Clauses up until such time as the New Standard Contractual Clauses are enacted, at which time Data Transfer Agreement shall mean the New Standard Contractual Clauses.

“**EEA**” means the European Economic Area.

“**Personal Data**” means any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the applicable Data Protection Laws and that are processed by Supplier in connection with the services provided under the Agreement.

“**Processing Agreement**” means this Appendix 5.

“**New Standard Contractual Clauses**” means the published draft Commission Implementing Decision 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, or any other replacement data transfer agreement published by the European Commission

“**Standard Contractual Clauses**” means the contractual clauses published in 2010 by the EU Commission 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, attached hereto as Schedule 1.

“**Sub-Processor**” has the meaning set out in Schedule 1.

“**Supervisory Authority**” means any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Laws.

“**Third Country**” means a country outside the EEA.

2

Data processing

- (a) Supplier acknowledges that for the purposes of the Data Protection Laws the Company is the Controller and Supplier is the Processor of any Personal Data and that this Appendix 5 (*Data Protection*) constitutes a data processing agreement where required by the Data Protection Laws. A Data Processing Form agreed and signed by the Parties will set out the scope, nature, purpose of processing, duration of processing and type of Personal Data to be processed by the Supplier under this Appendix 5. Data Processing Forms may be updated from time to time between the Parties.
- (b) The Parties acknowledge that the Company is located in a Third Country, thereby potentially acting as a Data Importer, where it transfers to the Supplier, Personal Data that originates from any Customers within the EEA. In such cases the GDPR requires that Standard Contractual Clauses must govern the processing of such Personal Data (including where the Company transfers the Personal Data to a Supplier (a Sub-Processor).
- (c) The Parties acknowledge and agree that the Standard Contractual Clauses are effective and offer the same or greater protective requirements with regards to the Processing of Personal Data between Data Controller and Data Processor within the EEA as it does on the processing of Personal Data between Data Exporters and Data Importers. Therefore, whether or not the origin of Personal Data processed under this Agreement is the EEA, they shall comply with the provisions of the Standard Contractual Clauses as they would apply to Importers.
- (d) The Parties agree that at such time as the New Standard Contractual Clauses are enacted, the Parties agree to replace the Standard Contractual Clauses with the New Standard Contractual Clauses, or will adapt Schedule 1 to incorporate such modules or elements of the New Standard Contractual Clauses as would be necessary in order to remain compliant with Data Protection Legislation.
- (e) Supplier shall comply with the requirements of the Data Protection Laws in respect of the activities which are the subject of the Agreement and shall not knowingly do anything or permit anything to be done which might lead to a breach by Supplier or the Company of the Data Protection Laws.
- (f) Supplier warrants, represents and covenants that it will only process Personal Data, when applicable, to the extent it relates to:
 - (i) the types of Personal Data;
 - (ii) the categories of Data Subject;
 - (iii) the duration, nature and purpose of processing,
 - (iv) the technical and organisational security measures that must apply to any processing,set out in a Data Processing Form and only for the duration specified in a Data Processing Form.

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

In these Standard Contractual Clauses

I. the Company shall be deemed the **data exporter** (or '**controller**')

and

II. the Supplier shall be deemed the **data importer**

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

The Company and Supplier, have agreed on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Company to the Supplier of the personal data specified in Annex 1 (some of which originates from its Customers) .

Clause 1

Definitions

For the purposes of the Clauses:

- (a) '**personal data**', '**special categories of data**', '**process/processing**', '**controller**', '**processor**', '**data subject**' and '**supervisory authority**' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾ and "**Customer Personal Data**" means personal data belonging to the data exporter and/or its Customers as identified in Annex 1;
- (b) '**the data exporter**' means the controller who transfers the personal data;
- (c) '**the data importer**' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) '**the sub-processor**' means any processor engaged by the data exporter or by any other sub-processor of the data exporter who agrees to receive from the data exporter or from any other sub-processor of Customer Personal Data exclusively intended for processing activities to be carried out on behalf of the Company after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) '**the applicable data protection law**' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which data exporter's Customer's are established;
- (f) '**technical and organisational security measures**' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of Customer Personal Data where applicable are specified in Annex 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both data exporter and data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of Data Exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where data exporter or its Customer is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct data importer to process the personal data transferred only on data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 6 of the Agreement, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of Data Importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly data exporter of its inability to comply, in which case data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to data exporter as soon as it is aware, in which case data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 6 before processing the personal data transferred;
- (d) that it will promptly notify data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
 - (ii) any accidental or unauthorised access; and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 6 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from data exporter;
- (h) that, in the event of sub-processing, it has previously informed data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against data exporter, arising out of a breach by data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because data exporter has factually disappeared or ceased to exist in law or has become insolvent, data importer agrees that the data subject may issue a claim against data importer as if it were data exporter, unless any successor entity has assumed the entire legal obligations of data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against data exporter or data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both data exporter and data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were data exporter or

data importer, unless any successor entity has assumed the entire legal obligations of data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of data exporter under the applicable data protection law.
3. The data importer shall promptly inform data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of data importer, or any sub-processor, pursuant to paragraph 2. In such a case data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing law

The Clauses shall be governed by the law of the Member State in which data exporter's Customer is established, or the UK in the absence of an applicable Member State.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of data exporter under the Clauses without the prior written consent of data exporter. Where data importer subcontracts its obligations under the Clauses, with the consent of data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on data importer under the Clauses⁽³⁾. Where the sub-processor fails to fulfil its data protection obligations under such written agreement data importer shall remain fully liable to data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against data exporter or data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which data exporter's Customer is established, or in the absence of an applicable Member State, the UK.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, data importer and the sub-processor shall, at the choice of data exporter, return all the personal data transferred and the copies thereof to data exporter or shall destroy all the personal data and certify to data exporter that it has done so, unless legislation imposed upon data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

ANNEX 1

Duration of Processing

Customer Personal Data shall be Processed for no longer than is necessary for compliance with the Processing Agreement, or as is required by any law to which the data importer is subject.

Nature and Purpose

- The accessing of and storage on the data importer's systems/network servers.
- Provision of services to the Customer pursuant to the Processing Agreement.
- Operation and maintenance of systems.
- Management and management reporting.
- Financial reporting and audit reports, including invoicing activities on behalf of the Customer.
- Risk management, compliance, legal and audit functions.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

- End users and/or consumers of products and services provided by the Customer.
- End users and/or consumers of products and services provided by Company Entities
- Employees of the Customer.
- Employees of suppliers to the Customer.
- Employees of suppliers to Company entities.
- Employees of Company Entities.

Categories of data

The personal data transferred concern the following categories of data:

- Personal details: Name, address, email address, telephone number and other contact information, next of kin, family and social details.
- Financial details: Tax status, transaction records, payment method records.
- Employment details: Company, job title, cost centre, fee rates.
- Other Personal Data which has been provided by end users or consumers in the course of using the services provided by the Customer

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

- Health / Medical including Disabilities
- Ethic origin
- Genetic Data
- Sexual Orientation
- Religious / Philosophical Beliefs
- Trade Union Memberships
- Political Opinion

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

- Processing as part of a contracted service
- Processing for Company activities (Employment, Purchases, Sales, Marketing, Operational, HR)

ANNEX 2

TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties.

Description of the by Data Importer in accordance with Data Protection Legislation:

The Parties Agree that Appendix 6 of the Agreement sets out comprehensive technical and organisational security measures implemented by the Supplier (Data Importer) and with which it will comply.