

## ELMO Software Limited - Data Processing Addendum

This Data Processing Addendum ("DPA") is incorporated into, and is subject to the terms and conditions of, the Customer Agreement between ELMO Software (or a Related Body Corporate of ELMO Software which is acting as a processor) and the customer entity that is a party to the Customer Agreement ("Customer" or "you").

This DPA will take priority over any other agreement, arrangement, understanding or contract that ELMO Software may have in place with the Customer to the extent of any conflict or inconsistency between their provisions relating to the privacy and security of Personal Data. Capitalised terms used in this DPA have the meaning given to them in the Customer Agreement, unless otherwise defined herein.

### 1. DEFINITIONS

In this DPA, these terms will have the meanings given to them below:

- (a) **Adequate Territory** means a territory outside of the European Economic Area or the United Kingdom that has been designated by the European Commission or by the United Kingdom (as applicable) as ensuring an adequate level of protection pursuant to Applicable Privacy Law.
- (b) **Applicable Privacy Law** will mean: (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council 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) ("**GDPR**"); (iii) the Data Protection Act 2018 (UK) ("**UK Data Protection Law**"); (iv) any applicable national laws and regulations that implement the laws referred to in subparagraphs (i) and (ii); and (v) any other laws and regulations relating to privacy or data protection (including where applicable, the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland (United Kingdom) by virtue of the European Union (Withdrawal) Act 2018 as modified by applicable domestic law from time to time;
- (d) **Controller, Processor, Data Subject, Personal Data and Processing (and Process)** will have the meanings given in Applicable Privacy Law. Where Applicable Privacy Law does not prescribe or refer to a controller, processor or joint controller, each party will be classified according to whatever classification applies under Applicable Privacy Law and mostly closely aligns with the role of controller, processor or joint controller under Applicable Privacy Law.
- (e) **Customer Agreement** means the written or electronic Software-as-a-Service Agreement (SaaS) between ELMO Software and Customer which governs the provision of the Service to Customer, as such terms may be updated from time to time.
- (f) **Customer Data** means any personal data that ELMO Software processes on behalf of Customer via the Service, as more particularly described in this DPA

- (g) **Data Exporter** means a Customer that has engaged ELMO Software to provide the Service under the Agreement.
- (h) **Data Importer** means ELMO Software.
- (i) **ELMO Software** means ELMO Software Limited ABN 13 102 455 087 or a Related Body Corporate of ELMO Software which is acting as a processor;
- (j) **Information Security Statement** means ELMO Software Limited's Information Security Statement available on ELMO's public website (<https://www.elmosoftware.co.uk/security-statement>)
- (k) **Model Clauses** or "**Standard Contractual Clauses**" refers to one of or both of the following, as the context requires:
  - (i) For Personal Data subject to the UK Data Protection Law, means the "**UK Standard Contractual Clauses**" for the Transfer of Personal Data to Processors Established In Third Countries pursuant to Commission Decision 2010/87/EU of 5 February 2010, as set out in Annex C, Part A or as may subsequently apply under Applicable Privacy Law; or
  - (ii) For Personal Data subject to the GDPR, the "**2021 Standard Contractual Clauses**," defined as the clauses issued pursuant to the EU 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 and completed as described in Annex C, Part B.
- (l) **Notifiable Security Incident** means any unauthorized or unlawful breach of security that leads to the accidental or unlawful destruction, loss, or alteration of, or unauthorized disclosure of or access to, Customer Data on systems managed or otherwise controlled by ELMO Software that poses a risk to the rights and freedoms of individuals as defined by Applicable Privacy Law
- (m) **Related Body Corporate** has the meaning given in section 50 of the Corporations Act 2001 (Commonwealth).

## 2. PROCESSING OF PERSONAL DATA

### 2.1. *Role of the Parties*

The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, ELMO Software is the Processor and ELMO Software will engage Sub-processors pursuant to the requirements set forth in Section 3 "Subprocessors" below.

### 2.2. *ELMO Software's Processing of Personal Data*

As Customer's Processor, ELMO Software shall only Process Personal Data for the following purposes: (i) Processing in accordance with the Customer Agreement; (ii) Processing initiated by Authorised Users in their use of the Services; and (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email or support tickets) that are consistent with the terms of the Customer Agreement (individually and collectively, the

“Purpose”). ELMO Software acts on behalf of and on the instructions of Customer in carrying out the Purpose.

2.3. *Details of the Processing*

The subject-matter of Processing of Personal Data by ELMO Software is as described in the Purpose in Section 2.2. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Annex A (Details of Data Processing) to this DPA.

### 3. SUB-PROCESSORS

3.1. *Authorised Sub-processors*

Customer agrees that ELMO Software may engage Sub-processors to process Customer Data on Customer's behalf. The Sub-processors currently engaged by ELMO Software and authorised by Customer are available at <https://www.elmosoftware.co.uk/subprocessors>. ELMO Software shall notify Customer if it adds or removes Sub-processors at least 10 days prior to any such changes if Customer opts in to receive such notifications.

3.2. *Sub-processor Obligations*

ELMO Software shall: (i) enter into a written agreement with each Sub-processor containing data protection obligations that provide at least the same level of protection for Customer Data as those in this DPA, to the extent applicable to the nature of the service provided by such Sub-processor; and (ii) remain responsible for such Sub-processor's compliance with the obligations of this DPA and for any acts or omissions of such Sub-processor that cause ELMO Software to breach any of its obligations under this DPA.

### 4. SECURITY

4.1. *Security Measures*

ELMO Software shall implement and maintain appropriate technical and organizational security measures that are designed to protect Customer Data from Security Incidents and designed to preserve the security and confidentiality of Customer Data in accordance with ELMO Software's security standards described in Annex B (Security Measures) to this DPA.

4.2. *Confidentiality of Processing*

ELMO Software shall ensure that any person who is authorised by ELMO Software to process Customer Data (including its staff, agents and subcontractors) shall be under an appropriate obligation of confidentiality (whether a contractual or statutory duty).

4.3. *Updates to Security Measures*

Customer is responsible for reviewing the information made available by ELMO Software relating to data security and making an independent determination as to whether the Services meets Customer's requirements and legal obligations under Applicable Privacy Laws. Customer acknowledges that the Security Measures are subject to technical progress and development and that ELMO Software may update or modify the Security Measures from time to time, provided that such updates and modifications do not result in the degradation of the overall security of the Services provided to Customer.

4.4. *Security Incident Response*

Upon becoming aware of a Notifiable Security Incident, ELMO Software shall: (i) notify Customer without undue delay and will provide all such timely information and cooperation as

the controller may require in order for the controller to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Privacy Law; and (ii) take all such measures and actions as are necessary to remedy or mitigate the effects of the Notifiable Security Incident and will keep the controller informed of all developments in connection with the Notifiable Security Incident. ELMO Software's notification of or response to a Notifiable Security Incident under this Section 4.4 shall not be construed as an acknowledgment by ELMO Software of any fault or liability with respect to the Notifiable Security Incident.

4.5. *Customer Responsibilities*

Notwithstanding the above, Customer agrees that except as provided by this DPA, Customer is responsible for its secure use of the Services, including securing its account authentication credentials, protecting the security of Customer Data when in transit to and from the Services, and taking any appropriate steps to securely encrypt or backup any Customer Data uploaded to the Service.

## **5. THIRD-PARTY CERTIFICATIONS AND AUDITS**

5.1. *Audit Rights*

ELMO Software shall make available to Customer all information reasonably necessary to demonstrate compliance with this DPA and allow for and contribute to audits, including inspections by Customer in order to assess compliance with this DPA. Customer acknowledges and agrees that it shall exercise its audit rights under this DPA (including this Section 5.1 and where applicable, the Model Clauses) and any audit rights granted by Applicable Privacy Law, by instructing ELMO Software to comply with the audit measures described in Sections 5.2 and 5.3 below.

5.2. *Security Reports*

Customer acknowledges that ELMO Software has obtained third-party certification and audits as described in the Information Security Statement. Upon Customer request, and subject to the confidentiality obligations, ELMO Software shall make available to Customer (or Customer's independent, third-party auditor) information regarding ELMO Software's compliance by supplying a summary copy of its most recent audit report(s) ("**Report**") to Customer, so that Customer can verify ELMO Software's compliance with the audit standards against which it has been assessed and this DPA.

5.3. *Security Due Diligence*

In addition to the Report, ELMO Software shall respond to all reasonable requests for information made by Customer to confirm ELMO Software compliance with this DPA, including responses to information security, due diligence, and audit questionnaires, by making additional information available regarding its information security program upon Customer's written request, provided that Customer shall not exercise this right more than once per calendar year.

## **6. RETURN OR DELETION OF DATA**

6.1. *Deletion or Return Upon Termination*

Upon termination or expiry of the Agreement, ELMO Software will (at the Customer's election) destroy or return to the controller all Personal Data in its possession or control, as further described in the Customer Agreement. This requirement will not apply to the extent that the processor is required by Applicable Law to retain some or all of the Personal Data, in which

event ELMO Software will isolate and protect the Personal Data from any further processing except to the extent required by such law.

## **7. UNITED KINGDOM AND EUROPEAN SPECIFIC PROVISIONS**

### **7.1. *Applicable Privacy Law***

The parties agree that Section 7.2, 7.3 and 7.4 below, shall apply if, and only to the extent that, GDPR or the UK Data Protection Law applies to the processing of Personal Data in connection with the Customer Agreement.

### **7.2. *Data Protection Impact Assessment***

Upon Customer's request, ELMO Software shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to ELMO Software. ELMO Software shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority, to the extent required under Applicable Privacy Law.

### **7.3. *Data Subject Requests***

As part of the Service, ELMO Software provides Customer with a number of self-service features, that Customer may use to retrieve, correct, delete or restrict the use of Customer Data, which Customer may use to assist it in connection with its obligations under Applicable Privacy Law with respect to responding to requests from data subjects at no additional cost. In addition, ELMO Software shall, taking into account the nature of the processing, provide reasonable additional assistance to Customer to the extent possible to enable Customer to comply with its data protection obligations with respect to data subject rights under Applicable Privacy Law. In the event that any such request is made to ELMO Software directly, ELMO Software shall not respond to such communication directly except as appropriate (for example, to direct the data subject to contact Customer) or legally required, without Customer's prior authorisation. If ELMO Software is required to respond to such a request, ELMO Software shall promptly notify Customer and provide Customer with a copy of the request unless ELMO Software is legally prohibited from doing so. For the avoidance of doubt, nothing in the Customer Agreement (including this DPA) shall restrict or prevent ELMO Software from responding to any data subject or data protection authority requests in relation to personal data for which ELMO Software is a controller.

### **7.4. *International Transfers***

To the extent that ELMO Software is a recipient of Customer Data that originated in the EEA or the United Kingdom in a territory outside of the EEA or outside of the United Kingdom that is not an Adequate Territory, the parties agree to abide by and process Personal Data in compliance with the Model Clauses in the form set out in Annex C. For the purposes of the descriptions in the Model Clauses, ELMO Software agrees that it is the "data importer" and Customer is the "data exporter" (notwithstanding that Customer may itself be an entity located outside Europe).

## **8. LIMITATION OF LIABILITY**

### **8.1. *Liability***

Each party's liability taken together in the aggregate arising out of or related to this DPA (including the Model Clauses) shall be subject to the exclusions and limitations of liability set

forth in the Customer Agreement. Any claims made against ELMO Software (or a Related Body Corporate of ELMO Software) under or in connection with this DPA (including, where applicable, the Model Clauses) shall be brought solely by the Customer entity that is a party to the Agreement. In no event shall any party limit its liability with respect to any individual's data protection rights under this DPA or otherwise.

## **9. RELATIONSHIP WITH THE AGREEMENT**

- 9.1. This DPA shall remain in effect for as long as ELMO Software carries out Customer Data processing operations on behalf of Customer or until termination of the Agreement (and all Customer Data has been returned or deleted in accordance with Section 6.1 above).
- 9.2. The parties agree that this DPA shall replace any existing data processing agreement or similar document that the parties may have previously entered into in connection with the Services.
- 9.3. In the event of any conflict or inconsistency between this DPA and the Customer Agreement, the provisions of the following documents (in order of precedence) shall prevail: (i) Model Clauses; then (ii) this DPA; and then (iii) the Customer Agreement.
- 9.4. Except for any changes made by this DPA, the Agreement remains unchanged and in full force and effect.
- 9.5. No one other than a party to this DPA, its successors and permitted assignees shall have any right to enforce any of its terms.
- 9.6. This DPA shall be governed by and construed in accordance with the governing law and jurisdiction provisions in the Customer Agreement, unless required otherwise by Applicable Privacy Law.

## Annex A - Details of Data Processing

**(a) Controller (data exporter):** Customer that has engaged ELMO Software or a Related Body Corporate of ELMO Software to provide the Service under the Customer Agreement.

Controller (data exporter) Contact details: The email address(es) designated by Customer in the Customer Agreement or otherwise provided or updated by the Customer.

Controller (data exporter) Role: The Data Exporter's role is set forth in Section 2.1 (Roles of the Parties) of this Addendum.

**(b) Processor (data importer):** ELMO Software Limited ABN 13 102 455 087 or a Related Body Corporate of ELMO Software Limited which is acting as a processor.

Processor (data importer) Contact Details: The name, address and role of the Data Importer's contract are set forth in the signature panel of Annexure C.

Processor (data importer) Role: The Data Importer's role is set forth in Section 2.1 (Roles of the Parties) of this Addendum

**(c) Subject matter:** The subject matter of the data processing under this DPA is the Customer Data.

**(d) Duration of processing:** ELMO Software will process Customer Data as outlined in Section 6 (Return or Deletion of Data) of this DPA.

**(e) Purpose of processing:** As Customer's Processor, ELMO Software shall only Process Personal Data for the following purposes: (i) Processing in accordance with the Customer Agreement and applicable Order Form(s); (ii) Processing initiated by Authorised Users in their use of the Services; and (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email or support tickets) that are consistent with the terms of the Customer Agreement (individually and collectively, the "**Purpose**"). ELMO Software acts on behalf of and on the instructions of Customer in carrying out the Purpose.

**(f) Nature of the processing:** ELMO Software provides Services as more particularly described in the Customer Agreement.

**(g) Categories of data subjects:** Customer may process personal data using the Services, the extent of which is determined and controlled by Customer and which may include, but is not limited to, personal data relating to the following categories of data subject:

- Authorised Users;
- Employees of Customer;
- Consultants of Customer;
- Contractors of Customer;
- Job Candidates of Customer;
- Agents of Customer; and/or
- Third parties with which Customer conducts business.

**(h) Types of Customer Data:** Customer may upload, submit or otherwise provide certain personal data to the Service, the extent of which is typically determined and controlled by Customer in its sole discretion, and may include the following types of personal data:

- Data required for the management of relationships with current, potential or past employees and performance and management of employment agreements;
- Contact information (name, aliases, address, email address, telephone numbers, fax numbers, time zone location, etc.);
- Passport and driving licence data (number, nationality, date of birth, place of birth, gender, marital status, etc.);

- Personal characteristics data (age, gender, nationality, marital status);
- National Insurance Number;
- Pension fund data;
- Employment data (employee number, job title/position, business unit, department, cost centre, seniority, supervisor name, notice period, resignation date, date of death, headcount information, tax information, rehire reason and recommendation, etc.);
- Biographical data (work experience, previous employments, assignments, references, educational degree, honors, etc.);
- Information contained in CV (including hobbies, etc.);
- Emergency contact details;
- Contact details of family members, address and date and place of birth of family members if required;
- Performance and appraisals data;
- Salary, benefits as well as expense data;
- Payroll data, including bank details and tax details;
- Work time management and absence data.

**(i) Sensitive Data:** ELMO Software does not want to, nor does it intentionally, collect or process any Sensitive Data in connection with the provision of the Service.

**(j) Processing Operations:** Customer Data will be processed in accordance with the Customer Agreement (including this DPA) and may be subject to the following processing activities:

- Storage and other processing necessary to provide, maintain and improve the Services provided to Customer pursuant to the Customer Agreement; and/or
- Disclosures in accordance with the Customer Agreement and/or as compelled by applicable law.

## **Annex B - Security Measures**

*Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):*

The Security Measures applicable to the Service are described in the Information Security Statement (as updated from time to time in accordance with Section 4.3 of this DPA).



## **Annex C - Standard Contractual Clauses (Processors)**

For the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, ELMO Software whose legal name is ELMO Software Limited (hereinafter the "data importer") and Customer (hereinafter the "data exporter") each a "party"; together "the parties", 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 data exporter to the data importer of the personal data specified in Annex 1.

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.

Name of the data exporting organisation: Customer as per the Customer Agreement

Address: as per Customer Agreement

Contact details: as per the Customer Agreement

(the **data exporter**)

AND

Name of data importing organisation: Elmo Software Limited

Address: Level 27, 580 George Street, NSW 2000, Australia

Contact Details:

Email: [dpo@elmosoftware.com.au](mailto:dpo@elmosoftware.com.au)      Tel: +61 2 8305 4600

The parties 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 data exporter to the data importer of the personal data specified in Appendix 1.

## **Part A – UK Standard Contractual Clauses**

The parties agree that the UK Standard Contractual Clauses will apply to personal data that is transferred via the Services from the United Kingdom, either directly or via onward transfer, to any country or recipient outside of the United Kingdom that is not recognised by the competent United Kingdom regulatory authority or governmental body for the United Kingdom as providing an adequate level of protection for personal data. For data transfers from the United Kingdom that are subject to the UK Standard Contractual Clauses, the UK Standard Contractual Clauses will be deemed entered into (and incorporated into this Addendum by this reference) and completed as follows:

### **Clause 1**

#### **Definitions**

For the purposes of the Clauses:

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

### **Clause 2**

#### **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

### **Clause 3**

#### **Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the 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 the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the 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 the data exporter**

The data exporter agrees and warrants:

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

#### Clause 5

#### **Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organizational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorized access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the 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 the data exporter.

## Clause 6

### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract 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 the data exporter or the 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 the data exporter and the 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 the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the 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, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## Clause 8

### **Cooperation with supervisory authorities**

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

## Clause 9

### **Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

## Clause 10

### **Variation of the contract**

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

## Clause 11

### **Sub-processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the 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 the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the 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 the data exporter is established.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## Clause 12

### **Obligation after the termination of personal data-processing services**

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

### **Part B - 2021 Standard Contractual Clauses**

1. The parties agree that the 2021 Standard Contractual Clauses will apply to personal data that is transferred via the Services from the European Economic Area or Switzerland, either directly or via onward transfer, to any country or recipient outside the European Economic Area or Switzerland that is not recognised by the European Commission (or, in the case of transfers from Switzerland, the competent authority for Switzerland) as providing an adequate level of protection for personal data. For data transfers from the European Economic Area that are subject to the 2021 Standard Contractual Clauses, the 2021 Standard Contractual Clauses will be deemed entered into (and incorporated into this Addendum by this reference) and completed as follows:
  - a. Module Two (Controller to Processor) of the 2021 Standard Contractual Clauses will apply.
  - b. in Clause 7 of the 2021 Standard Contractual Clauses, the optional docking clause will not apply;
  - c. in Clause 9 of the 2021 Standard Contractual Clauses, Option 2 will apply and the time period for prior notice of sub-processor changes will be as set forth in clause 3.1 of this DPA;
  - d. in Clause 11 of the 2021 Standard Contractual Clauses, the optional language will not apply;
  - e. in Clause 17 (Option 2). In the event that the Member State where the data exporter is established does not allow for third-party beneficiary rights, the 2021 Standard Contractual Clauses will be governed by Irish law;
  - f. in Clause 18(b) of the 2021 Standard Contractual Clauses, disputes will be resolved before the courts of Ireland;
  - g. in Annex I, Part A of the 2021 Standard Contractual Clauses:

Data Exporter details: please see the details set forth in Section (a) of Annex A (Details of Data Processing) to the Data Processing Addendum ("DPA").

Signature and Date: by entering into this DPA, Data Exporter is deemed to have signed these Standard Contractual Clauses incorporated herein, including their Annexes, as of the date of the Customer Agreement.

Data Importer details: please see the details set forth in Section (b) Annex A (Details of Data Processing) to the DPA.

Signature and Date: By entering into the DPA, Data Importer is deemed to have signed these Standard Contractual Clauses, incorporated herein, including their Annexes, as of the date of the Customer Agreement.

h. in Annex I, Part B of the 2021 Standard Contractual Clauses:

The categories of data subjects are described in Section (g) of Annex A (Details of Data Processing) to the DPA.

The Sensitive Data transferred is described in Section (i) of Annex A (Details of Data Processing) to the DPA.

The frequency of the transfer is a continuous basis for the duration of the Customer Agreement.

The nature of the processing is described in Section (f) of Annex A (Details of Data Processing) to the DPA.

The purpose of the processing is described in Section (e) of Annex A (Details of Data Processing) to the DPA.

The period for which the personal data will be retained is described in Section (d) of Annex A (Details of Data Processing) to the DPA.

For transfers to sub-processors, the subject matter, nature, and duration of the processing is set forth in Section 3 of the DPA.

i. in Annex I, Part C of the 2021 Standard Contractual Clauses: The Irish Data Protection Commission will be the competent supervisory authority.

j. Annex B of the DPA serves as Annex II of the Standard Contractual Clauses.



## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

**Details of the transfer:** Please see the details set forth in Annex A to the Data Processing Addendum ("DPA") to which these Clauses are appended.

## **APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

Please see Annex B - Security Measures

## **APPENDIX 3 TO THE STANDARD CONTRACTUAL CLAUSES**

The parties acknowledge that Clause 10 of the Clauses permits them to include additional business-related terms provided they do not contradict with the Clauses. Accordingly, this Appendix sets out the parties' interpretation of their respective obligations under specific Clauses identified below. Where a party complies with the interpretations set out in this Appendix, that party shall be deemed by the other party to have complied with its commitments under the Clauses.

### **Clause 5(f): Audit**

1. Data exporter acknowledges and agrees that it exercises its audit right under Clause 5(f) by instructing data importer to comply with the audit measures described in Section 5 (Third-Party Certifications and Audits) of the DPA.

### **Clause 5(j): Disclosure of subprocessor agreements**

1. The parties acknowledge the obligation of the data importer to send promptly a copy of any onward subprocessor agreement it concludes under the Clauses to the data exporter.
2. The parties further acknowledge that, pursuant to subprocessor confidentiality restrictions, data importer may be restricted from disclosing onward subprocessor agreements to data exporter. Notwithstanding this, data importer shall use reasonable efforts to require any subprocessor it appoints to permit it to disclose the subprocessor agreement to data exporter.
3. Even where data importer cannot disclose a subprocessor agreement to data exporter, the parties agree that, upon the request of data exporter, data importer shall (on a confidential basis) provide all information it reasonably can in connection with such subprocessing agreement to data exporter.

### **Clause 6: Liability**

1. Any claims brought under the Clauses shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations set forth in the Agreement. In no event, shall any party limit its liability with respect to any data subject rights under these Clauses.

### **Clause 11: Onward subprocessing**

1. The parties acknowledge that, pursuant to FAQ II.1 in Article 29 Working Party Paper WP 176 entitled "FAQs in order to address some issues raised by the entry into force of the EU 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" the data exporter may provide a general consent to onward subprocessing by the data importer.
2. Accordingly, data exporter provides a general consent to data importer, pursuant to Clause 11 of these Clauses, to engage onward subprocessors. Such consent is conditional on data importer's compliance with the requirements set out in Section 3 (Sub-processors) of the DPA.