DATA PROCESSING AGREEMENT/ADDENDUM

Last Updated – January 2024

This Data Processing Agreement ("**DPA**") forms an integral part of and is entered into as of the date of the Silverfort Software License Agreement (the "**Agreement**"). You acknowledge that you, on behalf of the organization you represent ("**Organization**") (collectively, **"You", "Your", "Client", or "Data Controller"**) have read and understood and agree to comply with this DPA and are entering into a binding legal agreement with **Silverfort** as defined below (**"Silverfort"**, **"Us"**, **"We", "Our", "Service Provider" or "Data Processor"**) to reflect the parties' agreement with regard to the Processing of Personal Data (as such terms are defined below) of GDPR-protected individuals. Both parties shall be referred to as the "Parties" and each, a "Party".

WHEREAS, Silverfort shall provide the services set forth in the Agreement (collectively, the "**Services**") for Client, as described in the Agreement; and

WHEREAS, In the course of providing the Services pursuant to the Agreement, Silverfort may process Personal Data on your behalf, in the capacity of a "Data Processor"; and the Parties wish to set forth the arrangements concerning the processing of Personal Data (defined below) within the context of the Services and agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the parties, intending to be legally bound, agree as follows:

1. INTERPRETATION AND DEFINITIONS

1.1 The headings contained in this DPA are for convenience only and shall not be interpreted to limit or otherwise affect the pro visions of this DPA.

1.2 References to clauses or sections are references to the clauses or sections of this DPA unless otherwise stated.

1.3 Words used in the singular include the plural and vice versa, as the context may require.

1.4 Capitalized terms not defined herein shall have the meanings assigned to such terms in the Agreement.

1.5 Definitions:

(a) **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

(b) "**Authorized Affiliate**" means any of Client's Affiliate(s) which (a) is subject to the Data Protection Laws And Regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (b) is permitted to use the Services pursuant to the Agreement between Client and Silverfort, but has not signed its own agreement with Silverfort and is not a "Client" as defined under the Agreement.

(c) **"Controller" or "Data Controller"** means the entity which determines the purposes and means of the Processing of Personal Data. For the purposes of this DPA only, and except where indicated otherwise, the term "Data Controller" shall include the Organization and/or the Organization's Authorized Affiliates.

(d) **"Data Protection Laws and Regulations"** means all laws and regulations of the European Union, the European Economic Area and their Member States, and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

(e) **"Data Subject"** means the identified or identifiable person to whom the Personal Data relates.

(f) **"Member State"** means a country that belongs to the European Union and/or the European Economic Area. "Union" means the European Union.

(g) "**GDPR**" means the 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).

(h) **"Personal Data"** means any information relating to an identified or identifiable natural person; 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. For the avoidance of doubt, Client's business contact information is not by itself deemed to be Personal Data subject to this DPA.

(i) **"Process(ing)"** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic 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.

(j) **"Processor" or "Data Processor"** means the entity which Processes Personal Data on behalf of the Controller.

(k) **"Security Documentation"** means the Security Documentation applicable to the specific Services purchased by Client, as updated from time to time, and will be made available to Client upon a request sent by Client to Silverfort at privacy@silverfort.com.

(l) "**Silverfort**" means the relevant Silverfort entity of the following Silverfort legal entities: Silverfort Inc., Silverfort Ltd. and any other wholly owned subsidiary of Silverfort, Inc. or Silverfort Ltd.

(m) "**Silverfort Group**" means Silverfort and its Affiliates engaged in the Processing of Personal Data.

(n) **"Sub-processor"** means any Processor engaged by Silverfort and/or Silverfort Affiliate to Process Personal Data on behalf of Client.

(o) "**Supervisory Authority**" means an independent public authority which is established by an EU Member State pursuant to the GDPR.

2. PROCESSING OF PERSONAL DATA

2.1 **Roles of the Parties.** The Parties acknowledge and agree that with regard to the Processing of Personal Data under this DPA Silverfort is the Data Processor and Silverfort or members of the Silverfort Group may engage Sub-processors pursuant to the requirements set forth in Section 5 "Authorization Regarding Sub-processors" below. For clarity, this DPA shall not apply with respect to Silverfort processing activity as a Data Controller with respect to Silverfort data as defined in the Agreement.

2.2 **Client's Processing of Personal Data.** Client shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations and comply at all times with the obligations applicable to data controllers (including, without limitation, Article 24 of the GDPR). For the avoidance of doubt, Client's instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Client shall have sole responsibility for the means by which Client acquired Personal Data. Without limitation, Client shall comply with any and all transparency-related obligations (including, without limitation, displaying any and all relevant and required privacy notices or policies) and shall at all times have any and all required ongoing legal bases in order to collect, Process and transfer to Silverfort the Personal Data and to authorize the Processing by Silverfort of the Personal Data which is authorized in this DPA. Client shall defend, hold harmless and indemnify Silverfort, its Affiliates and subsidiaries (including without limitation their directors, officers, agents, subcontractors and/or employees) from and against any liability of any kind related to any breach, violation or infringement by Client and/or its authorized users of any Data Protection Laws and Regulations and/or this DPA and/or this Section.

2.3 **Silverfort's Processing of Personal Data.**

2.3.1 Subject to the Agreement, Silverfort shall Process Personal Data that is subject to this DPA only in accordance with Client's documented instructions as necessary for the performance of the Services and for the performance of the Agreement and this DPA unless required to otherwise by Union or Member State law or any other applicable law to which Silverfort and its Affiliates are subject; in which case, Silverfort shall inform the Client of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The duration of the Processing, the nature and purposes of the Processing, as well as the types of Personal Data Processed and categories of Data Subjects under this DPA are further specified in **Schedule 1** (Details of the Processing) to this DPA.

2.3.2 To the extent that Silverfort or its Affiliates cannot comply with a request (including, without limitation, any instruction, direction, code of conduct, certification, or change of any kind), from Client and/or its authorized users relating to Processing of Personal Data or where Silverfort considers such a request to be unlawful, Silverfort (i) shall inform Client, providing relevant details of the problem (but not legal advice), (ii) Silverfort may, without any kind of liability towards Client, temporarily cease all Processing of the affected Personal Data (other than securely storing those data), and (iii) if the Parties do not agree on a resolution to the issue in question and the costs thereof, each Party may, as its sole remedy, terminate the Agreement and this DPA with respect to the affected Processing, and Client shall pay to Silverfort all the amounts owed to Silverfort or due before the date of termination. Client will have no further claims against Silverfort (including, without limitation, requesting refunds for Services) due to the termination of the Agreement and/or the DPA in the situation described in this paragraph (excluding the obligations relating to the termination of this DPA set forth below).

2.3.3 Silverfort will not be liable in the event of any claim brought by a third party, including, without limitation, a Data Subject, arising from any act or omission of Silverfort, to the extent that such is a result of Client's instructions.

3. RIGHTS OF DATA SUBJECTS

3.1 **Data Subject Request.** If Silverfort receives a request from a Data Subject to exercise its rights as laid down in Chapter III of the GDPR ("**Data Subject Request**"), Silverfort shall, to the extent legally permitted, promptly notify and forward such Data Subject Request to Client. Taking into account the nature of the Processing, Silverfort shall use commercially reasonable efforts to assist Client by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Client's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. To the extent legally permitted, Client shall be responsible for any costs arising from Silverfort's provision of such assistance.

4. SILVERFORT PERSONNEL

4.1 **Confidentiality.** Silverfort shall ensure that its personnel engaged in the Processing of Personal Data have committed themselves to confidentiality and non-disclosure.

4.2 Silverfort may disclose and Process the Personal Data (a) as permitted hereunder (b) to the extent required by a court of competent jurisdiction or other Supervisory Authority and/or otherwise as required by applicable laws or applicable Data Protection Laws and Regulations (in such a case, Silverfort shall inform the Client of the legal requirement before the disclosure, unless that law prohibits such information on important grounds of public interest), or (c) on a "need-to-know" basis under an obligation of confidentiality to its legal counsel(s), data protection advisor(s), accountant(s), investors or potential acquirers.

5. AUTHORIZATION REGARDING SUB-PROCESSORS

5.1 **Sub-processors.** Client acknowledges and agrees that (a) Silverfort' Affiliates may be used as Sub-processors; and (b) Silverfort and/or Silverfort' Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services.

5.2 **List of Current Sub-processors.** Silverfort shall make available to Client the current list of Sub-processors used by Silverfort upon a request send by Client to Silverfort at privacy@silverfort.com. Such Sub-processor list shall include the identities and details of those Sub-processors and their country of location ("**Sub-processor List**"). The Sub-processor List as of the date of acceptance of this DPA is hereby authorized by Client.

5.3 **Notification of New Sub-processors.** Client may send an email, with the subject SUBSCRIPTION TO SUB-PROCESSORS NOTIFICATION, to Silverfort at privacy@silverfort.com in order to request the subscription of Client to notifications of new Sub-processors, and after Client subscribes, Silverfort shall provide notification of any new Sub-processor(s) before authorizing such new Sub-processor(s) to Process Personal Data in connection with the provision of the Services.

5.4 **Objection Right for Sub-processors.** Client may reasonably object to Silverfort's use of a new Sub-processor for reasons related to the GDPR by notifying Silverfort promptly in writing within three (3) business days after receipt of Silverfort's notice in accordance with the mechanism set out in Section 5.3 and such written objection shall include the reasons related to the GDPR for objecting to Silverforts' use of such new Sub-processor. Failure to object to such new Sub-processor in writing within three (3) business days following Silverfort's notice shall be deemed as acceptance of the new Sub-Processor. In the event Client reasonably objects to a new Sub-processor, as permitted in the preceding sentences, Silverfort will use reasonable efforts to make available to Client a change in the Services or recommend a commercially reasonable change to Client's use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Client. If Silverfort is unable to make available such change within a reasonable period of time, which shall not exceed sixty (60) days, Client may, as a sole remedy, terminate the applicable Agreement and this DPA with respect only to those Services which cannot be provided by Silverfort without the use of the objected-to new Sub-processor by providing written notice to Silverfort provided that all amounts due under the Agreement before the termination date with respect to the Processing at issue shall be duly paid to Silverfort. Until a decision is made regarding the new Sub-processor, Silverfort may temporarily suspend the Processing of the affected Personal Data. Client will have no further claims against Silverfort due to the termination of the Agreement (including, without limitation, requesting refunds) and/or the DPA in the situation described in this paragraph.

5.5 **Agreements with Sub-processors**. In accordance with Articles 28.7 and 28.8 of the GDPR, if and when the European Commission lays down the standard contractual clauses referred to in such Article, the Parties may revise this DPA in good faith to adjust it to such standard contractual clauses. This Section **Error! Reference source not found.** shall not apply to subcontractors of Silverfort which provide ancillary services to support the performance of the DPA. This includes, for example, telecommunication services, maintenance and user service, cleaning staff, or auditors.

6. SECURITY

6.1 Controls for the Protection of Personal Data. Taking into account the state of the art, the costs of implementation, the scope, the context, the purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Silverfort shall maintain all industry-standard technical and organizational measures required pursuant to Article 32 of the GDPR for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Personal Data), confidentiality and integrity of Personal Data, as set forth in the Security Documentation which are hereby approved by Client. Upon the Client's request, Silverfort will use commercially reasonable efforts to assist Client, at Client's cost, in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing, the state of the art, and the information available to Silverfort.

6.2 Third-Party Certifications and Audits. Upon Client's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement and this DPA, Silverfort shall make available to Client that is not a competitor of Silverfort (or Client's independent, third-party auditor that is not a competitor of Silverfort) a copy or a summary of Silverfort's then most recent third-party audits or certifications, as applicable (provided, however, that such audits, certifications and the results therefrom, including the documents reflecting the outcome of the audit and/or the certifications, shall only be used by Client to assess compliance with this DPA, and shall not be used for any other purpose or disclosed to any third party without Silverfort's prior written approval and, upon Silverfort's first request, Client shall return all records or documentation in Client's possession or control provided by Silverfort in the context of the audit and/or the certification). At Client's cost and expense, Silverfort shall allow for and contribute to audits, including inspections of Silverfort's, conducted by the controller or another auditor mandated by the controller (who is not a direct or indirect competitor of Silverfort) provided that the parties shall agree on the scope, methodology, timing and conditions of such audits and inspections. Notwithstanding anything to the contrary, such audits and/or inspections shall not contain any information, including without limitation, personal data that does not belong to Client.

7. PERSONAL DATA INCIDENT MANAGEMENT AND NOTIFICATION

To the extent required under applicable Data Protection Laws and Regulations, Silverfort shall notify Client without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, including Personal Data, transmitted, stored or otherwise Processed by Silverfort or its Sub-processors of which Silverfort becomes aware (a "**Personal Data Incident**"). Silverfort shall make reasonable efforts to identify the cause of such Personal Data Incident and take those steps as Silverfort deems necessary, possible and reasonable in order to remediate the cause of such a Personal Data Incident to the extent the remediation is within Silverfort's reasonable control. The obligations herein shall not apply to incidents that are caused by Client or Client's users or are otherwise unrelated to the provision of the Services. In any event, Client will be the party responsible for notifying supervisory authorities and/or concerned data subjects (where required by Data Protection Laws and Regulations).

8. RETURN AND DELETION OF PERSONAL DATA

Subject to the Agreement, Silverfort shall, at the choice of Client, delete or return the Personal Data to Client after the end of the provision of the Services relating to Processing, and shall delete existing copies unless applicable law requires storage of the Personal Data. In any event, to the extent required or allowed by applicable law, Silverfort may retain one copy of the Personal Data for evidence purposes and/or for the establishment, exercise or defense of legal claims and/or to comply with applicable laws and regulations. If the Client requests the Personal Data to be returned, the Personal Data shall be returned in the format generally available for Silverfort's Clients.

9. AUTHORIZED AFFILIATES

9.1 Contractual Relationship. The Parties acknowledge and agree that, by entering into the DPA, the Client enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates, thereby establishing a separate DPA between Silverfort. Each Authorized Affiliate agrees to be bound by the obligations under this DPA. All access to and use of the Services by Authorized Affiliates must comply with the terms and conditions of the Agreement and this DPA and any violation of the terms and conditions therein by an Authorized Affiliate shall be deemed a violation by Client.

9.2 Communication. The Client shall remain responsible for coordinating all communication with Silverfort under the Agreement and this DPA and shall be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.

10. TRANSFERS OF DATA

10.1 Transfers to countries that offer adequate level of data protection. Personal Data may be transferred from the EU Member States, the three EEA member countries (Norway, Liechtenstein and Iceland) (collectively, "**EEA**") and the United Kingdom to countries that offer adequate level of data protection under or pursuant to the adequacy decisions published by the relevant data protection authorities of the EEA, the Union, the Member States or the European Commission ("**Adequacy Decisions**"), without any further safeguard being necessary.

10.2 **Transfers to other countries**. If the Processing of Personal Data includes transfers from the EEA to countries outside the EEA which are not subject to an Adequacy Decision ("**Other Countries**"), the Parties shall comply with Chapter V of the GDPR, including, if necessary, executing the standard data protection clauses adopted by the relevant data protection authorities of the EEA, the Union, the Member States or the European Commission or comply with any of the other mechanisms provided for in the GDPR for transferring Personal Data to such Other Countries. To the maximum extent permitted by law, to the extent that Client and Silverfort will use the Standard Contractual Clauses as a mechanism to transfer Client Personal Data, the rights and obligations of the parties shall be performed in accordance with, and subject to, this DPA.

11. TERMINATION

This DPA shall automatically terminate upon the termination or expiration of the Agreement under which the Services are provided. Sections 2.2, 2.3.3, 8 and 12 shall survive the termination or expiration of this DPA for any reason. This DPA cannot, in principle, be terminated separately to the Agreement, except where the Processing ends before the termination of the Agreement, in which case, this DPA shall automatically terminate.

12. RELATIONSHIP WITH AGREEMENT

In the event of any conflict between the provisions of this DPA and the provisions of the Agreement, the provisions of this DPA shall prevail over the conflicting provisions of the Agreement.

Notwithstanding anything to the contrary in the Agreement and/or in any agreement between the parties and to the maximum extent permitted by law: (A) Silverfort's (including Silverfort's Affiliates') entire, total and aggregate liability, related to personal data or information, privacy, or for breach of, this DPA and/or Data Protection Laws and Regulations, including, without limitation, if any, any indemnification obligation under the Agreement or applicable law regarding data protection or privacy, shall be limited to the amounts paid to Silverfort under the Agreement within twelve (12) months preceding the event that gave rise to the claim. This limitation of liability is cumulative and not per incident; (B) In no event will Silverfort and/or Silverfort Affiliates and/or their third-party providers, be liable under, or otherwise in connection with this DPA for: (i) any indirect, exemplary, special, consequential, incidental or punitive damages; (ii) any loss of profits, business, or anticipated savings; (iii) any loss of, or damage to data, reputation, revenue or goodwill; and/or (iv) the cost of procuring any substitute goods or services; and (C) The foregoing exclusions and limitations on liability set forth in this Section shall apply: (i) even if Silverfort, Silverfort Affiliates or third-party providers, have been advised, or should have been aware, of the possibility of losses or damages; (ii) even if any remedy in this DPA fails of its essential purpose; and (iii) regardless of the form, theory or basis of liability (such as, but not limited to, breach of contract or tort).

13. AMENDMENTS

Without derogating form your rights under the applicable Data Protection Laws and Regulations, this DPA may be amended, at any time, by Silverfort, solely to reflect any changes or updates in applicable privacy laws and regulations.

14. LEGAL EFFECT

This DPA shall only become legally binding between Client and Silverfort when they have duly entered into the Agreement. Silverfort may assign this DPA or its rights or obligations hereunder to any Affiliate thereof, or to a successor or any Affiliate thereof, in connection with a merger, consolidation or acquisition of all or substantially all of its shares, assets or business relating to this DPA or the Agreement. Any Silverfort obligation hereunder may be performed (in whole or in part), and any Silverfort right (including invoice and payment rights) or remedy may be exercised (in whole or in part), by an Affiliate of Silverfort.

15. POWER

The Parties represent and warrant that they each have the power to enter into, perform and be bound by this DPA.

You represent and warrant that you have, or you were granted, full authority to bind the Organization and, as applicable, its Authorized Affiliates to this DPA. If you cannot, or do not have authority to, bind the Organization and/or its Authorized Affiliates, you shall not supply or provide Personal Data to Silverfort.

By accepting this DPA, Client enters into this DPA on behalf of itself and, to the extent required or permitted under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent that Silverfort processes Personal Data for which such Authorized Affiliates qualify as the/a "data controller".

List of Schedules

- **SCHEDULE 1 - DETAILS OF THE PROCESSING**
- **SCHEDULE 2 – STANDARD CONTRACTUAL CLAUSES**

The parties' authorized signatories have duly accepted this Agreement.

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SCHEDULE 1 - DETAILS OF THE PROCESSING

Subject matter

Silverfort will Process Personal Data as necessary to perform the Services pursuant to the Agreement, as further instructed by Client in its use of the Services.

Nature and Purpose of Processing

1. Performing the Agreement, this DPA and/or other contracts executed by the Parties, including, providing the Service(s) to Client and providing support and technical maintenance, if agreed in the Agreement
2. For Silverfort to comply with documented reasonable instructions provided by Client where such instructions are consistent with the terms of the Agreement.

Duration of Processing

Subject to any Section of the DPA and/or the Agreement dealing with the duration of the Processing and the consequences of the expiration or termination thereof, Silverfort will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

Type of Personal Data

Client may submit Personal Data to Silverfort and/or to the Services, the extent of which is determined and controlled by Client in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First name
- Last name
- Corporate username
- Corporate email address
- Any other Personal Data or information that the Client decides to provide to Silverfort or the Services.

The Client and the Data Subjects shall provide the Personal data to Silverfort by supplying the Personal data to Silverfort's Service.

In some limited circumstances Personal Data may also come from others sources, for example, in the case of anti-money laundering research, fraud detection or as required by applicable law. For clarity, Client shall always be deemed the "Data Controller" and Silverfort shall always be deemed the "Data Processor" (as such terms are defined in the GDPR).

The Client, Client's vendors and/or Client's business partners and the Data Subjects shall provide the Personal Data to Silverfort by supplying the Personal Data to Silverfort's Service. For the avoidance of doubt, the log-in details to Silverfort's platform are subject to Silverfort's privacy policy available here: https://www.silverfort.com/company/privacy-policy/ and not to this DPA.

Categories of Data Subjects

Client may submit Personal Data to Silverfort and/or to the Services, the extent of which is determined and controlled by Client in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Users authorized by Client to use the Services (including without limitation, employees and subcontractors)
- Users with access to the Client's computer network (including without limitation, employees and subcontractors)
- Employees, agents, advisors of Client (who are natural persons)

SCHEDULE 2

STANDARD CONTRACTUAL CLAUSES

Controller to Processor

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 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;

(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.

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[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.

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
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.

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.

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[2] (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.

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[2] 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.

(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.

Clause 9

Use of sub-processors

(a) 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 3 business days 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.

(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.[3] The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.

(c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

(d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

(e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

Clause 10

Data subject rights

(a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.

(b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

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.

(b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

(c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

  (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;

  (ii) refer the dispute to the competent courts within the meaning of Clause 18.

(d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.

(e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.

(f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

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

Clause 12
Liability

(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 [The relevant option below shall automatically apply]

(a) (i) 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.

(ii) 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.

(iii) 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

(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[4];

(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).

(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. 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 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

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.

(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.).

(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

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[4] 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.

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.

(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 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) 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. 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

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 Ireland.

Clause 18

Choice of forum and jurisdiction

(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 Ireland

(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.

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

Data exporter(s):
Name & Address: Please refer to Client's detail in the Agreement.

_____
Activities relevant to the data transferred under these Clauses: Activities necessary to perform the Services for Clients pursuant to the Agreement.

Data importer(s):
Name & Address: The Silverfort entity and address, as detailed in the Agreement.

_____
Activities relevant to the data transferred under these Clauses: Activities necessary to perform the Services for Client pursuant to the Agreement.

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred
As described in Schedule 1

Categories of personal data transferred
As described in Schedule 1

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.
As described in Schedule 1

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).
As described in Schedule 1

Nature of the processing
As described in Schedule 1

Purpose(s) of the data transfer and further processing
As described in Schedule 1

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period
As described in this DPA and/or the Agreement

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing
As described in this DPA and Schedule 2

C. COMPETENT SUPERVISORY AUTHORITY

The competent supervisory authority as identified in Clause 13 – Any independent public authority, which is established by an EU Member State pursuant to the GDPR

ANNEX II

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

1. Data Importer shall establish a procedure for allowing access to Data Exporter Personal Data and restriction of such access. Data Importer shall ensure that access to Data Exporter Personal Data is strictly limited to those individuals who "need to know" or need to access the relevant Data Exporter Personal Data and as strictly necessary for the purpose of providing the Services and shall keep record of the persons authorised to access the Data Exporter Personal Data.

2. Data Importer shall take all steps reasonably necessary to ensure the reliability of the individuals who may have access to Data Exporter Personal Data and shall ensure that each such individual (i) is informed of the confidential nature of Data Exporter Personal Data; (ii) has received appropriate training on his/her responsibilities; and (iii) is subject to written confidentiality undertakings and signs written security protocols.

3. To the extent required under applicable law, Data Importer shall implement physical measures to ensure that access to the Data Exporter Personal Data is granted only to authorized users.

4. Data Importer shall maintain and implement sufficient and appropriate (based on the type of Data Exporter Personal Data and its sensitivity) environmental, physical and logical security measures with respect to Data Exporter Personal Data and to Data Importer's system's infrastructure, data processing system (including the system in which the Data Exporter Personal Data is processed), communication means, terminals, system architecture, hardware and software, in order to prevent penetration and unauthorized access to Data Exporter Personal Data or to the system or communication lines between Data Exporter and Data Importer. Data Importer further agrees that systems on which Data Exporter Personal Data is processed shall be located in a secure location, which may be accessed only by properly authorized employees.

5. Data Importer shall list all components (hardware and software) used to process Data Exporter Personal Data, including computer systems, communication equipment, and software. Data Importer shall use such list to continuously monitor such components and identify weaknesses and risks for the purpose of implementing appropriate security measures to mitigate them.

6. The Data Importer shall act in accordance with an appropriate security policy and working procedures that comply with the security requirements under this Appendix and privacy laws, including with respect to backup and recovery procedures. Data Importer shall review its security policies and operating procedures periodically and not less than on an annual basis, and when material changes to the systems or processing are made, all in order to amend them, if required.

7. Data Importer shall take measures to record the access to the Data Exporter Personal Data, including recording the exit or entry of any employee for or into the facilities where the Data Exporter Personal Data is processed, as well as any equipment brought in or taken out of such facilities.

8. Data Importer shall implement automatic control mechanism for verifying access to systems containing Data Exporter Personal Data, which shall include, inter alia, the user identity, date and time of access attempt, the system component attempted to be accessed, type and scope of access and if access was granted or denied. Data Importer shall periodically monitor the information from the control mechanism, list issues and irregularities and the measures taken to handle them. Control records shall be maintained for a minimum of 24 months. Data Importer records and any related reports and measures will be shared with Data Exporter, upon request, and to extent required under applicable law, such records shall be backed-up by Data Importer.

9. Data Importer will perform security risk survey and penetration testing, at least once every 18 months and shall make required amendments in case of any irregularities are discovered. Data Importer records and any related reports and measures related to the risk survey and penetration testing will be shared with Data Exporter, upon request.

ANNEX III

LIST OF SUB-PROCESSORS

EXPLANATORY NOTE:

This Annex must be completed 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: Please reference to the sub-processors list in Schedule 2.