

# Data Processing Terms

## 1 BACKGROUND

- 1.1 RS and the Customer have previously entered into or are entering into an Agreement pursuant to which RS has agreed to provide Products to the Customer.
- 1.2 The Products may currently or in future involve the processing by RS of personal data for which the Customer is data controller or processor and for which RS is a data processor or sub-processor (in each case for the purposes of Data Protection Law (as defined below)).
- 1.3 To the extent that paragraph 1.2 applies, Data Protection Law requires the Customer and RS to include certain principles in their contractual arrangements in relation to the processing of personal data and accordingly, the parties wish to amend and/or supplement the Agreement to include the terms set out in this document (the "**Data Processing Terms**"). In the event that the Customer has more than one Agreement with RS, these Data Processing Terms shall apply to each Agreement.

## THE PARTIES AGREE THAT:

### 2 DEFINITIONS

- 2.1 The following definitions apply in these Data Processing Terms:
  - Affiliate:** any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, from time to time.
  - Agreement:** the agreement under which RS has agreed to provide Products to the Customer, of which these Data Processing Terms form part.
  - Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company (whether direct or indirect), and controls, controlled and the expression change of control shall be construed accordingly.
  - Customer:** the entity party to the Agreement in relation to the supply by RS of Products.
  - Data Protection Law:**
    - (a) In each case where (and to the extent) applicable (i) UK Data Protection Law; and (ii) Regulation 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 (the "**GDPR**"); and
    - (b) any other applicable law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction regulating personal data protection and/or processing and/or privacy in any applicable jurisdiction and which relates to the Agreement or Products and/or a party;and in each case:
    - (i) together with any other applicable laws implementing amending, consolidating or replacing the aforementioned legislation or binding restrictions from time to time; and
    - (ii) as amended, consolidated, re-enacted or replaced from time to time.References to controller, processor, processing, personal data, personal data breach and data subject (and any other term used but not defined) shall each have the meaning attributed to such terms set out in the applicable Data Protection Law and "process" shall be construed accordingly. References to "the personal data" are references to the personal data provided or made available by the Customer to RS pursuant to the Agreement.
  - SCCs:** means the contractual clauses annexed to European Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries (Restricted Countries herein) pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council,, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021D0914&from=EN> as updated, amended or superseded from time to time) as adopted in the Appendix to these Data Processing Terms. For any transfers between a Restricted Country and the UK, the UK Addendum shall apply in addition.
  - Products:** the hardware, software, software as a service and

services (or any one or more of them) supplied or agreed to be supplied by RS to the Customer.

**RS:** Retalia Solutions Limited (Co. no. 16120384).

**"Restricted Country"** means a country, territory or jurisdiction which is not deemed to provide adequate protection of personal data in accordance with Article 45 (1) of GDPR and/or (where applicable) UK Data Protection Law.

**"UK Addendum"** means Version B1.0 of the International Data Transfer Addendum to the SCCs issued by Information Commissioners Office under S.119(A) of the UK Data Protection Act 2018, in force as of 21 March 2022 and available at <https://ico.org.uk/media/for-organisations/documents/4019539/international-data-transfer-addendum.pdf>, as may be amended or superseded from time to time.

**"UK Data Protection Law"** means all applicable data protection and privacy legislation in force from time to time in the UK including (i) the UK Data Protection Act 2018 (and regulations made thereunder); (ii) the UK GDPR (being the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018); and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), in each case as amended, consolidated and/or replaced from time to time (including by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) (the "**DP EU Exit Regulations**")).

- 2.2 Construction. In these Data Processing Terms the following rules apply: a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted or the equivalent statute or statutory provision under the applicable law; any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; a reference to any document, agreement, policy, plan, procedure or similar is reference to the same as modified, updated or replaced from time to time; a reference to **writing** or **written** does not include faxes or (except where stated otherwise) e-mails; a reference to software includes all updates, hot fixes and service packs as deployed in relation to that software; unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

### 3 GENERAL OBLIGATIONS

- 3.1 Each party shall comply with all applicable requirements of Data Protection Law applicable to it in connection with the performance and operation of the Agreement. This paragraph is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Law.
- 3.2 The parties acknowledge that for the purposes of Data Protection Law (where applicable), the Customer is the data controller and RS is the data processor, except when the Customer acts as a processor of personal data, in which case RS is a sub-processor.

### 4 RS DATA PROTECTION OBLIGATIONS

- 4.1 The provisions of this paragraph 4 only apply in so far as RS processes any personal data for the Customer which is subject to UK Data Protection Law or GDPR and which requires the parties to conclude a processing contract (or other legal act). References in these Data Processing Terms to "Articles" and "Chapters" shall (to the extent that UK Data Protection Law

applies) be reference to Articles and Chapters of the UK GDPR (as merged with the UK Data Protection Act 2018 under the DP EU Exit Regulations) and (to the extent that GDPR applies) be reference to Articles and Chapters of GDPR.

- 4.2 The subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of data subjects and the obligations and rights of the Customer are set out in these Data Processing Terms (including Schedule I) and the Agreement.
- 4.3 RS shall:
- (a) process the personal data only on documented instructions from Customer, including with regard to transfers of personal data to a Restricted Country or an international organisation, unless required to do so law to which RS is subject; in such a case, RS shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
  - (b) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - (c) take all measures required pursuant to Article 32 (*Security of Processing*);
  - (d) respect the conditions referred to in Article 28(2) and 28(4) for engaging another processor;
  - (e) taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;
  - (f) assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 (*security, data breach and data protection impact assessments*) taking into account the nature of processing and the information available to RS;
  - (g) at the choice of the Customer, delete or return all the personal data to the Customer after the end of the provision of services relating to processing, and delete existing copies unless applicable law requires storage of the personal data;
  - (h) make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in Article 28 (*processing*) and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer; and
  - (i) immediately inform the Customer if, in its opinion, an instruction infringes UK Data Protection Law and/or the GDPR
- 4.4 RS shall:
- (a) inform the Customer without undue delay after becoming aware of a personal data breach;
  - (b) subject to the provisions of any applicable law, notify the Customer:
  - (i) promptly if it receives or is notified of a request from an applicable data subject to have access to that person's personal data;
  - (ii) promptly if it receives or is notified of a complaint or request relating to the Customer's obligations under Data Protection Law; and shall provide the Customer with reasonable assistance in respect of the matters set out in (a) and (b) above.

## 5 DATA TRANSFER TO CUSTOMER IN A RESTRICTED COUNTRY

- 5.1 Any transfers of Personal Data under these Data Processing Terms between (i) the European Economic Area, European Union, Switzerland and/or UK; and (ii) a Restricted Country (a "**Restricted Transfer**") shall comply with the relevant module in the Appendix to these Data Processing Terms. For the avoidance of doubt, the exclusions and limits on liability under the Agreement shall apply to these Data Processing Terms including the SCCs.

## 6 CUSTOMER OBLIGATIONS

- 6.1 It is the sole responsibility of the Customer to satisfy itself that the Products enable the Customer to (in conjunction with the Customer's existing systems, processes, equipment and security) comply with its obligations under applicable laws,

including Data Protection Law. RS is not responsible for determining the requirements of Data Protection Law applicable to the Customer or the Customer's business or that the Products meet the requirements of Data Protection Law and RS gives no warranties and makes no representations in this respect.

- 6.2 The Customer shall:
- (a) ensure that all instructions issued to RS in respect of the processing of personal data shall be lawful, reasonable and in compliance with Data Protection Law, and shall act reasonably in exercising rights under these Data Processing Terms;
  - (b) ensure that personal data made available to RS is the minimum necessary in order for RS to perform the Agreement, and the Customer shall not make available personal data to RS unless strictly necessary for the performance of the Agreement; and
  - (c) not use the Products in conjunction with personal data to the extent or in a manner that such use would be in breach of any applicable Data Protection Law.
- 6.3 Where RS processes any personal data for the Customer, the Customer warrants and represents that the making available and/or transfer of personal data to RS including for the processing contemplated by or required for the performance of the Agreement, including these Data Processing Terms, is lawful and in compliance with Data Protection Law, and that, where applicable, necessary data subject and/or data controller consents and/or notices are in place.
- 6.4 The Customer retains control of the personal data and remains responsible for its compliance obligations under the applicable Data Protection Law.

## 7 PRODUCT DELIVERY IMPLICATIONS

- 7.1 The parties agree that RS shall not process personal data except for the purpose of or in connection with the performance and/or operation of the Products and/or the Agreement. The parties acknowledge that the Agreement and these Data Processing Terms constitute the documented instructions from the Customer to RS for the processing of personal data by RS.
- 7.2 The Customer generally authorises and consents to RS engaging other processors for the purpose of processing personal data in the performance of the Agreement provided that any such engagement shall at all times be in accordance with Data Protection Law. The Customer expressly consents to any RS Affiliate being engaged as another processor.
- 7.3 The Customer consents (including pursuant to paragraph 4.3(a)) to RS transferring personal data to a Restricted Country or international organisation provided that, where applicable, RS complies with Data Protection Law (including Article 44 in respect of UK GDPR and GDPR). The Customer agrees and acknowledges that (if applicable) RS may adopt or enter into standard data protection clauses (including for and on behalf of the Customer) as contemplated by Article 46 of UK GDPR and GDPR to ensure such compliance.
- 7.4 RS shall not be liable for any failure to deliver the Products and/or comply with the other provisions of the Agreement as a result of the performance or implementation of these Data Processing Terms.
- 7.5 RS shall be entitled to charge the Customer reasonable fees (calculated in accordance with RS's prevailing standard rates at the time) and costs and expenses reasonably incurred and the Customer shall pay such fees and costs and expenses on RS's payment terms:
- (a) if, as a result of the Customer's instructions, RS (or its sub-processor) is required by Data Protection Law to process personal data outside of the agreed scope of the Products;
  - (b) for any steps taken by RS (or its sub-processor) under or in connection with paragraphs 4.3(e) to (h) and/or paragraph 4.4;
  - (c) for any other assistance RS (or its sub-processor) provides to the Customer in respect of Data Protection Law.

## 8 GENERAL

- 8.1 If there is any conflict or inconsistency between these Data Processing Terms and the remainder of the Agreement then the provisions of these Data Processing Terms shall prevail. These Data Processing Terms form part of the Agreement. Certain third party Products (which may include Microsoft on-line

services) are subject to terms directly between the relevant third party and the Customer, and which may include terms relating to Data Protection Law in respect of those Products.

8.2 RS may amend these Data Processing Terms:

- (a) if necessary or desirable to comply with applicable law, guidance or legal advice;
- (b) if required to do so by a supervisory authority or other regulatory entity;
- (c) in order to implement any variation to or replacement of the SCCs or UK Addendum or to implement any alternative appropriate safeguarding measure for the transfer (or receipt) of personal data to or from a Restricted Country jurisdiction; or
- (d) in order to comply with an approved code of conduct or certification mechanism referred to under Articles 40, 42 and 43.

8.3 The governing law and dispute resolution provision of the Agreement apply to these Data Processing Terms.

8.4 Where any Affiliate of the Customer receives or utilises and/or is entitled to receive or utilise the Products, and RS processes personal data for that Customer Affiliate, these Data Processing Terms apply to any such processing, with RS acting as the Customer's sub-processor. The Customer shall procure that any such Customer Affiliate agrees to and complies with these Data Processing Terms as if named as the Customer, and any breach by a Customer Affiliate of a provision of these Data Processing Terms shall be deemed a breach of that provision by the Customer.

## SCHEDULE I

### PROCESSING, PERSONAL DATA AND DATA SUBJECTS

If any section of this Schedule is unpopulated, details shall be as set out (or determined in accordance with) the Agreement.

#### 1 PROCESSING BY RS

##### Scope

For or related to the provision of the Products, as may be further set out or determined in accordance with the Agreement.

##### Nature and Purpose of Processing

For or related to the provision of the Products, as may be further set out or determined in accordance with the Agreement, and which may include:

- (i) Access to and/or storage of systems on which personal data is held and/or processed; and
- (ii) Access to and/or receipt and/or storage of personal data.

##### Duration of the Processing

As set out or determined in accordance with the Agreement, and if not expressly set out, for the duration of the applicable Products.

#### 2 TYPES OF PERSONAL DATA

Personal data provided or made accessible during the provision of the Products, including any one or more of the following (or as otherwise set out or determined in accordance with the Agreement):

- (i) Names
- (ii) Addresses and other contact information

#### 3 CATEGORIES OF DATA SUBJECT

Data subjects, including any one or more of the following (or as otherwise set out or determined in accordance with the Agreement):

- (i) Employees of the Customer, or employees of the Customer's customers;
- (ii) Individual customers (or prospective customers) of the Customer;
- (iii) Employees of suppliers to the Customer;
- (iv) Other individual business contacts of the Customer.

## APPENDIX – SCCs APPLYING TO RESTRICTED TRANSFERS

### Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Controller Established in a Third Country (Processor-to-Controller Transfers)

#### SECTION I

##### CLAUSE 1

###### Purpose and scope

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) for the transfer of personal data to a third country.

The Parties:

- a. 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 the Agreement (hereinafter each 'data exporter'), and
- b. 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 the Agreement (hereinafter each 'data importer')

have agreed to these standard contractual clauses (hereinafter: 'Clauses'). These Clauses apply with respect to the transfer of personal data as specified in the Schedule to the Data Processing Terms.

##### CLAUSE 2

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

- c. 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.
- d. 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:
- b. Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
- c. 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);
- d. Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
- e. Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
- f. Clause 13;
- g. Clause 15.1(c), (d) and (e);
- h. Clause 16(e);
- i. Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- j. 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.

These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

##### CLAUSE 5

###### Hierarchy

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

##### CLAUSE 6

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

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in the Agreement and the Schedule to the Data Processing Terms.

##### 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 additional paperwork as may be specified by RS.

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

###### 8.2 Security of processing

- e. The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- f. The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after



becoming aware of it and assist the data importer in addressing the breach.

- g. The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

### 8.3 Documentation and compliance

- a. The Parties shall be able to demonstrate compliance with these Clauses.

The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

## CLAUSE 9

### Use of sub-processors

As per Data Processing Terms.

## CLAUSE 10

### Data subject rights

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

## CLAUSE 11

### Redress

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

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

## CLAUSE 13

### Supervision

N/A

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

### CLAUSE 14

**Local laws and practices affecting compliance with the Clauses** *(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)*

- a. The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling

its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

- b. The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
  - I. the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
  - II. the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards; 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** *(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)*

### 15.1 Notification

- a. The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
  - I. receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or

- II. becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- 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.
- d. 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.
- e. Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- f. 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 a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of England and Wales or (where the law of a Member State is required to apply) The Netherlands.

## CLAUSE 18

### Choice of forum and jurisdiction

Any dispute arising from these Clauses shall be resolved by the courts of England and Wales.

- f. The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- g. 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.
- h. 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.