

## PARTIES AND EXECUTION

<b>Customer:</b>	<b>Playbook UX LLC:</b> A New Hampshire limited liability company with offices located 254 Plainfield Rd Unit 11  West Lebanon, NH 03784 United States (“ <b>Playbook</b> ”)
<b>Signature:</b>	<b>Signature:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>
<b>Contact Email:</b>	<b>Contact Email:</b> <a href="mailto:hello@playbookux.com">hello@playbookux.com</a>

## VARIABLES

<b>Parties’ relationship</b>	<b>Controller to Processor and/or Processor to Processor</b>
<b>Parties’ roles</b>	<b>Customer</b> is a Controller and/or Processor  <b>PlaybookUX</b> is a Processor on behalf of Customer
<b>Main Agreement</b>	Playbook UX LLC Terms of Service (“Terms”) available online at: <a href="http://www.playbookux.com">www.playbookux.com</a> or as negotiated by the Parties as of <b>[DATE]</b>
<b>Term</b>	This DPA will commence on the final date of signature and will continue for the duration of the applicability of the Main Agreement.
<b>Breach Notification Period</b>	Without undue delay after becoming aware of a personal data breach
<b>Sub-processor Notification Period</b>	Fourteen (14) days before the new sub-processor is granted access to Personal Data
<b>Liability Cap</b>	Each party’s aggregate liability under this DPA will not exceed the liability caps as per the Main Agreement
<b>Governing Law and Jurisdiction</b>	As per the Main Agreement
<b>Data Protection Laws</b>	All laws, regulations, and court orders which apply to the processing of Personal Data controlled or processed by Customer in: <ul style="list-style-type: none"> <li>● the European Economic Area (<b>EEA</b>)</li> <li>● the United Kingdom</li> <li>● Switzerland</li> <li>● the United States</li> <li>● Canada</li> <li>● Japan</li> <li>● Australia</li> <li>● any other applicable jurisdictions</li> </ul> <p>This includes the European Union Regulation (EU) 2016/679 (<b>GDPR</b>), the Data Protection Act 2018 (UK) and the UK General Data Protection</p>

	Regulation, the Federal Act on Data Protection 1992 (Switzerland), the California Consumer Privacy Act of 2018 ( <b>CCPA</b> )/California Privacy Rights Act of 2020 ( <b>CPRA</b> ), the Personal Information Protection and Electronic Documents Act (Canada), the Act on the Protection of Personal Information (Act No. 57 of 2003 as amended in 2015) (Japan), the Privacy Act 1998 (Australia), each as amended from time to time, and any other applicable laws.
<b>Services related to processing</b>	As described in the Main Agreement
<b>Duration of processing</b>	For the duration of the applicability of the Main Agreement
<b>Nature and purpose of processing</b>	To enable the user to conduct and analyze both qualitative and quantitative research all while building out a central repository to stay on top of customer insights;  To provide research insights;  To resolve technical or administrative issues, billing and invoicing, and otherwise comply with PlaybookUX's own legal obligations; and  To optimize and improve the performance of PlaybookUX's Services.
<b>Personal Data</b>	Data processed by PlaybookUX for the provision of the Services may include the following types of personal data: <ul style="list-style-type: none"> <li>• <b>IP Addresses:</b></li> <li>• <b>Username:</b></li> <li>• <b>Device names:</b></li> <li>• <b>HTTP Cookies:</b></li> <li>• <b>Keyboard layout:</b></li> </ul>
<b>Data subjects</b>	The individuals whose Personal Data will be processed may include the Customer's: <ul style="list-style-type: none"> <li>• employees</li> <li>• job applicants</li> <li>• customers/end users</li> <li>• website visitors</li> <li>• business contacts (of customers, business partners, suppliers)</li> </ul>
<b>Transfer Mechanism</b>	<ul style="list-style-type: none"> <li>• Standard Contractual Clauses approved by the European Commission Decision of 4 June 2021 (as amended from time to time), for the transfer of personal data from the EEA or adequate country to a third country</li> <li>• International Data Transfer Addendum issued by the Information Commissioner's Office under Section 119A of the Data Protection Act 2018, effective from 21 March 2022, for the transfer of personal data from the UK to a third country that is both outside the EEA and a non-adequate country</li> </ul>

## ANNEX 1

<b>Security measures.</b> Technical and organisational measures to ensure the security of the data	Available at: <a href="http://www.playbookux.com/legal">www.playbookux.com/legal</a>
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## ANNEX 2

**Sub-processors.**  
sub-processors

Current

Available at: <https://www.playbookux.com/data-subprocessors/>

### TERMS

#### 1. What is this agreement about?

1.1 **Purpose.** The parties are entering into this Data Processing Agreement (**DPA**) for the purpose of processing Personal Data (as defined above).

1.2 **Definitions.** Under this DPA:

- a. **adequate country** means a country or territory that is recognised under Data Protection Laws from time to time as providing adequate protection for processing Personal Data;
- b. **Controller** (including as applicable any “**business**” as that term is defined by the CCPA/CPRA), **data subject**, **personal data breach**, **process/processing**, **Processor** (including as applicable any “**service provider**” as that term is defined by the CCPA/CPRA), and **supervisory authority** have the same meanings as in the Data Protection Laws; and
- c. **Sub-processor** means another processor engaged by PlaybookUX to carry out specific processing activities with Personal Data.

#### 2. What are each party’s obligations?

##### 2.1 Customer’s obligations.

- a. Where Customer acts as a Controller with respect to the processing of Personal Data, it shall instruct PlaybookUX to process Personal Data in accordance with this DPA, and is responsible for providing all notices and obtaining all consents, licences and legal bases required to allow PlaybookUX to process Personal Data.
- b. Where Customer acts as a Processor with respect to the processing of Personal Data, it shall instruct PlaybookUX to process Personal Data in accordance with this DPA, and, as the single point of contact for PlaybookUX, is responsible for sharing Controller’s instructions with Playbook prior to the processing of Personal Data.

##### 2.2 PlaybookUX’s obligations. PlaybookUX will:

- (a) only process Personal Data in accordance with this DPA and Customer’s instructions, unless legally required to do otherwise; Additionally, Customer acknowledges that PlaybookUX, acting as a Controller in its own right, may process Personal Data relating to the operation, support, or use of the Services for its own business purposes, such as billing, account management, data analysis, benchmarking, technical support, product development, and compliance with law;
- (b) not sell, retain or use any Personal Data for any purpose other than as permitted by this DPA and the Main Agreement;
- (c) inform Customer immediately if (in its opinion) any instructions infringe Data Protection Laws;
- (d) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk involved as set out in Annex 1;
- (e) notify Customer of a personal data breach within the Breach Notification Period, and provide assistance to Customer as required under Data Protection Laws in responding to it;
- (f) ensure that anyone authorised to process Personal Data is committed to confidentiality obligations;
- (g) without undue delay, provide Customer with reasonable assistance with:
  - (i) data protection impact assessments,
  - (ii) responses to data subjects’ requests to exercise their rights under Data Protection Laws,and

- (iii) engagement with supervisory authorities;
  - (h) if requested, provide Customer with information necessary to demonstrate its compliance with obligations under Data Protection Laws and this DPA;
  - (i) allow for audits at Customer's reasonable request with at least sixty (60) days' notice, performed by an independent auditor as agreed upon by Customer and PlaybookUX, provided that audits are limited to once a year and during business hours except in the event of a security incident. The foregoing shall only extend to those documents and facilities relevant and material to the processing of Customer Personal Data and shall be conducted in a manner that causes minimal business disruption. Customer and PlaybookUX each bear their own costs related to an audit; and
  - (j) return Personal Data upon Customer's written request or delete Personal Data at the end of the Term, unless retention is legally required. Notwithstanding the above, PlaybookUX is permitted to retain anonymised datasets.
- 2.3 **Warranties.** The parties warrant that they and any staff and/or subcontractors will comply with their respective obligations under Data Protection Laws for the Term.

### 3. Sub-processing

- 3.1 **Use of sub-processors.** Customer authorises PlaybookUX to engage sub-processors when processing Personal Data. PlaybookUX's existing sub-processors are listed in Annex 2.
- 3.2 **Sub-processor requirements.** PlaybookUX will:
- (a) require its sub-processors to comply with terms that are equivalent to PlaybookUX's obligations in this DPA;
  - (b) ensure appropriate safeguards are in place before internationally transferring Personal Data to its sub-processor; and
  - (c) be liable for any acts, errors or omissions of its sub-processors as if they were a party to this DPA.
- 3.3 **Approvals.** PlaybookUX may appoint new sub-processors provided that they notify Customer in writing within the Sub-processor Notification Period.
- 3.4 **Objections.** Customer may reasonably object in writing to any future sub-processor. If the parties cannot agree on a solution within a reasonable time, either party may terminate this DPA.

### 4. International personal data transfers

- 4.1 **Instructions.** PlaybookUX will transfer personal data outside the UK, the EEA, or an adequate country only on documented instructions from Customer, unless otherwise required by law.
- 4.2 **Transfer mechanism.** Where a party is located outside the UK, the EEA, or an adequate country and received Personal Data:
- (a) that party will act as the **data importer**;
  - (b) the other party is the **data exporter**; and
  - (c) the relevant Transfer Mechanism(s) will apply.
- 4.3 **Additional measures.** If the Transfer Mechanism(s) is/are insufficient to safeguard the transferred Personal Data, the data importer will promptly implement supplementary measures to ensure Personal Data is protected to the same standard as required under Data Protection Laws.
- 4.4 **Disclosures.** Subject to the terms of the relevant Transfer Mechanism(s), if the data importer receives a request from a public authority to access Personal Data, it will (if legally permitted):
- (a) challenge the request and promptly notify the data exporter about it; and
  - (b) only disclose to the public authority the minimum amount of Personal Data required and keep a record of the disclosure.

### 5. Other important information

- 5.1 **Survival.** Any provision of this DPA which is intended to survive the Term will remain in full force.

- 5.2 **Order of precedence.** In case of a conflict between this DPA and other relevant agreement, they will take priority in this order:
- (a) Transfer Mechanism,
  - (b) DPA,
  - (c) Main Agreement.
- 5.3 **Notices.** Notices under this DPA must be in writing and sent by email to the respective email addresses listed on the DPA's front page as may be updated by a party to the other in writing.
- 5.4 **Third parties.** Except for affiliates, no one other than a party to this DPA has the right to enforce any of its terms.
- 5.5 **Entire agreement.** This DPA supersedes all prior discussions and agreements and constitutes the entire agreement between the parties with respect to its subject matter and neither party has relied on any statement or representation of any person in entering into this DPA.
- 5.6 **Amendments.** Any amendments to this DPA must be agreed in writing.
- 5.7 **Assignment.** Neither party can assign this DPA to anyone else without the other party's consent.
- 5.8 **Waiver.** If a party fails to enforce a right under this DPA, that is not a waiver of that right at any time.
- 5.9 **Governing law and jurisdiction.** The Governing Law applies to this DPA and all disputes will only be litigated in the courts of the Jurisdiction.

**TRANSFER MECHANISM SCHEDULE TO THE DATA PROCESSING AGREEMENT:**

**STANDARD CONTRACTUAL CLAUSES – MODULE 2**

**(CONTROLLER TO PROCESSOR TRANSFERS)**

<b>PARTIES AND EXECUTION</b>	
<b>Purpose.</b> This Schedule supplements the Data Processing Agreement entered into between the parties (the <b>DPA</b> ) to govern the international transfer of personal data. By signing below, the parties agree to the terms of this Schedule.	
<b>Data exporter</b>	<b>Data importer</b>
<b>Entity details:</b>	<b>Entity details:</b> Playbook UX LLC
<b>Signature:</b>	<b>Signature:</b>
<b>Date:</b>	<b>Date:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>

Contact details:	Contact details: <a href="mailto:hello@playbookux.com">hello@playbookux.com</a>
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<b>VARIABLES</b>	
<b>Docking</b>	Clause 7 of the Clauses apply
<b>Use of sub-processors</b>	No changes are made to Clause 9 in the Clauses
<b>Redress</b>	No changes are made to Clause 11 in the Clauses
<b>Supervision</b>	No changes are made to Clause 13(a) in the Clauses
<b>Governing law</b>	<p>Clause 17 is deleted in its entirety and replaced with the following:</p> <p>These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.</p>

**APPENDIX TO THE CLAUSES**

**ANNEX I**

<b>A. LIST OF PARTIES</b>	
<b>Data exporter</b>	
<b>Name</b>	As described in the Parties and Execution table at the beginning of this Schedule
<b>Address</b>	As described in the Parties and Execution table at the beginning of this Schedule
<b>Contact person's name, position and contact details</b>	As described in the Parties and Execution table at the beginning of this Schedule
<b>Activities relevant to the data transferred under these Clauses</b>	As described in the Variables table at the beginning of the DPA
<b>Role</b>	Controller
<b>Data importer</b>	
<b>Name</b>	As described in the Parties and Execution table at the beginning of this Schedule

<b>Address</b>	As described in the Parties and Execution table at the beginning of this Schedule
<b>Contact person's name, position and contact details</b>	As described in the Parties and Execution table at the beginning of this Schedule
<b>Activities relevant to the data transferred under these Clauses</b>	As described in the Variables table at the beginning of the DPA
<b>Role</b>	Processor

## B. DESCRIPTION OF TRANSFER

<i>Term</i>	<i>Description</i>
<b>Data subjects.</b> Categories of data subjects whose personal data is transferred	As described in the Variables table in the DPA
<b>Personal data.</b> Categories of personal data transferred	As described in the Variables table in the DPA
<b>Sensitive data.</b> 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 the Variables table in the DPA
<b>Transfer frequency.</b> The frequency of the transfer (e.g., whether the data is transferred on a one-off or continuous basis)	Continuous basis
<b>Nature of the processing</b>	As described in the Variables table in the DPA
<b>Purpose of the data transfer and further processing</b>	As described in the Variables table in the DPA
<b>Retention period.</b> The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period	For the duration of the Main Agreement

<p><b>Sub-processor transfers.</b> For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing</p>	<p>As described in Annex 2 of the DPA</p>
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**C. COMPETENT SUPERVISORY AUTHORITY**

<p><b>Supervisory authority.</b> Identify the competent supervisory authority/ies in accordance with Clause 13</p>	<p>Where Data exporter is established in an EU Member State, the supervisory authority with responsibility for ensuring compliance by Customer with Regulation (EU) 2016/679 as regards the data transfer shall act as competent supervisory authority.</p> <p>Where 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 shall act as competent supervisory authority.</p> <p>Where 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, Data Protection Commission, 21 Fitzwilliam Square South, Dublin 2 D02 RD28, Ireland, shall act as competent supervisory authority.</p> <p>Where Data exporter is established in Switzerland or falls within the territorial scope of application of Swiss Data Protection Laws and Regulations, the Swiss Federal Data Protection and Information Commissioner shall act as competent supervisory authority insofar as the relevant data transfer is governed by Swiss Data Protection Laws and Regulations.</p>
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**ANNEX II**

**TECHNICAL AND ORGANISATIONAL MEASURES**

<p><b>Measures.</b> Technical and organisational measures to ensure the security of the data</p>	<p>As described in Annex 1 of the DPA</p>
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**ANNEX III**

**LIST OF SUB-PROCESSORS**



<b>Sub-processors.</b> The controller has authorised the use of sub-processors	As described in Annex 2 of the DPA
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**ANNEX**

*to the*

**COMMISSION IMPLEMENTING DECISION**

**On standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council**

**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) for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies, or other body/ies (hereinafter “entity/ies”) transferring the personal data, as listed in Annex I.A. (hereinafter each “data exporter”), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A. (hereinafter each “data importer”)

have agreed to these standard contractual clauses (hereinafter: “Clauses”).

- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

*Clause 2*

***Effect and invariability of the Clauses***

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46 (2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or

processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

### *Clause 3*

#### ***Third-party beneficiaries***

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
  - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
  - (ii) Clauses 8.1(b), 8.9(a), (c), (d) and (e);
  - (iii) Clauses 9(a), (c), (d) and (e);
  - (iv) Clauses 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clauses 15.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clauses 18(a) and (b).
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

### *Clause 4*

#### ***Interpretation***

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

### *Clause 5*

#### ***Hierarchy***

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

### *Clause 6*

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

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

*Clause 7*

***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 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 (in the same country as the data importer or in another third country, hereinafter "onward transfer") if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

### **8.9 Documentation and compliance**

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

### *Clause 9*

#### ***Use of sub-processors***

- (a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least fourteen (14) days in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the

sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. 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.

## *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***

- (a) 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.
- (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;
  - (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 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 the Governing Law described in the Variables table of the DPA.

*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.
- (f) The Parties agree that those shall be the courts of the Jurisdiction described in the Variables table of the DPA.
- (g) 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.
- (h) The Parties agree to submit themselves to the jurisdiction of such courts.

**TRANSFER MECHANISM SCHEDULE TO THE DATA PROCESSING AGREEMENT:**

**STANDARD CONTRACTUAL CLAUSES – MODULE 3**

**(PROCESSOR TO PROCESSOR TRANSFERS)**

<b>PARTIES AND EXECUTION</b>	
<b>Purpose.</b> This Schedule supplements the Data Processing Agreement entered into between the parties (the DPA) to govern the international transfer of personal data. By signing below, the parties agree to the terms of this Schedule.	
<b>Data exporter</b>	<b>Data importer</b>
<b>Entity details:</b>	<b>Entity details: Playbook UX LLC</b>

<b>Signature:</b>	<b>Signature:</b>
<b>Date:</b>	<b>Date:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Contact details:</b>	<b>Contact details:</b> <a href="mailto:hello@playbookux.com">hello@playbookux.com</a>

<b>VARIABLES</b>	
<b>Docking</b>	<b>Clause 7 of the Clauses apply</b>
<b>Use of sub-processors</b>	<b>No changes are made to Clause 9 in the Clauses</b>
<b>Redress</b>	<b>No changes are made to Clause 11 in the Clauses</b>
<b>Supervision</b>	<b>No changes are made to Clause 13(a) in the Clauses</b>
<b>Governing law</b>	<p><b>Clause 17 is deleted in its entirety and replaced with the following:</b></p> <p><b>These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.</b></p>

**APPENDIX TO THE CLAUSES**

**ANNEX I**

<b>A. LIST OF PARTIES</b>	
<b>Data exporter</b>	
<b>Name</b>	<b>As described in the Parties and Execution table at the beginning of this Schedule</b>
<b>Address</b>	<b>As described in the Parties and Execution table at the beginning of this Schedule</b>

Contact person's name, position and contact details	As described in the Parties and Execution table at the beginning of this Schedule
Activities relevant to the data transferred under these Clauses	As described in the Variables table at the beginning of the DPA
Role	Processor
<b>Data importer</b>	
Name	As described in the Parties and Execution table at the beginning of this Schedule
Address	As described in the Parties and Execution table at the beginning of this Schedule
Contact person's name, position and contact details	As described in the Parties and Execution table at the beginning of this Schedule
Activities relevant to the data transferred under these Clauses	As described in the Variables table at the beginning of the DPA
Role	Processor

## B. DESCRIPTION OF TRANSFER

<i>Term</i>	<i>Description</i>
Data subjects. Categories of data subjects whose personal data is transferred	As described in the Variables table in the DPA
Personal data. Categories of personal data transferred	As described in the Variables table in the DPA
Sensitive data. 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 the Variables table in the DPA

Transfer frequency. The frequency of the transfer (e.g., whether the data is transferred on a one-off or continuous basis)	Continuous basis
Nature of the processing	As described in the Variables table in the DPA
Purpose of the data transfer and further processing	As described in the Variables table in the DPA
Retention period. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period	For the duration of the Main Agreement
Sub-processor transfers. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing	As described in Annex 2 of the DPA

### C. COMPETENT SUPERVISORY AUTHORITY

Supervisory authority. Identify the competent supervisory authority/ies in accordance with Clause 13	<p>Where Data exporter is established in an EU Member State, the supervisory authority with responsibility for ensuring compliance by Customer with Regulation (EU) 2016/679 as regards the data transfer shall act as competent supervisory authority.</p> <p>Where 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 shall act as competent supervisory authority.</p> <p>Where 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, Data Protection Commission, 21 Fitzwilliam Square South, Dublin 2 D02 RD28, Ireland, shall act as competent supervisory authority.</p> <p>Where Data exporter is established in Switzerland or falls within the territorial scope of application of Swiss Data Protection Laws and Regulations, the Swiss Federal Data Protection and Information Commissioner shall act as competent supervisory</p>
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	authority insofar as the relevant data transfer is governed by Swiss Data Protection Laws and Regulations.
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**ANNEX II**

<b>TECHNICAL AND ORGANISATIONAL MEASURES</b>	
Measures. Technical and organisational measures to ensure the security of the data	As described in Annex 1 of the DPA

**ANNEX III**

<b>LIST OF SUB-PROCESSORS</b>	
Sub-processors. The controller has authorised the use of sub-processors	As described in Annex 2 of the DPA

**ANNEX**

*to the*

**COMMISSION IMPLEMENTING DECISION**

**On standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council**

**STANDARD CONTRACTUAL CLAUSES**

**Processor 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) for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter “entity/ies”) transferring the personal data, as listed in Annex I.A. (hereinafter each “data exporter”), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A. (hereinafter each “data importer”)

have agreed to these standard contractual clauses (hereinafter: “Clauses”).

- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

***Clause 2***



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

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46 (2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

### ***Clause 3***

#### ***Third-party beneficiaries***

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
  - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
  - (ii) Clauses 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g);
  - (iii) Clauses 9(a), (c), (d) and (e);
  - (iv) Clauses 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clause 15.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clauses 18(a) and (b).
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

### ***Clause 4***

#### ***Interpretation***

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

### ***Clause 5***

#### ***Hierarchy***

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

## **Clause 6**

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

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

## **Clause 7**

### ***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 exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.
- (b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.
- (c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.
- (d) The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter.

#### **8.2 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B., unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

### **8.3 Transparency**

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

### **8.4 Accuracy**

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

### **8.5 Duration of processing and erasure or return of data**

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

### **8.6 Security of processing**

- (a)** The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter “personal data breach”). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

- (b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

#### **8.7 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter "sensitive data"), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

#### **8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (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 of Regulation (EU) 2016/679;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

- 8.9 Documentation and compliance**
- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.
  - (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.
  - (c) The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.
  - (d) The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.
  - (e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.
  - (f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
  - (g) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

## *Clause 9*

### *Use of sub-processors*

- (a) The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least fourteen (14) days in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the

extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent - the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

#### **Clause 10**

##### ***Data subject rights***

- (a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.
- (b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

#### **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.

## ***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***

- (a) 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.
- (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;
  - (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). The data exporter shall forward the notification to the controller.



- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation, if appropriate in consultation with the controller. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the controller or the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

## **Clause 15**

### ***Obligations of the data importer in case of access by public authorities***

#### **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.

The data exporter shall forward the notification to the controller.

- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). The data exporter shall forward the information to the controller.
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

## **15.2 Review of legality and data minimisation**

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).**
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. The data exporter shall make the assessment available to the controller.**
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.**

## **SECTION IV – FINAL PROVISIONS**

### ***Clause 16***

#### ***Non-compliance with the Clauses and termination***

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.**
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).**
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:**
  - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;**
  - (ii) the data importer is in substantial or persistent breach of these Clauses; or**
  - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.**

**In these cases, it shall inform the competent supervisory authority and the controller of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.**

- (d) 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 the Governing Law described in the Variables table of the DPA.

#### ***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.
- (f) The Parties agree that those shall be the courts of the Jurisdiction described in the Variables table of the DPA.
- (g) 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.
- (h) The Parties agree to submit themselves to the jurisdiction of such courts.