

**Data Processing Agreement**  
**Passage Technology LLC as the Processor**  
*(Revision July 2019)*

This Data Processing Agreement (“DPA”) is made by and between Passage Technology, LLC, an Illinois limited liability company (“Passage”), and the customer company or entity that is accepting this Agreement, or its affiliates (“Company” and the two parties collectively the “Parties” and each individually a “Party”) as of July 26, 2019 and shall govern any services provided to Company and its Affiliates by Passage as a Processor or Subprocessor (defined below) (the "Services"). This DPA supplements, is incorporated into, and will remain in effect for the term of any agreement (the "Agreement") between the Parties, including but not limited to any executed or click-through agreement or, if applicable, Passage’s Terms of Use, the duration of Services, or the processing of Company Data, whichever is later (the "Term"). Without limiting the generality of the foregoing, the subject matter, nature, and purpose of the processing under this DPA is the provision of the Services under the Agreement, and the categories of Personal Data (defined below) and categories of data subjects are those necessary to provide the Services under the Agreement, as described more fully in the Agreement. The SCC’s (Defined below) apply to all data processed by the Services, and future variations of the Services.

This DPA has been pre-signed on behalf of Passage. To enter into this DPA, Company must: enter Company’s full legal entity name above, fill out the requested Company contact information set forth on the signature page herein, and submit the completed and signed DPA to Passage via email at [dpo@passagetech.com](mailto:dpo@passagetech.com).

**1. Definitions.**

References in this DPA to “controller”, “data subject”, “processor”, and “supervisory authority” shall have the meanings ascribed to them under Privacy Laws. Capitalized terms that are not defined in this DPA shall have the meaning set out in the MSA. In this DPA:

- 1.1. “Affiliate” means any entity in which the party owns, either directly or indirectly, more than 50% of the equity interest or voting stock, or equivalent, in such entity, or controls, is controlled by or under common control with such entity, whether such entity is now existing or subsequently created or acquired during the term of the DPA.
- 1.2. “Applicable Privacy Laws” means all applicable privacy and data protection laws and regulations anywhere in the world, including, where applicable, the EU Data Protection Directive 95/46/EC, the EU Directive 2002/58/EC on privacy and electronic communications, and on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation) ("GDPR") (in all cases, as amended, superseded or replaced).
- 1.3. “Company Group Member ” means Company or any Company Affiliate.
- 1.4. “Contracted Processor” means Passage or a Subprocessor.
- 1.5. “Controller” means the natural or legal person or entity who determines the purposes and means of the processing of Personal Data.
- 1.6. "Data Breach" means a breach of security leading to accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and all other unlawful forms of processing of Passage Data.
- 1.7. “Data Subject” means the individual to whom Personal Data relates.

- 1.8. "GDPR" means the General Data Protection 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.
- 1.9. "Company Data" means any and all data including Personal Data that is provided to Passage or otherwise collected and/or accessed by Passage on behalf of Company and/or its Affiliates in the course of providing the Services under the Agreement. Any Company Data that is Personal Data is hereby referred to as "Company Personal Data".
- 1.10. "Personal Data" means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.
- 1.11. "process" means any operation or set of operations which is performed on Personal Data, encompassing the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction or erasure of Personal Data.
- 1.12. "Processor" means an entity that processes Personal Data on behalf of, and in accordance with the instructions of, a Controller.
- 1.13. "SCCs" or "Standard Contractual Clauses" means the standard contractual clauses as set forth in Annex 2 herein.
- 1.14. "Subprocessor" means an entity engaged by a Processor who agrees to receive from the Processor Personal Data exclusively intended for the processing activities to be carried out as part of the Services.

## 2. Processing of Company Personal Data.

The Parties agree with regard to the processing of Company Data that Company is the Controller, Passage is the Processor and Passage shall comply with all applicable Applicable Privacy Laws in the processing of Company Personal Data. Passage will not disclose Company Data to a third-party except as Company directs or unless required by law. Should a third-party contact Passage with a demand for Company Data, Passage shall initially redirect such request for Company Data directly to Company (including subject access requests pursuant to GDPR so Company may fulfill its Controller obligations under the GDPR). Passage will not independently respond to requests from Company's end users without Company's prior written instructions (except to confirm receipt of such request). If authorized to disclose by Company in the performance of its Controller obligations, Passage will work with Company to fulfill its obligations. If compelled to disclose Company Data by lawful order Passage shall use commercially reasonable efforts to notify Company in advance of such disclosure, unless prohibited from doing so by law.

### 2.1. Passage and each Passage Affiliate shall:

- 2.1.1. Comply with all Applicable Privacy Laws in the Processing of Company Personal Data; and
- 2.1.2. Not process Company Personal Data other than on the relevant Company Group Member's documented instructions unless processing is required by Applicable Privacy Laws to which the relevant Contracted Processor is subject, in which case Passage or the relevant Passage Affiliate shall to the extent permitted by Applicable

Privacy Laws inform the relevant Company Group Member of that legal requirement before the relevant processing of that Personal Data.

**2.2.** Each Company Group Member shall:

**2.2.1.** Instruct Passage and each Passage Affiliate (and authorizes Passage and each Passage Affiliate to instruct each Subprocessor) to:

2.2.1.1. Process Company Personal Data; and

2.2.1.2. In particular, transfer Company Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with this DPA and the Agreement; and

**2.2.2.** Warrant and represent that it is and will at all relevant times remain duly and effectively authorized to give the instructions set out in Section 2.2.1 on behalf of each relevant Company Affiliate.

**2.3.** Annex 1 to this DPA sets out certain information regarding the Contracted Processors' Processing of the Company Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other data protection laws). Nothing in Annex 1 (including as amended pursuant to this Section) confers any right or imposes any obligation on any Party to this DPA.

**3. Data Transfers.**

**3.1.** As part of providing the Services, Passage may transfer, store, and process Company Personal Data in the United States or other country in which Passage maintains facilities pursuant to the Privacy Shield Framework.

**3.2.** Alternatively, and in some cases as a subordinate supplement to Privacy Shield transfer mechanisms described above, Passage (as “data exporter”) and each Contracted Processor, as appropriate (as “data importer”) may enter into the Standard Contractual Clauses in respect of any data transfer required to carry out the Services. The Standard Contractual Clauses shall come into effect on the later of:

**3.2.1.** The data exporter becoming a party to them;

**3.2.2.** The data importer becoming a party to them; and

**3.2.3.** Commencement of the relevant data transfer and for the duration of the Term.

**4. Protection of Company Data.**

**4.1. Limitation of access.** Passage personnel will not process Personal Data without authorization and ensure access to such Personal Data restricted to those individuals who need to know/access the relevant Personal Data, as necessary for the purpose of the Agreement, and to comply with applicable laws and the GDPR privacy principles.

**4.2. Confidentiality.** Passage shall ensure that its personnel and any Sub-processors engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and are bound by a duty of confidentiality no less stringent than that contained within the Principal Agreement.

**4.3. Controls.** Passage shall maintain appropriate technical and organizational measures for protection of the security, confidentiality, and integrity of Customer Data as set forth in Article 32(1) of the GDPR.

- 4.4. Data protection impact assessment and prior consultation. Passage shall provide Company with reasonable cooperation and assistance needed to fulfill Company's obligation under the GDPR to carry out a data protection impact assessment, and prior consultations with supervising authorities or other competent data privacy authorities, which Company reasonably considers to be required of any customer by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Privacy Law, in each case solely in relation to processing of Company Personal Data by, and taking into account the nature of the processing and information available to, the Contracted Processors. Where such requests are undertaken Company shall bear all costs related to such request.
- 4.5. Deletion or return of customer personal data. Passage shall, pursuant to Company's written instructions, return Company Data to Company and/or, to the extent allowed by Applicable Privacy Laws, delete Company Data in a reasonable time after cessation of any services involving the processing of Company Personal Data, at the choice of the Company. Each Contracted Processor may retain Company Personal Data to the extent required by Applicable Privacy Laws and only to the extent and for such period as required by Applicable Privacy Laws.
- 4.6. Privacy officer. Passage has appointed a privacy officer, Beatriz Johnson, and the appointed person may be reached at [dpo@passagetech.com](mailto:dpo@passagetech.com) and Passage Technology, LLC at 100 S. Saunders Rd Suite 150 Lake Forest, IL 60045.

## 5. Subprocessing.

- 5.1. Appointment of Subprocessors. Passage may engage other companies and third-parties as Subprocessors to provide limited services on its behalf and Company authorizes Passage to appoint and retain such Subprocessors. Any Subprocessors to whom Passage transfers Company Data will have entered into written agreements with Passage requiring that the Subprocessor will have entered into written agreements with Passage requiring at least the same level of data security protections to be in place as is required by the GDPR.
- 5.2. Current Subprocessors. Passage may continue to use those Subprocessors already engaged by Passage or any Affiliate as at the date of this DPA and available for review on request. For clarity, Passage's current Subprocessors are listed below, which are fully authorized by Company:
  - 5.2.1. Salesforce, Inc.
  - 5.2.2. Freshbooks, Inc.
  - 5.2.3. FormStack, LLC
  - 5.2.4. Facebook, Inc.
  - 5.2.5. Twitter, Inc.
  - 5.2.6. LinkedIn
  - 5.2.7. Google
  - 5.2.8. Lanyon Solutions, Inc.
  - 5.2.9. HubSpot, Inc.
  - 5.2.10. Amazon
  - 5.2.11. G2Crowd
  - 5.2.12. Olark

**5.2.13.** SurePayroll

**5.2.14.** Microsoft

**5.2.15.** VistaPrint

**5.2.16.** Fifth-Third Bank

**5.2.17.** Reddit

**5.3.** Notification of new Subprocessors and objection right. Company acknowledges and expressly agrees that Passage may engage third-party Subprocessors in connection with the provision of the Services. Passage shall make available to Company its current list of Subprocessors.

## **6. Data Subject Rights.**

**6.1.** Taking into account the nature of the processing, Passage shall assist Company by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Company's obligation, as reasonably understood by Passage, to respond to a Data Subject request under Applicable Privacy Laws.

**6.2.** Passage shall, to the extent legally permitted, promptly notify Company if Passage receives a request from a Data Subject under Applicable Privacy Laws (including, but not limited to right of access, right to rectification, restriction of Processing, right to be forgotten, data portability, object to processing, or right not to be subject to an automated individual decision making) in respect of Company Personal Data.

## **7. Personal Data Breach.**

Passage shall notify Company without undue delay upon Passage or any Subprocessor becoming aware of a Data Breach affecting Company Personal Data. Passage will provide Company with sufficient information to allow Company to meet any obligations to report or inform Data Subjects of the Data Breach under the Applicable Privacy Laws. Such notification shall as a minimum describe the nature of the Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned; communicate the name and contact details of Passage's Data Protection Officer or other relevant contact from whom more information may be obtained; described the likely consequences of the Data Breach; and describe the measures taken or proposed to be taken to address the Data Breach. Passage shall make reasonable efforts to identify the cause of a Data Breach and take necessary and reasonable steps under the circumstances in order to remediate the cause of the Data Breach to the extent the remediation is within Passage's reasonable control. The obligations herein shall not apply to incidents that are caused by Company or Company's customers or end users.

## **8. Audit Rights.**

On reasonable prior written notice, no more than once (1) per calendar year, Passage agrees to provide Company (or its appointed auditors) with all information Passage deems reasonably necessary for Company to audit compliance with the requirements of this DPA, including completion of audit questionnaires, provision of security policies and summaries of assessments of compliance with any industry standards (e.g., ISO 27001, SSAE 16 SOC II),

penetration testing and vulnerability scans. Company shall solely bear all expenses related to such audit requests.

#### **9. Indemnification.**

Company shall at its sole expense, defend, indemnify, and hold harmless, Passage, its directors, officers, employees, affiliates, successors, and assigns from and against any and all damages, losses, costs, and expenses (including any reasonable attorney's fees and expenses), which Company pays to third-parties in connection with any claim, suit, action, or proceeding brought against Passage, and in each case to the extent arising out of any breach by Company of this DPA or the Agreement.

#### **10. Limitation of Liability.**

Neither Passage nor any Subprocessor shall be liable for any claim brought by Company or any third-party arising from any action or omission by Passage and/or Subprocessors to the extent such action or omission resulted from compliance with Company's instructions. In no event shall Passage or any of its Subprocessors be liable to Company for any indirect, consequential, punitive, special, or exemplary damages arising from Passage or its Subprocessors' breach of this Agreement. Except for the indemnification obligations set forth in Section 10, in no event shall the aggregate liability of each Party together with all of its Affiliates arising out of or related to this DPA exceed the total amount paid by Company and its Affiliates hereunder for the Services giving rise to the liability in the twelve (12) months preceding the first incident out of which the liability arose. The foregoing limitation will apply whether an action is in contract or tort and regardless of the theory of liability.

#### **11. Governing Law and Jurisdiction.**

This DPA is governed by and construed under the laws of the State of Illinois, without reference to its conflict of laws provisions. Any dispute or claim arising out of or relating to the DPA or claim of breach hereof shall be brought exclusively in the federal court for the Northern District of Illinois or in the Circuit Court of Lake County, Illinois. By execution of the Agreement, the Parties hereby consent to the exclusive jurisdiction of such courts, and waive any right to challenge jurisdiction or venue in such courts with regard to any suit, action, or proceeding under or in connection with the DPA.

#### **12. Changes in Data Protection Laws, etc.**

**12.1.** In the event Company requires modification of any data processing or transfer mechanism, Passage requires at least 30 (thirty) calendar days' advanced written notice to Passage from time to time to make any variations to the Standard Contractual Clauses, as they apply to data transfers which are subject to a particular Applicable Privacy Law, which are required, as a result of any change in, or decision of a competent authority under, that Applicable Privacy Law, to allow those data transfers to be made (or continue to be made) without breach of that Applicable Privacy Law; and propose any other variation to this DPA which Company reasonably considers to be necessary to address the requirements of any Applicable Privacy Law.

**12.2.** If Company gives notice that amendment or modification of any data processing or transfer mechanism is required, Passage shall promptly co-operate (and ensure that any affected Subprocessors promptly co-operate) to ensure that equivalent variations are made to any agreement.

**12.3.** Company shall not unreasonably withhold or delay agreement to any consequential variation to this DPA proposed by Passage to protect the Contracted Processors against additional risks associated with the variations made herein. If Company gives notice as required herein, the Parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Company's notice within a commercially reasonable timeframe.

### **13. Severability.**

Should any provision of this DPA be invalid or unenforceable, the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either: (i) amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein. Where this DPA directly conflicts with any other agreements entered into by and between the parties, this DPA shall supersede and control.

### **14. No Assignment.**

This Agreement is personal to each of the Parties. Except as provided below, no Party may assign or delegate any rights or obligations hereunder and any attempt to do so shall be null and of no effect.

### **15. Survival.**

All provisions of this DPA which by their nature should survive termination shall survive termination, including but not limited to the, limitation of liability, dispute, indemnification, and confidentiality provisions.

**16. Amendments.**

This DPA may not be amended except by written mutual consent of both Parties.

IN WITNESS WHEREOF, the Parties have executed this DPA as of the date first above written.

<b>PASSAGE</b>	<b>COMPANY</b>
<p><i>Brent Gossett</i></p> <hr/> <p>Brent Gossett, on behalf of Passage Technology, LLC</p> <p><i>Jerry Reid</i></p> <hr/> <p>Jerry Reid, on behalf of Passage Technology, LLC</p> <p><b>Email</b> llc-members@passagetech.com</p> <p><b>Corporate Mailing Address</b> 100 S. Saunders Rd Suite 150 Lake Forest, IL 60045</p> <p><b>Phone</b> 224-552-0083</p>	<p>_____</p> <p>Print Name: _____</p> <p>Signing on behalf of: _____</p> <p><b>Email</b></p> <p><b>Mailing Address</b></p> <p><b>Phone</b></p>

## Annex 1: Details of the Processing

This Annex 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

1. **Subject Matter and Duration.** The subject matter and duration of the processing of the Company Personal Data are set out in the Agreement and this DPA.
2. **Nature and Purpose of Processing.** Passage will process Personal Data as necessary to perform the Services as detailed on the applicable ordering document pursuant to the Agreement between the Parties and as further instructed by Company in its use of the Services.
3. **Types of Personal Data.** Company may submit Personal Data to the Services, the extent of which is determined and controlled by Company in its sole discretion, and which depending on the scope of Services may include, but is not limited to:
  - a. First and last name
  - b. Contact information
  - c. Company name
  - d. Email
  - e. Phone
  - f. Payment information
  - g. Username
  - h. Geolocation data
  - i. IP Address
  - j. Browser ID
  - k. Internet cookies
  - l. Issue affiliation data
  - m. Event and survey/petition registration, attendance, and response data
4. **Categories of Data Subjects.** Company may submit Personal Data to the Services, the extent of which is determined and controlled by Company as Controller, and which includes, but is not limited to Personal Data relating to the following categories of data subjects:
  - a. End users
  - b. Customers
  - c. Prospective customers
  - d. Employees
  - e. Authorized third-parties

## Annex 2 – Standard Contractual Clauses

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

Name of the data exporting organization:

Company Name:  
Company Address  
Company Phone

(the “data exporter”)

And

Name of the data importing organization:

Passage Technology, LLC  
100 S. Saunders Rd., Suite 150 Lake Forest, IL 60045  
224-552-0077

(the “data importer”) each a ‘party’; together ‘the parties’, HAVE AGREED on the following Contractual Clauses (the “Clauses”) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in this Annex 2.

### **Clause 1** **Definitions**

For the purposes of the Clauses:

- (a) “personal data”, “special categories of data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority” shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>;
- (b) “the data exporter” means the controller who transfers the personal data;
- (c) “the data importer” means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s

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<sup>1</sup> Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

- (d) “the subprocessor” means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) “the applicable data protection law” means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) “technical and organizational security measures” means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## **Clause 2**

### **Details of the transfer**

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

## **Clause 3**

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

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

**Clause 4**  
**Obligations of the data exporter**

The data exporter agrees and warrants:

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

**Clause 5**  
**Obligations of the data importer<sup>2</sup>**

The data importer agrees and warrants:

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

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<sup>2</sup> ) Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defense, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognized sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

- (i) That the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) To send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

**Clause 6**  
**Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

**Clause 7**  
**Mediation and jurisdiction**

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

**Clause 8**  
**Cooperation with supervisory authorities**

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

### **Clause 9** **Governing Law**

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

### **Clause 10** **Variation of the Contract**

The parties may not vary or modify the Clauses unless agreed to in writing and signed by the parties. This does not preclude the parties from adding clauses on business-related issues where required as long as they do not contradict or broaden data importer's obligations under the Clause.

### **Clause 11** **Subprocessing**

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

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

### **Clause 12**

#### **Obligation After the Termination of Personal Data Processing Services**

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor agree that upon request of the data exporter and/or of the supervisory authority, each will submit its data processing facilities for an audit of the measures referred to in Clause 12 paragraph 1.

## Appendix 1 to the Standard Contractual Clauses

This Appendix 1 forms part of the Clauses and must be completed and signed by the parties. The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix 1.

### Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

Data exporter is the authorized legal entity that has agreed to the Standard Contractual Clauses as a data exporter.

### Data importer

The data importer is (please specify briefly activities relevant to the transfer):

A provider of cloud software and data storage services, which processes personal data at the instruction of data exporter in accordance with the terms of the DPA.

### Data subjects

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

Data exporter may transfer Personal Data to the Service at its sole discretion as controlled by data exporter, which may include data regarding the following categories: (1) customers, business partners, vendors, and prospects (who are natural persons); (2) data exporter's users, supporters, prospective users, and prospective supporters, authorized by data exporter to use the Services (who are natural persons); (3) data exporter's affiliates, advisors, agents, and freelancers.

### Categories of data

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

Data exporter may submit Personal Data to the Service to the extent that, under data exporter's sole discretion and control, may include the following categories of Personal Data:

- First and Last Name
- Contact Information
- Professional life data
- Personal life data
- Connection/relationship data
- Locational data
- Event and survey/petition registration, attendance, and response data
- Issue affiliation data
- Internet cookies
- Usage information related to the Service

**Special categories of data (if appropriate)**

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

Except where Union or Member State law provide that a data subject may not consent to any of the items in the following list, data exporter may submit special categories of data to the Service to the extent that, under data exporter's sole discretion and control, and which is, for the sake of clarity,

Personal Data with information revealing one or more of the following categories of Personal Data:

- Political party affiliation, participation, voting, contribution, and opinion data
- Religious belief and organization donation data
- Philosophical belief data
- Trade union membership data
- Ethnic data

The specified purposes for processing data in the special categories are: to provide the Service to Data Subject in accordance with the Agreement and for improving the Service for all users and customers.

**Processing operations**

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

The purpose of Processing the Personal Data is to provide the Service to Data Subject in accordance with the Agreement.