

Document: Data Processing Terms for Quadient Inspire Evolve Services US
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Quadient Inspire Evolve Services Data Processing Terms

THESE DATA PROCESSING TERMS APPLY ONLY TO THE EXTENT PERSONAL DATA IS PROCESSED BY QUADIENT, OR ITS SUB-PROCESSORS, AS NECESSARY TO PROVIDE A SERVICE, AS HEREIN DEFINED.

Licensee and Quadient are agreeing to these Data Processing Terms because Licensee has entered into a Customer Schedule with Quadient or a Channel Partner (“Customer Schedule”) for the Quadient Inspire Evolve Services (the “Service”). These Data Processing Terms shall continue in full force and effect until expiry or termination of the Service. Any terms not defined herein, shall have the meaning set forth in the Terms of Use.

1 Definitions

“**CCPA**” means the California Consumer Privacy Act of 2018, as amended (Cal. Civ. Code §§ 1798.100 to 1798.199), and any related regulations or guidance provided by the California Attorney General. If the CCPA applies to provision of or use of the Service, the parties further agree to be bound by the terms set forth in Exhibit 1, attached hereto.

“**Controller**” has the meaning set forth in the GDPR. Unless otherwise specified, with respect to the Service, Licensee is the Controller of Personal Data.

“**Data Privacy Laws**” means laws, rules, regulations, governmental requirements, codes as well as international, federal, state, provincial laws applicable to the Personal Data and Quadient’s provision of the Service.

“**Data Processing Specifications**” means the Service-specific terms, if any, set forth in the applicable Customer Schedule.

“**GDPR**” means the General Data Protection Regulation ((EU) 2016/679) (“GDPR”), the European Directives 95/46 and 2002/58/EC (as amended by Directive 2009/136/EC) and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them.

“**Hosting Provider**” means a third-party hosting provider that manages the cloud infrastructure on which the Service is hosted. The Service is hosted by Microsoft Azure and governed by the terms and conditions of Microsoft for the Third-Party Services found at: azure.microsoft.com/en-us/support/legal/.

“**Personal Data**” means any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Unless otherwise specified herein, the Personal Data processed by Quadient in its provision of the Service is limited to the Personal Data transmitted by the Licensee, or on its behalf, or by end users, directly into the infrastructure where the Service is hosted.



“**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by Quadient, or a sub-processor, in the performance of the Service.

“**Privacy Notice**” means the applicable Privacy Notice located at www.quadient.com/quadient-website-privacy-statement.

“**Processor**” has the meaning set forth in the GDPR. Unless otherwise specified, with respect to the Service, Quadient is the Processor of Personal Data.

“**Rights of Individuals**” means the legal rights of individuals to access, rectify, delete, and port Personal Data.

2 Data Processing Specifications

The Data Processing Specifications, if any, set forth in the applicable Customer Schedule describe: (i) the subject matter of the data processing; (ii) the type of Personal Data processed; (iii) the name and location of the party hosting the Personal Data; (iv) where the Service is hosted; (v) sub-processors involved in the processing of the Personal Data, if any; (vi) the purpose of the data processing; and (vii) the period of time the Personal Data is retained. The applicable Data Processing Specifications are hereby incorporated by reference into these Data Processing Terms.

3 Licensee Instructions

The parties agree that these Data Processing Terms, the Customer Schedule, and the Terms of Use constitute Licensee’s documented instructions regarding Quadient’s processing of Personal Data. Quadient and its sub-processors will process Personal Data only in accordance with such instructions.

4 Data Processing and Disclosure

Quadient, and its sub-processors, will only access, use, review, share, disclose, distribute, or reference Personal Data as necessary to maintain and perform the Service. Notwithstanding, Quadient may disclose Personal Data as necessary to comply with the law or a valid and binding order of a governmental body (such as a subpoena or court order). If compelled to disclose Personal Data to a governmental body, unless Quadient is legally prohibited, Quadient will give Licensee reasonable notice of the demand. Any change in the processing of Personal Data will be in accordance with applicable Data Privacy Laws.

5 Standard Contractual Clauses and On-Ward Transfer

5.1 The Standard Contractual Clauses attached hereto as Exhibit 2 are hereby incorporated into these Data Processing Terms. These Standard Contractual Clauses only apply when Controllers in the EU transfer data to Processors (and sub-processors) established outside the EU or European Economic Area (EEA). Any transfer of Personal Data resulting from the Service will be subject to the Standard Contractual Clauses. Cross-border transfers, if any, are described in the applicable Data Processing Specifications. In the event the Standard Contractual Clauses are modified, revised or superseded by the European Commission, then and in accordance with Section 15 below, such modified, revised or replaced provisions shall automatically, and without any action required by either party, replace and supersede the Standard Contractual Clauses attached hereto as Exhibit 2.



5.2 To the extent that the parties are relying on a specific statutory mechanism or regulatory guidance to authorize cross-border transfers (as required by the Data Privacy Laws) that is subsequently modified, revoked, or held in a court of competent jurisdiction to be invalid as a result of a change in law, Quadient shall be entitled to immediately suspend any processing of Personal Data to the extent such processing is in conflict with such change in law.

5.3 To facilitate Quadient internal operations and provide support, Quadient may transfer information globally and allows access to that information from countries in which Quadient or Quadient Affiliates own or operate companies and/or have operations for the purpose of providing the Service or as otherwise set forth in the Privacy Notice. These countries may not have equivalent privacy and data protection law to the laws governing Personal Data of the Licensee. When Quadient shares Personal Data within and among Quadient Affiliates, to the extent legally required, Quadient has internal policies and procedures in place that dictate that the activities of such Quadient Affiliates with respect to the Personal Data are generally consistent with the Data Processing Terms and applicable Data Privacy Laws.

6 Sub-Processors

Licensee agrees that Quadient may engage sub-processors to provide all or part the Service. Quadient will restrict sub-processor access to Personal Data to only what is necessary to maintain or provide the Service. Quadient will prohibit its sub-processors from accessing Personal Data for any other purpose. Quadient will enter into a written agreement with each sub-processor generally consistent with these Data Processing Terms and applicable Data Privacy Laws.

7 Obligations

7.1 Each party will comply with Data Privacy Laws, rules and regulations applicable to it in the use and performance of the Service. Quadient will keep appropriate records of processing activities.

7.2 Quadient will cooperate with governmental and regulatory authorities in the event of an inquiry regarding the Service and compliance with applicable Data Privacy Laws. If Quadient: (i) determines that Quadient, or a sub-processor, is unable to comply with the obligations set forth in these Data Processing Terms; or (ii) becomes aware of any circumstance or change in the applicable Data Privacy Laws, that is likely to have a substantial adverse effect on its ability to meet the obligations set forth in these Data Processing Terms, Quadient will promptly notify the Licensee and Licensee will have the right to temporarily suspend the processing of Personal Data until the non-compliance is remedied.

7.3 Licensee represents and warrants that the Personal Data it provides to Quadient for processing can be processed lawfully (e.g. lawful collection, compliance with obligation to inform, and compliance with the applicable Data Privacy Law) and for the purpose of providing the Service. Licensee shall not, by any act or omission, put Quadient or its sub-processors in breach of any Data Privacy Laws in connection with the processing of Personal Data. Licensee will ensure that Personal Data is accurate, adequate and complete.

8 Security of Data Processing

With respect to the Personal Data, Quadient will maintain reasonable security measures and protect Personal Data in a manner legally required or otherwise reasonably appropriate to the nature of the Personal Data, including, as



applicable, the measures referred to in Article 32(1) of the GDPR. Quadient will take appropriate steps to ensure compliance with these Data Processing Terms. Quadient shall ensure that those processing Personal Data are subject to a duty of confidence. Quadient imposes appropriate contractual obligations upon its personnel and sub-processors, including relevant obligations regarding confidentiality, data protection and data security. Notwithstanding anything to the contrary in the Customer Schedule, Quadient's obligations extend only to those systems, networks, network devices, facilities and components over which Quadient exercises control.

9 Security Breach Notification

9.1 After becoming aware of a Personal Data Breach, Quadient will (a) notify Licensee of the Personal Data Breach without undue delay, unless otherwise prohibited by law, and (b) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Personal Data Breach. To assist Licensee in relation to any personal data breach notifications Licensee is required to make under applicable Data Privacy Laws, Quadient will include in the notification such information about the Personal Data Breach as Quadient is reasonably able to disclose to Licensee, taking into account the nature of the Service, the information available to Quadient at the time of the notification, and any restrictions on disclosing the information, such as confidentiality.

9.2 Notification of a Personal Data Breach will be delivered to Licensee's administrator(s) or, at Quadient's discretion, by direct Licensee communication (e.g., by email, phone call or an in-person meeting). Licensee acknowledges that it is solely responsible for ensuring that its contact information is current and valid. Licensee is solely responsible for fulfilling any third-party notification obligations.

9.3 Promptly following Quadient's notification to Licensee of a Personal Data Breach, Licensee and Quadient shall coordinate with each other to investigate the Personal Data Breach. Quadient will lead the investigation, and agrees to reasonably cooperate with Licensee in the handling of the Personal Data Breach.

9.4 Notwithstanding anything to the contrary, an unsuccessful or suspected Personal Data Breach will not be subject to this Section. Unless otherwise contemplated in applicable Data Privacy Laws, an unsuccessful Personal Data Breach is one that results in no unauthorized access to nonredacted and unencrypted Personal Data. This section constitutes any notice required by Quadient to Licensee of the ongoing occurrence of incidents that may constitute an unsuccessful or suspected Personal Data Breach but that are trivial and do not result in unauthorized access, use, or disclosure of Personal Data, including without limitation pings and other broadcast attacks on Quadient's firewall, port scans, unsuccessful log-on attempts, and denials of service, for which no additional notice to Licensee shall be required.

9.5 Any obligation by Quadient to report or respond to a Personal Data Breach under this Section will not be construed as an acknowledgement by Quadient of any fault or liability with respect to the Personal Data Breach.

10 Audits

Once per calendar year or following a successful Personal Data Breach, Licensee may request a summary or certification from Quadient of Quadient's security controls with respect to the Service and compliance with applicable Data Privacy Laws and these Data Processing Terms and Quadient will provide such summary or certification of the same promptly following Licensee's written request. Notwithstanding, this Section does not entitle Licensee to perform a physical audit of any Quadient facilities or the facilities of any subcontractor, Hosting Provider and/or sub-processor.



11 Assistance

Quadient will deal promptly and appropriately with inquiries by Licensee related to the processing of Personal Data. Quadient will use commercially reasonable efforts to cooperate with Licensee where necessary for the performance of Licensee's privacy impact assessments. Quadient will promptly comply with reasonable requests or instructions by Licensee requiring Quadient to provide, amend, transfer, or delete Personal Data or to otherwise assist with requests pursuant to the Rights of Individuals under applicable Data Privacy Laws. Should an individual data subject contact Quadient, Quadient will use commercially reasonable efforts to forward such request to Licensee. Quadient does not respond to individual data subjects directly except where Quadient or a sub-processor is required by law to respond. Quadient will cooperate with Licensee to address and resolve any such complaints, requests or inquiries. Licensee shall be responsible to the extent legally permitted for any costs and expenses arising from any such assistance by Quadient.

12 Personal Data Retention and Destruction

In accordance with applicable Data Privacy Laws, as a general principle Quadient does not keep Personal Data longer than necessary for the provision of the Service. Unless otherwise agreed in writing by the parties, after the data retention period set forth in the applicable Customer Schedule, Personal Data is deleted irretrievably.

13 Support Services

13.1 Quadient may process basic contact information from select Licensee representatives when providing support services. The processing of such data for the purpose of providing support is subject to the Privacy Notice.

14 Limitation of Liability

14.1 QUADIENT IS ONLY LIABLE FOR A PERSONAL DATA BREACH ONLY TO THE EXTENT THAT SUCH PERSONAL DATA BREACH WAS CAUSED, IN WHOLE OR IN PART, BY QUADIENT'S FAILURE TO ADHERE TO: (I) DATA PRIVACY LAWS APPLICABLE TO QUADIENT'S PROVISION OF THE SERVICE; AND/OR (II) THE TERMS OF THESE DATA PROCESSING TERMS.

14.2 EXCEPT FOR GROSS NEGLIGENCE OR WILFULL MISCONDUCT AND CLAIMS WHICH LIABILITY MAY NOT BE EXCLUDED BY LAW, QUADIENT'S AGGREGATE LIABILITY IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THESE DATA PROCESSING TERMS (INCLUDING ANY EXHIBITS HERETO) SHALL NOT EXCEED AMOUNTS PAID TO QUADIENT FOR THE SERVICE GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM FIRST AROSE. THIS LIMIT, WHICH INCLUDES COSTS AND FEES ARISING OUT OF ANY SUCH CLAIM, SHALL APPLY TO ANY AND ALL CLAIMS REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL QUADIENT OR ITS AFFILIATES BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF OPPORTUNITIES, LOSS OF USE OF THE PRODUCT(S) OR SERVICE(S) OR ANY ASSOCIATED PRODUCT(S) OR SERVICE(S), OR COST OF COVER OR COST OF SUBSTITUTE SERVICE WHICH ARISE OUT OF PERFORMANCE, NON-PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATION CONTAINED WITHIN THESE DATA PROCESSING TERMS, REGARDLESS OF THE LEGAL



THEORY ON WHICH THEY ARE BASED, EVEN IF THE QUADIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15 Changes

Quadient may update these Data Processing overtime based on changes and improvements to the Service and to better align the rights and obligations of the parties with applicable Data Privacy Laws. Quadient will provide Licensee with notice of any material change to these Data Processing Terms prior to the implementation of such change. Subject to Section 6, notice will be: (i) delivered through the Service (if applicable); (ii) posted at the applicable website; or (iii) provided to Licensee's administrator(s), as applicable. By continuing to use the Service after such notice, Licensee agrees to the changes and agrees to be bound by same. If changes are required in the processing of Personal Data in order to comply with applicable Data Privacy Law, Licensee and Quadient shall collaborate to evaluate the changes to be made.

16 Governing Law

If there is a Customer Schedule in place between Quadient and Licensee, governing law and jurisdiction shall be as set forth in the Customer Schedule. If there is no Customer Schedule in place between Quadient and Licensee, these Data Processing Terms are governed in accordance with the Governing Law and Dispute Resolution Section of the Terms of Use.

Exhibit 1

CCPA Addendum

If the CCPA applies to provision of or use of the Service, the parties further agree to be bound by the terms of this CCPA Addendum in addition to Data Processing Terms.

Applicability and Treatment of Personal Information.

To the extent Quadient: (i) receives from Licensee personal information (as defined in the CCPA) of a consumer (as defined in the CCPA) (hereinafter referred to as "Personal Information"); and (ii) processes (as defined in the CCPA) such Personal Information on behalf Licensee to provide the Service, the following additional terms and conditions shall apply. Unless otherwise specified in this Addendum, Personal Information will be treated as Personal Data under the Data Processing Terms. For clarity, with respect to the Service, Quadient is a "service provider" as defined in the CCPA.

CCPA Compliance.

Quadient will comply with applicable requirements of the CCPA when collecting, using, retaining, or disclosing Personal Information.



Collection; Use.

Quadient will limit collection, use, retention, and disclosure to activities reasonably necessary and proportionate for the business purpose set forth in the Customer Schedule and the Terms of Use. Quadient shall not retain, use or disclose Personal Information for a commercial purpose other than providing the Service. Quadient shall not collect, use, retain, disclose, sell, or otherwise make Personal Information available for Quadient's own commercial purpose(s) or in a way that does not comply with the CCPA. Notwithstanding, Quadient may use de-identified data for its own business purpose(s) solely as necessary to perform the Service or otherwise in compliance with the Terms of Use and the Data Processing Terms.

Assistance

Quadient will use commercially reasonable efforts to timely assist Licensee in complying with a verifiable consumer request.

Subcontractors.

If Quadient authorizes any subcontractor, Quadient or third party to process Personal Information, Quadient acknowledges that such subcontractor, Quadient or third party is also a "service provider" as defined in the CCPA.

No Sale of Personal Information.

Quadient will not sell any Personal Information. For clarity, if Licensee purchases the Service through a Channel Partner or expresses interest in purchasing Quadient offerings through a Channel Partner, Quadient may disclose certain Personal Information constituting business contact information to the Channel Partner. Licensee agrees that it has intentionally triggered such disclosure and same is not a sale of Personal Information as contemplated under the CCPA.

Exhibit 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 Quadient and Licensee 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 the applicable Data Processing Specifications.

CLAUSE 1

Definitions

For the purposes of the Clauses:

(a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) 'the data exporter' means the controller who transfers the personal data;



(c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) 'technical and organizational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

CLAUSE 2

Details of the transfer

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

CLAUSE 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.



CLAUSE 4

Obligations of the data exporter

The data exporter agrees and warrants:

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

CLAUSE 5

Obligations of the data importer

The data importer agrees and warrants:



(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented appropriate technical and organizational security measures before processing the personal data transferred, documentation of which is available upon request;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;

(ii) any accidental or unauthorized access; and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter, to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of documentation provided pursuant to Clause 4(c) and 5(c), if any, which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.



CLAUSE 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor, is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

CLAUSE 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

CLAUSE 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.



3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

CLAUSE 9

Governing law

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

CLAUSE 10

Variation of the contract

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

CLAUSE 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

CLAUSE 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless

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legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.