

ANNEX

**Standard Contractual Clauses (processors)**

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 organisation: .....  
address .....  
.....  
tel.: .....; fax: ..... ; e-mail: .....

Other information needed to identify the organisation  
.....  
(the data **exporter**)

and

Name of the data importing organisation: .....  
address .....  
.....  
tel.: .....; fax: ..... ; e-mail: .....

Other information needed to identify the organisation:  
.....  
(the data **importer**)

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 Appendix 1.

*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 (the Directive) <sup>(1)</sup>;
- (b) 'the data exporter' shall mean the controller who transfers the personal data;
- (c) 'the data importer' shall mean 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 these Clauses and who is not subject to a third country's system ensuring to adequate protection;
- (d) 'the applicable data protection law' shall mean the legislation protecting the fundamental rights and freedoms of natural persons 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;
- (e) 'technical and organisational security measures' shall mean those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised 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.

<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.

## Clause 3

**Third-party beneficiary clause**

The data subject can enforce against the data exporter this Clause, Clause 4(b) to (h), Clause 5(a) to (e), and (g), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9, 10 and 11, as third-party beneficiaries.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9, 10 and 11, in cases where the data exporter has factually disappeared or has ceased to exist in law.

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 he 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 these clauses;
- (c) that the data importer shall provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (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, unauthorised 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 he 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 his data could be transmitted to a third country not providing adequate protection;
- (g) that he agrees to forward the notification received from the data importer pursuant to Clause 5(b) to the data protection supervisory authority if he decides to continue the transfer or to lift his suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses set out in this Annex, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures.

## Clause 5

**Obligations of the data importer <sup>(1)</sup>**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with his instructions and the clauses; if he cannot provide such compliance for whatever reasons, he agrees to inform promptly the data exporter of his inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that he has no reason to believe that the legislation applicable to him prevents him from fulfilling the instructions received from the data exporter and his 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, he will promptly notify the change to the data exporter as soon as he is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that he has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

<sup>(1)</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 defence, 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 recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

- (d) that he shall 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 unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless he has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to his 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 his 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 set out in this Annex, with the exception of Appendix 2 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.

#### Clause 6

#### Liability

1. The parties agree that a data subject, who has suffered damage as a result of any violation of the provisions referred to in Clause 3 is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring the action referred to in paragraph 1 arising out of a breach by the data importer of any of his obligations referred to in Clause 3 against the data exporter because the data exporter has disappeared factually or has ceased to exist in law or became insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if he were the data exporter.
3. The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim <sup>(1)</sup>.

#### Clause 7

#### Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against him 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 data importer agrees that, by agreement with the data subject, the resolution of a specific dispute can be referred to an arbitration body if the data importer is established in a country which has ratified the New York Convention on enforcement of arbitration awards.
3. The parties agree that the choice made by the data subject will not prejudice his 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 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.

<sup>(1)</sup> Paragraph 3 is optional.

Clause 9

**Governing Law**

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

Clause 10

**Variation of the contract**

The parties undertake not to vary or modify the terms of the Clauses.

Clause 11

**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 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 he has done so, unless legislation imposed upon the data importer prevents him from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that he will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer warrants that upon request of the data exporter and/or of the supervisory authority, he will submit his data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

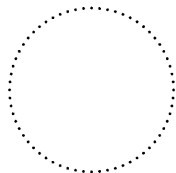
Name (written out in full): .....

Position: .....

Address: .....

Other information necessary in order for the contract to be binding (if any): .....

Signature .....



(stamp of organisation)

**On behalf of the data importer:**

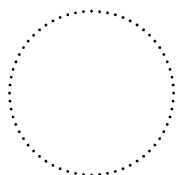
Name (written out in full): .....

Position: .....

Address: .....

Other information necessary in order for the contract to be binding (if any): .....

Signature .....



(stamp of organisation)

Appendix 1

to the Standard Contractual Clauses

This Appendix 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)

Data exporter

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

.....
.....
.....

Data importer

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

.....
.....
.....

Data subjects

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

.....
.....
.....

Categories of data

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

.....
.....
.....

Special categories of data (if appropriate)

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

.....
.....
.....

Processing operations

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

.....
.....
.....

DATA EXPORTER

DATA IMPORTER

Name: .....

Authorised signature

.....



*Appendix 2*

**to the Standard Contractual Clauses**

**This Appendix forms part of the Clauses and must be completed and signed by the parties**

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

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.....  
.....

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