

## Data Processing Addendum

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This Data Processing Addendum, which includes the documents referenced herein, (together the “**Addendum**”) forms part of the Enterprise Services Agreement, Subscription Services Agreement or other written or electronic agreement between Liferay and Customer referring to this Addendum for the purchase of certain services from Liferay (identified either as “**Services**” or otherwise in the applicable agreement, and hereinafter defined as “**Services**”) including any applicable appendices (the “**Agreement**”) to reflect the parties’ agreement with regard to the Processing of Personal Data. Liferay and Customer enter into this Addendum acting on its own behalf and as an agent for its respective Affiliates subject to Section 13 of this Addendum. Any capitalized terms used but not defined in this Addendum have the meanings ascribed to them in the Agreement. Except as modified below, the terms of the Agreement shall remain in effect.

### 1. Definitions

**"Applicable Laws"** means (i) European Union or Member State laws with respect to any Customer Personal Data in respect of which any Customer Group Member is subject to EU Data Protection Laws; and (ii) any other applicable law with respect to any Customer Personal Data in respect of which any Customer Group Member is subject to any other Data Protection Laws, including for example and without limiting the generality of the foregoing, the LGPD and UK GDPR.

**"Affiliate"** (of Customer or of Liferay or of both as designated in this Addendum) means unless otherwise defined in the Agreement, an entity that owns or controls, is owned or controlled by or is or under common control or ownership with the designated party (Customer or Liferay), where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

**"Customer Group Member"** means Customer or any Customer Affiliate.

**"Commission"** shall have the same meaning as in the GDPR.

**"Contracted Processor"** means Liferay or a Subprocessor.

**"Customer Personal Data"** means any Personal Data Processed by a Contracted Processor on behalf of a Customer Group Member pursuant to or in connection with the Agreement.

**"Data Protection Laws"** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country, including for example and without limiting the generality of the foregoing, the LGPD and UK GDPR.

**"Data Subject"** means an identified or identifiable natural person who is the subject of Personal Data.

**"EEA"** means the European Economic Area.

**"EU Data Protection Laws"** means the GDPR as amended, replaced or superseded from time to time and laws implementing or supplementing the GDPR.

**"GDPR"** means EU General Data Protection Regulation 2016/679, as amended, superseded, or replaced from time to time.

**"LGPD"** means the Brazilian General Data Protection Law, Federal Law no. 13,709/2018, as amended, superseded, or replaced from time to time.

**"Member State"** shall have the same meaning as in the GDPR.

**"Privacy Shield Framework"** means the EU-U.S. and/or Swiss-U.S. Privacy Shield Certification Program operated by the US Department of Commerce.

**"Privacy Shield Principles"** means the Privacy Shield Framework Principles (as supplemented by the Supplemental principles) contained in Schedule II to the European Commission Decision C(2016)4176 of July 12, 2016 (as may be amended, superseded or replaced from time to time).

**"Personal Data"** means any information relating to an identified or identifiable natural person, where 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.

**"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.

**"Processing"** means any operation or set of operations which is performed upon Personal Data or sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**"Restricted Transfer"** means (i) a transfer of Customer Personal Data from any Customer Group Member to a Contracted Processor; or (ii) an onward transfer of Customer Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor, in each case (i) and (ii), where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the EU Standard Contractual Clauses (2010) for data transfers from the UK or in the absence of the EU Standard Contractual Clauses (2021) for data transfers from the EEA to be established under section 6.4 (iii) or 12 below; For the avoidance of doubt, without limitation to the

generality of the foregoing, the parties to this Addendum intend that where a transfer of Personal Data is of a type authorized by Data Protection Laws in the exporting country, for example in the case of transfers from within the European Union to a country (such as Switzerland) or scheme (such as formerly US Privacy Shield) which is approved by the Commission as ensuring an adequate level of protection or any transfer which falls within a permitted derogation, such transfer shall not be a Restricted Transfer.

"**Services**" means the services to be supplied to or carried out by or on behalf of Liferay for Customer Group Members pursuant to the Agreement.

"**EU Standard Contractual Clauses (2010)**" means the contractual clauses (processors), published by the European Commission, reference 2010/87/EU, as set out in Schedule 3, amended as indicated (in square brackets and italics) in that Schedule and under Section 14.3.

"**EU Standard Contractual Clauses (2021)**" means the contractual clauses, published by the European Commission, reference 2021/914, Processor-Processor Module implemented as set forth in Section 12.4.

"**Subprocessor**" means any person (including any third party and any Liferay Affiliate but excluding an employee of Liferay or any of its sub-contractors) appointed by or on behalf of Liferay or any Liferay Affiliate to Process Personal Data on behalf of any Customer Group Member in connection with the Agreement.

"**Supervisory Authority**" shall have the same meaning as in the GDPR or as defined in the applicable Data Protection Law.

"**UK**" means the United Kingdom.

"**UK GDPR**" means GDPR as amended and incorporated into UK law under the European Union (Withdrawal) Act 2018, as amended, superseded, or replaced from time to time.

## 2. Authority

Liferay represents and warrants that before any Liferay Affiliate Processes any Customer Personal Data on behalf of any Customer Group Member, Liferay's entry into this Addendum as an agent for and on behalf of that Liferay Affiliate will have been duly and effectively authorized (or subsequently ratified) by that Liferay Affiliate.

## 3. Processing of Customer Personal Data

- 3.1 Liferay and each Liferay Affiliate shall (i) comply with all applicable Data Protection Laws in the Processing of Customer Personal Data; and (ii) not Process Customer Personal Data other than on the relevant Customer Group Member's documented instructions unless Processing is required by Union or Member State or other Applicable Laws to which the relevant Contracted Processor is subject, in which case Liferay or the relevant Liferay Affiliate shall, to the extent permitted by Applicable Laws, inform the relevant Customer Group Member of that legal requirement before the relevant Processing of that Personal Data, unless that law prohibits such information on important grounds of public interest.
- 3.2 Each Customer Group Member (i) instructs Liferay and each Liferay Affiliate (and authorizes Liferay and each Liferay Affiliate to instruct each Subprocessor) to Process Customer Personal Data; and in particular, transfer Customer Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the Agreement; (ii) warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give the instruction set out in Section 3.2 (i) on behalf of each relevant Customer Affiliate and (iii) shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer Group Member acquired Personal Data.
- 3.3 Schedule 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Customer Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Customer may make reasonable amendments to Schedule 1 by written notice to Liferay from time to time as Customer reasonably considers necessary to meet those requirements. Nothing in Schedule 1 (including as amended pursuant to this Section 3.3) confers any right or imposes any obligation on any party to this Addendum.

## 4. Liferay and Liferay Affiliate Personnel

Liferay and each Liferay Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Customer Personal Data, ensuring in each case that access is limited to those individuals who need to know and/or need to access the relevant Customer Personal Data, as necessary for the purposes of the Agreement and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality and that Personal Data is not Processed except on instructions from the Customer, unless he or she is required to do so by Applicable Law.

## 5. Security

- 5.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Liferay and each Liferay Affiliate shall in relation to the Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR and the Technical Organizational Measures set forth in Schedule 2. Customer acknowledges that the Technical Organizational Measures are subject to technical progress and development and that Liferay may update or modify the Technical Organizational Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Service provided to Customer and Customer authorizes any such update or modification.

- 5.2** In assessing the appropriate level of security, Liferay and each Liferay Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.
- 5.3** Customer acknowledges and agrees that (i) Liferay is not in a position to comprehensively assess what measures are appropriate to the Customer's Personal Data as such data is Processed for Customer's and not Liferay's business, (ii) Customer has assessed these specifically agreed measures and (iii) in between Customer and Liferay Customer is responsible to data subjects and supervisory authorities if the agrees measures do not meet the legally required standard of appropriateness with respect to the Customer Data.
- 5.4** Notwithstanding the above, Customer agrees that except as provided by this Addendum or the Agreement, Customer is responsible for its secure use of the Service, including securing its account authentication credentials, protecting the security of Customer Personal Data when in transit to and from the Services and taking any appropriate steps to securely encrypt or backup any Customer Personal Data uploaded to the Services.
- 6. Subprocessing**
- 6.1** Each Customer Group Member authorizes Liferay and each Liferay Affiliate to appoint (and permit each Subprocessor appointed in accordance with this Section 6 to appoint) Subprocessors in accordance with this Section 6 and any restrictions in the Agreement.
- 6.2** Liferay and each Liferay Affiliate may continue to use those Subprocessors already engaged by Liferay or any Liferay Affiliate as at the effective date of this Addendum, subject to Liferay and each Liferay Affiliate in each case as soon as practicable meeting the obligations set out in Section 6.4. Liferay makes available a list of all Subprocessors used for the Processing of Personal Data under this Addendum at <https://www.liferay.com/legal/cloud-services-data> and also available upon request to [dataprotection@liferay.com](mailto:dataprotection@liferay.com). Liferay shall update the list on its website of any Sub-Processor to be appointed at least twenty (20) days prior to the date on which the Sub-Processor shall commence Processing Personal Data and will notify Customer of such change specifying the location of the Sub-processor and type of Processing of Customer Personal Data conducted by such Subprocessor via email notification to the email address associated with the applicable Customer account.
- 6.3** Liferay shall give Customer prior notice of the appointment of any new Subprocessor as described in Section 6.2. If, within ten (10) calendar days of receipt of that notice, Customer notifies Liferay in writing of any objections (on reasonable grounds) to the proposed appointment neither Liferay nor any Liferay Affiliate shall appoint (or disclose any Customer Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address the objections raised by any Customer Group Member and Customer has been provided with a reasonable written explanation of the steps taken. Where Liferay cannot address the objections in a commercially reasonable manner within a thirty (30) days from Liferay's receipt of Customer's notice, notwithstanding anything in the Agreement, Customer may either (i) decide to use the Services as proposed by Liferay or (ii) by written notice to Liferay with immediate effect terminate the Agreement to the extent that it relates to the Services which require the use of the proposed Subprocessor and receive a pro-rated refund of any prepaid Fees for unused Services as of the effective date of such termination.
- 6.4** With respect to each Subprocessor, Liferay or the relevant Liferay Affiliate shall:
- (i) before the Subprocessor first Processes Customer Personal Data (or, where relevant, in accordance with Section 6.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by the Agreement;
  - (ii) undertake that the arrangement between on the one hand (a) Liferay, or (b) the relevant Liferay Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Customer Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;
  - (iii) if that arrangement involves a Restricted Transfer from the UK or other countries acknowledging EU Standard Contractual Clauses (2010), ensure that the EU Standard Contractual Clauses (2010) are at all relevant times incorporated into the agreement between on the one hand (a) Liferay, or (b) the relevant Liferay Affiliate, or (c) the relevant intermediate Subprocessor entering into the EU Standard Contractual Clauses (2010) on behalf of the Customer or the relevant Customer Group Member(s) as "data exporter(s)"; and on the other hand the Subprocessor as "data importer(s)", or before the Subprocessor first Processes Customer Personal Data procure that it enters into an agreement incorporating the EU Standard Contractual Clauses (2010) with the relevant Customer Group Member(s) (and Customer shall procure that each Customer Affiliate party to any such EU Standard Contractual Clauses (2010) co-operates with their population and execution);
  - (iv) or where that arrangement involves a Restricted Transfer from the EEA, Switzerland or other country acknowledging EU Standard Contractual Clauses (2021), the EU Standard Contractual Clauses (2021) are at all relevant times incorporated into the agreement between on the one hand (a) Liferay or (b) the relevant Liferay Affiliate, or (c) the relevant intermediate Subprocessor entering into the EU Standard Contractual Clauses (2021) as a "data exporter(s)" and on the other hand the Subprocessor as "data importer(s)" as set forth in section 12.4 below; and
  - (v) upon request by Customer provide to Customer information about any Subprocessor in form of a summary or copy of the applicable contractual terms with such Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum), if required by Applicable Laws.
- 6.5** Liferay and each Liferay Affiliate procures that each Subprocessor performs the obligations under sections 3.1, 4, 5, 7.1, 8.2, 9 and 11.1, as they apply to Processing of Customer Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of Liferay. Liferay and the relevant Affiliate shall be liable for the acts and omissions of its Subprocessors to the same extent Liferay or the relevant Liferay Affiliate would be liable if performing the Services of each Subprocessor directly under the terms of this Addendum, save as otherwise set forth in the Agreement.

## 7. Data Subject Rights

- 7.1** Taking into account the nature of the Processing, Liferay and each Liferay Affiliate shall assist each Customer Group Member by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer Group Members' obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under the Data Protection Laws. In addition, to the extent the Customer Group Member, in its use of the Services, does not have the ability to address a Data Subject request, Liferay and each Liferay Affiliate shall upon Customer Group Member's request provide commercially reasonable efforts to assist Customer Group Member in responding to such Data Subject request, to the extent Liferay or the Liferay Affiliate are legally permitted to do so and the response to such Data Subject request is required under Applicable Laws. To the extent legally permitted, Customer Group Member shall be responsible for any costs arising from Liferay's or Liferay Affiliate's provision of such assistance.
- 7.2** Liferay shall (i) promptly notify Customer, if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Customer Personal Data; and (ii) ensure that the Contracted Processor does not respond to that request except (i) on the documented instructions of Customer or the relevant Customer Affiliate or (ii) as required by Applicable Laws to which the Contracted Processor is subject, in which case Liferay shall to the extent permitted by Applicable Laws inform Customer of that legal requirement before the Contracted Processor responds to the request.

## 8. Personal Data Breach

- 8.1** Liferay shall notify Customer without undue delay upon Liferay becoming aware of a Personal Data Breach affecting Customer Personal Data Processed by Liferay or any Sub-processor, via email to the email address associated with the administrator of Customer's Cloud Services account, providing Customer with sufficient information to allow each Customer Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum (i) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned; (ii) communicate the name and contact details of Liferay's data protection officer or other relevant contact from whom more information may be obtained; (iii) describe the likely consequences of the Personal Data Breach; and (iv) describe the measures taken or proposed to be taken to address the Personal Data Breach.
- 8.2** Liferay shall co-operate with Customer and each Customer Group Member and take such commercially reasonable steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## 9. Data Protection Impact Assessment and Prior Consultation

Liferay and each Liferay Affiliate shall provide reasonable assistance to each Customer Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required of any Customer Group Member by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

## 10. Deletion or return of Customer Personal Data

- 10.1** Subject to sections 10.2 and 10.3 and upon the termination or expiration or Customer's access to and use of any Services involving the Processing of Customer Personal Data (the "**Cessation Date**"), Liferay will permit Customer to export its Personal Data, at its expense, in accordance with the capabilities of the Services as specified in the Agreement. Following such period Liferay and each Liferay Affiliate shall promptly delete and procure the deletion of all copies of those Customer Personal Data.
- 10.2** Subject to section 10.3, Customer may in its absolute discretion by written notice to Liferay within fourteen (14) days of the Cessation Date require Liferay and each Liferay Affiliate to (i) return a complete copy of all Customer Personal Data to Customer by secure file transfer in such format as is reasonably notified by Customer to Liferay, provided that if the Services allow Customer to export the Customer Personal Data Liferay may refer Customer to such functionality in order to meet its obligations under this Subsection (i); and (ii) delete and procure the deletion of all other copies of Customer Personal Data Processed by any Contracted Processor. Liferay and each Liferay Affiliate shall promptly comply with any such written request.
- 10.3** Each Contracted Processor may retain Customer Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Liferay and each Liferay Affiliate shall ensure the confidentiality of all such Customer Personal Data and shall ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 10.4** Upon Customer's request Liferay shall promptly provide written certification to Customer that it and each Liferay Affiliate has fully complied with this Section 10.

## 11. Audit rights

- 11.1** Subject to Sections 11.2 to 11.4 below, Liferay and each Liferay Affiliate shall make available to each Customer Group Member on request all information necessary to demonstrate compliance with this Addendum, including Processor's records of Processing of Customer Personal Data conducted on behalf of the Customer, and shall allow for and contribute to audits, including inspections, by any Customer Group Member or an auditor mandated by any Customer Group Member in relation to the Processing of the Customer Personal Data by the Contracted Processors.
- 11.2** Information and audit rights of the Customer Group Members only arise under section 11.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, Article 28(3)(h) of the GDPR).
- 11.3** Customer or the relevant Customer Affiliate undertaking an audit shall give Liferay or the relevant Liferay Affiliate reasonable notice of any audit or inspection to be conducted under section 11.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavors to avoid causing (or, if it cannot avoid,

to minimize) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

- (i) to any individual unless he or she produces reasonable evidence of identity and authority;
- (ii) outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Customer or the relevant Customer Affiliate undertaking an audit has given notice to Liferay or the relevant Liferay Affiliate that this is the case before attendance outside those hours begins; or
- (iii) for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any 12-month period, except for any additional audits or inspections which (a) Customer or the relevant Customer Affiliate undertaking an audit reasonably considers necessary because of genuine concerns as to Liferay's or the relevant Liferay Affiliate's compliance with this Addendum; or (b) A Customer Group Member is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory, in both cases (a) and (b) where Customer or the relevant Customer Affiliate undertaking an audit has identified its concerns or the relevant requirement or request in its notice to Liferay or the relevant Liferay Affiliate of the audit or inspection.

**11.4** If the requested audit scope is addressed in a SOC 2 Type I or similar certification or report performed by a qualified third party auditor within the prior twelve months and Liferay or Liferay Affiliate, as applicable, confirms that there are no known material changes in the controls audited, Customer or Customer Affiliates agrees to accept those findings in lieu of requesting an audit of the controls covered by the report to the extent it can reasonably do so under Applicable Law.

## **12. International Transfers**

**12.1** Customer acknowledges that Liferay and its Subprocessors may maintain data processing operations in countries that are outside the EEA, UK and Switzerland. As such, Liferay and Subprocessors may process Personal Data in non-EEA, non-UK and non-Swiss countries. This will apply even where Customer and Liferay have agreed to host Personal Data in the EEA, if such non-EEA processing is necessary to provide support-related or other services requested by Customer.

### **12.2 Privacy Shield**

Where Customer Group Member is self-certified to the Privacy Shield Framework and transfers Personal Data from the EEA, UK or Switzerland to Liferay or a Liferay Affiliate, the Customer Group Member is obliged under the terms of the Privacy Shield framework to flow down the following requirements and Liferay or Liferay Affiliate, as applicable, hereby agrees: (i) to provide at least the same level of protection to such Personal Data as is required by the Privacy Shield Principles; (ii) to notify Customer if it makes a determination that it no longer can meet its obligation to provide the same level of protection to such Personal Data as is required by the Privacy Shield Principles; and (iii) upon notice, including under 12.2(ii), to work with Customer to take reasonable and appropriate steps to stop and remediate any unauthorized Processing of the Personal Data. For the avoidance of doubt, Liferay does not rely on the Privacy Shield Framework for purposes of data transfers from the UK, Switzerland and EEA to the USA, for as long as Privacy Shield Framework is not considered as a scheme establishing an adequate level of protection under the Applicable Laws but incorporates this clause into the Addendum to fulfill the obligations of Liferay, Inc. under the Privacy Shield Framework certification that Liferay, Inc. maintains.

### **12.3 Restricted Transfers from the UK and other countries acknowledging EU Standard Contractual Clauses (2010)**

- 12.3.1** Subject to section 12.3.3, each Customer Group Member transferring data from the UK or other country where Applicable Laws allow Restricted Transfers subject to the EU Standard Contractual Clauses (2010) (as "data exporter") and each Contracted Processor, as appropriate, (as "data importer") hereby enter into the EU Standard Contractual Clauses (2010) in respect of any Restricted Transfer from that Customer Group Member to that Contracted Processor.
- 12.3.2** The EU Standard Contractual Clauses (2010) shall come into effect under section 12.3.1 on the later of: (i) the data exporter becoming a party to them; (ii) the data importer becoming a party to them; and (iii) commencement of the relevant Restricted Transfer.
- 12.3.3** Section 12.3 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.
- 12.3.4** Liferay represents and warrants that, before the commencement of any Restricted Transfer to a Subprocessor which is not a Liferay Affiliate, Liferay's or the relevant Liferay Affiliate's entry into the EU Standard Contractual Clauses (2010) under this Section 12.3, and agreement to variations to those EU Standard Contractual Clauses (2010) made under section 14.3.1, as agent for and on behalf of that Subprocessor will have been duly and effectively authorized (or subsequently ratified) by that Subprocessor.
- 12.3.5** The parties have agreed to practical interpretations to certain provisions contained within the EU Standard Contractual Clauses (2010), as permitted by the Art 29 Working Party. These interpretations clarify how Liferay and Subprocessors should implement the EU Standard Contractual Clauses (2010) in practice, and are set out in Appendix 3 to the EU Standard Contractual Clauses (2010).
- 12.3.6** Where Applicable Law adopts the EU Standard Contractual Clauses (2021) as a replacement or a transfer mechanism equivalent to the EU Standard Contractual Clauses (2010) then the EU Standard Contractual Clauses (2021) shall apply in accordance with Section 12.4 below.

### **12.4 Restricted Transfers from the EEA, Switzerland and other countries acknowledging EU Standard Contractual Clauses (2021)**

- 12.4.1** Liferay represents and warrants that, before the commencement of any Restricted Transfer from the EEA, Switzerland or any other country acknowledging EU Standard Contractual Clauses (2021) for the purposes of each Restricted Transfer, Liferay and, if and where applicable, each Liferay Affiliate will enter into the EU Standard Contractual Clauses (2021) with each concerned Subprocessor.

- 12.4.2** Liferay will furthermore ensure that, before the commencement of any Restricted Transfer from the EEA, Switzerland or any other country acknowledging EU Standard Contractual Clauses (2021) by a Subprocessor, for the purposes of each Restricted Transfer, each Subprocessor which is not a Liferay Affiliate will enter into the EU Standard Contractual Clauses (2021) to any of its subprocessors.
- 12.4.3** Parties understand and agree that entering into the EU Standard Contractual Clauses (2021) shall not require the parties to physically sign a copy of the EU Standard Contractual Clauses (2021). They can be entered into by way of incorporation or a reference in any agreement(s) between the parties relating to the Processing.
- 12.4.4** For clarification, the EU Standard Contractual Clauses (2021) will be implemented in accordance with the agreements as between the Parties in this Addendum. For example, where this Addendum further specifies audit or certification provisions or Customer authorizes use of Subprocessor subject to specific rules, such specifications will be applied in relation to the EU Standard Contractual Clauses (2021). The governing law of the EU Standard Contractual Clauses (2021) shall be the law of Ireland and any dispute arising from these Clauses shall be resolved by the courts of Ireland. The competent Authority under the EU Standard Contractual Clauses (2021) is the Data Protection Commission, Ireland.

### 13. Affiliates

- 13.1** Liferay and Customer enter into this Agreement acting on its own behalf and as an agent for its respective Affiliates if and to the extent that (i) such Affiliates are not the party to an Order Form under the Agreement and therefore not “Liferay” or “Customer” as defined under the Agreement and (ii) the Affiliate of Liferay is an obliged party under the Agreement and (iii) the Affiliate of Customer is permitted to use the Services pursuant to the Agreement between Customer and Liferay Processes Personal Data for which such Affiliates qualify as the Controller
- 13.2** If and to the extent that Affiliates become party to this Addendum the parties hereby establish a separate Addendum between each Liferay Affiliate and each Customer Affiliate subject to the provisions of the Agreement and this Section 13 and for the purposes of such Addendum such Affiliates shall be deemed “Customer” and “Liferay” respectively. Each Affiliate agrees to be bound by the obligations under this Addendum and, to the extent applicable, the Agreement. For the avoidance of doubt, an Affiliate is only a party to this Addendum and is not and does not become a party to the Agreement other than for the purposes of the Processing of Personal Data according to this Addendum. All access to and use of the Services by Customer Affiliates must comply with the terms and conditions of the Agreement, and any violation of the terms and conditions of the Agreement by a Customer Affiliate shall be deemed a violation by Customer.
- 13.3** Where a Customer Affiliate becomes a party to this Addendum, it shall to the extent required under Applicable Laws be entitled to exercise the rights and seek remedies under this Addendum, subject to the following:
- 13.3.1** Except where Applicable Laws require the Customer Affiliate to exercise a right or seek any remedy under this Addendum against Liferay or a Liferay Affiliate directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement (including any Order Form) shall exercise any such right or seek any such remedy on behalf of the Customer Affiliate, and (ii) the Customer that is the contracting party to the Agreement (including any Order Form) shall exercise any such rights under this Addendum not separately for each Customer Affiliate individually but in a combined manner for all of its Customer Affiliates together (as set forth, for example, in Sub-Section 13.3.2 below).
- 13.3.2** The Customer that is the contracting party to the Agreement shall, when carrying out an on-site audit of the procedures relevant to the protection of Personal Data, take all reasonable measures to limit any impact on Liferay and its Subprocessors by combining, to the extent reasonable possible, several audit requests carried out on behalf of different Customer Affiliates in one single audit
- 13.4** The Customer that is the contracting party to the Agreement (including any Order Form) shall remain responsible for coordinating all communication under this Addendum with Liferay or the applicable Liferay Affiliate that is the contracting party to the Agreement (including any Order Form) and shall be entitled to make and receive any communication in relation to this Addendum on behalf of its Customer Affiliates.
- 13.5** Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this Addendum, and all Addendi between Customer Affiliates and Liferay Affiliates, whether in contract, tort or under any other theory of liability, is subject to limitation of liability provisions of the Agreement, and any reference in such clause to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all Addendi together. For the avoidance of doubt, Liferay's and its Affiliates' total liability for all claims from the Customer and all of its Customer Affiliates arising out of or related to the Agreement and each Addendum shall apply in the aggregate for all claims under both the Agreement and all Addendi established under this Agreement, including by Customer and all Customer Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any Customer Affiliate that is a contractual party to any such Addendum. For the avoidance of doubt, in no event shall any party limit its liability with respect to any Data Subject rights.

### 14. General Terms

#### 14.1 Governing law and jurisdiction

Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses (i) the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and (ii) this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Agreement.

#### 14.2 Order of precedence

- 14.2.1** Nothing in this Addendum reduces Liferay's or any Liferay Affiliate's obligations under the Agreement in relation to the protection of Personal Data or permits Liferay or any Liferay Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

**14.2.2** Subject to section 14.2.1, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

**14.3 Changes in Data Protection Laws, etc.**

**14.3.1** Customer may (i) by at least 30 (thirty) calendar days' written notice to Liferay from time to time make any variations to the standard contractual clauses (including any EU Standard Contractual Clauses (2010) entered into under section 12.3 or EU Standard Contractual Clauses (2021) entered into in accordance with section 12.4), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and (ii) propose any other variations to this Addendum which Customer reasonably considers to be necessary to address the requirements of any Data Protection Law.

**14.3.2** If Customer gives notice under section 14.3.1(i) then (i) Liferay and each Liferay Affiliate shall promptly co-operate (and ensure that any affected Subprocessors promptly co-operate to ensure that equivalent variations are made to any agreement put in place under Section 6.4; and (ii) Customer shall not unreasonably withhold or delay agreement to any consequential variations to this Addendum proposed by Liferay to protect the Contracted Processors against additional risks associated with the variations made under section 14.3.1.

**14.3.3** If Customer gives notice under section 14.3.1 (ii), 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 Customer's notice as soon as is reasonably practicable.

**14.3.4** Neither Customer nor Liferay shall require the consent or approval of any Customer Affiliate or Liferay Affiliate to amend this Addendum pursuant to this section 14.3 or otherwise.

**14.4 Severance**

If any provision or provisions of this Addendum shall be held to be invalid, illegal or unenforceable in whole or in part by any court of competent jurisdiction or other competent authority, this Addendum will continue to be valid and enforceable as to the other provisions and/or the remainder of the affected provision(s). The affected provision(s) will be deemed amended to the minimum extent necessary to render it valid and enforceable in conformity with applicable law and parties' intent as expressed in this Addendum or the Agreement.

**SCHEDULE 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA**

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

**Subject matter and duration of the Processing:** The subject matter of the Processing is the Customer Personal Data and duration of the processing is the term of the Services, both as set forth in the Agreement.

**The nature and purpose of the Processing of Customer Personal Data:** Liferay will Process Customer Personal Data as necessary to perform the Services pursuant to the Agreement including any Order Form, as further specified in the Documentation, and as further instructed by Customer Group Member in its use of the Services and Processing to comply with other reasonable instructions provided by Customer Group Member (e.g., via email) where such instructions are consistent with the terms of the Agreement including any Order Form.

**The types of Customer Personal Data (and any special categories of data, if applicable) to be Processed and the categories of Data Subjects to whom the Customer Personal Data relates** are identified at <https://www.liferay.com/legal/cloud-services-data>.

**The obligations and rights of Customer and Customer Affiliates:** The obligations and rights of Customer and Customer Affiliates are set forth in the Agreement and this Addendum.



**SCHEDULE 2: TECHNICAL AND ORGANIZATIONAL MEASURES**

Liferay makes available a description of the technical and organizational security measures it implements for Services Processing Personal Data at <https://www.liferay.com/legal/cloud-services-data>.

**SCHEDULE 3: EU STANDARD CONTRACTUAL CLAUSES (2010)**

*[These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law (otherwise).]*

*[If these Clauses are not governed by the law of a Member State, the terms "Member State" and "State" are replaced, throughout, by the word "jurisdiction".]*

**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 *[This opening recital is deleted if these Clauses are not governed by the law of a member state of the EEA.]*

*[The gaps below are populated with details of the relevant Customer Group Member:]*

Name of the data exporting organisation:

Address: \_\_\_\_\_

Tel.: \_\_\_\_\_; e-mail: \_\_\_\_\_

Other information needed to identify the organisation

.....  
(the data exporter)

And

*[The gaps below are populated with details of the relevant Contracted Processor:]*

Name of the data importing organisation:

Address: \_\_\_\_\_

Tel.: \_\_\_\_\_; e-mail: \_\_\_\_\_

Other information needed to identify the organisation:

.....  
(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 Appendix 1.

**Background**

The data exporter has entered into a data processing addendum ("DPA") with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer's execution of, and compliance with, the terms of these Clauses.

*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; [If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words "except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data" are added.]
- (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; [If these Clauses are not governed by the law of a Member State, the words "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" are deleted.]
- (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 organisational security measures'* means 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.

#### *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 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 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; [*If these Clauses are not governed by the law of a Member State, the words "within the meaning of Directive 95/46/EC" are deleted.*]
- (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, with the exception of Appendix 2, 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***

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 organisational security measures specified in Appendix 2 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 unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised 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, 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;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (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. 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*

##### ***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 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.

**On behalf of the data exporter:**

*[Populated with details of, and deemed signed 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.....

**On behalf of the data importer:**

*[Populated with details of, and deemed signed 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.....

**APPENDIX 1 TO THE EU STANDARD CONTRACTUAL CLAUSES (2010)**

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):

The data exporter is the relevant "Customer Group Member" in the Addendum to which the Clauses are attached.

**Data importer**

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

The data exporter is the relevant "Contracted Processor" in the Addendum to which the Clauses are attached.

**Data subjects**

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

The categories of data subjects are as set forth in Schedule 1 of the Addendum.

**Categories of data**

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

The types of personal data are as set forth in Schedule 1 of the Addendum.

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

The personal data transferred concern the following special categories of data:

Special categorized of data, if any, are as set forth in Schedule 1 of the Addendum.

**Processing operations**

The personal data transferred will be subject to the following basic processing activities:

The nature and purpose of the processing is set forth in Schedule 1 of the Addendum.

**DATA EXPORTER**

*[Populated with details of, and deemed to be signed on behalf of, the data exporter:]*

Name:.....

Authorised Signature .....

**DATA IMPORTER**

*[Populated with details of, and deemed to be signed on behalf of, the data importer:]*

Name:.....

Authorised Signature .....

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**APPENDIX 2 TO THE EU STANDARD CONTRACTUAL CLAUSES (2010)**

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

**Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):**

The security measures are described in Schedule 2 of the Addendum.



**APPENDIX 3 TO THE EU STANDARD CONTRACTUAL CLAUSES (2010)**

Where the Standard Contractual Clauses ("SCC") apply pursuant to the Addendum, then this Appendix 3 sets forth (i) the parties' interpretations of their respective obligations under specific provisions within the SCC and (ii) additional contractual commitments that are intended to be additional safeguards that supplement the SCC also to address additional requirements the GDPR has introduced for data processing. Where a party complies with the interpretations set out in this Appendix 3, that party shall be deemed by the other party to have complied with its obligations under the SCC. As used herein, the terms "data exporter" and "data importer" shall have the meaning given to them in the SCC.

Nothing in the interpretations or additional requirements below is intended to vary or modify the SCC or conflict with either party's rights or responsibilities under the SCC and, in the event of any conflict between the provisions below and the SCC, the SCC shall prevail to the extent of such conflict. Notwithstanding this, the parties expressly agree, that any claims brought under the SCC shall be exclusively governed by the limitations of liability set forth in the Agreement (including Section 13.4 of the Addendum). For the avoidance of doubt, in no event shall any party limit its liability with respect to any data subject rights under the SCC.

1. The data exporter agrees that the SCC shall constitute data importer's Confidential Information according to the Agreement and shall only be and may not be disclosed by data exporter to any third party unless permitted under the Agreement or to a data subject pursuant to Clause 4 (h) or to a supervisory authority pursuant to Clause 8.
2. The Addendum and the Agreement are data exporter's complete and final instructions at the effective date of the Addendum to data importer for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the SCC, the following is deemed an instruction by the data exporter to process Personal Data: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by data exporter in their use of the SCC Services and (iii) Processing to comply with other reasonable instructions provided by data exporter (e.g., via email) where such instructions are consistent with the terms of the Agreement.
3. If the data exporter intends to suspend the transfer of data or and/or terminate the contract in accordance with Clause 5(a) the exporter shall provide notice to data importer of such intent and provide importer with sufficient opportunity to cure the non-compliance ("Cure Period"). If after the Cure Period, the data importer cannot cure the non-compliance then the data exporter may exercise its right to suspend the transfer of Personal Data and/or terminate the contract. This shall not apply in circumstances where there is an urgent need to suspend the transfer of Personal Data and/or terminate the contract due to a serious risk of harm to data subjects. In this event, the parties acknowledge that the data exporter shall be entitled to suspend the transfer of Personal Data and/or terminate the contract immediately.
4. The parties agree that the audits described in Clause 5(f), Clause 11 and Clause 12(2) of the SCC shall be carried out in accordance with audit and certification provisions described in Section 11 (Audit Rights) of the Addendum.
5. The parties agree that the copies of the subprocessor agreements that must be provided by data importer to data exporter pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by data importer beforehand; and, that such copies will be provided by data importer, in a manner to be determined in its discretion, only upon request by data exporter. The parties further acknowledge that, pursuant to subprocessor confidentiality restrictions, data importer may be restricted from disclosing onward subprocessor agreements to data exporter. Notwithstanding this, data importer shall use reasonable efforts to require any subprocessor it appoints to permit it to disclose the subprocessor agreement to data exporter. Even where data importer cannot disclose a subprocessor agreement to data exporter, the parties agree that, upon the request of data exporter, data importer shall provide all information it reasonably can, in connection with such subprocessing agreement to data exporter. Any onward subprocessor agreement or information related thereto that data importer provides to data exporter shall constitute data importer's Confidential Information in accordance with the Agreement
6. With respect to Clauses 5 (h) and 11 of the SCC data exporter acknowledges and expressly agrees that data importer may be retained as subprocessor and data exporter provides a general consent to data importer, pursuant to Clause 11 of the SCC to engage onward subprocessors. Such consent is conditional on data importer's compliance with the sub-processing conditions set forth in Section 6 of the Addendum entered into between the data exporter and data importer, as well as the requirements in 7.1 and 7.2, which collectively ensure that the onward subprocessor is subject to the same data protection obligations as the data importer. Data importer shall inform data exporter of any subcontractors by making available to data exporter the current list of subprocessors in accordance with Section 6 of this Addendum.
  - 6.1 Any onward sub-processor must agree in writing: (i) to only process Personal Data in the EEA or other country that the European Commission has formally recognized as having an "adequate" level of protection in accordance with Applicable Law ; or (ii) to process Personal Data on terms equivalent to the SCC, pursuant to requirements equivalent to a scheme (such as formerly Privacy Shield), or pursuant to Binding Corporate Rules approval by European data protection authorities and whose scope extends to transfers of Personal Data from the territories in which the data exporter is established;
  - 6.2 Data importer restricts the onward subprocessor's access to Personal Data only to what is strictly necessary to perform its subcontracted data processing services to data importer (which shall be consistent with the instructions issued to the data importer by data exporter) and data importer will prohibit the onward subprocessor from processing the Personal Data for any other purpose.
7. The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses, shall be provided by data importer to data exporter Group Member only upon data exporter's request.
8. Any claims brought under the SCC shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations of liability set forth in the Agreement. In no event shall any party limit its liability with respect to any data subject rights under the SCC.