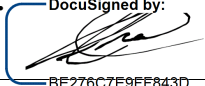


**Back4App, Inc. Data Processing Addendum**

This Data Processing Addendum (“**Addendum**”) is made and entered into by and between Back4App, Inc. (“**Back4App**”) and the customer specified in the table below (“**Customer**”).

<p><b>Back4App, Inc.</b> <small>DocuSigned by:</small>    <small>BE276C7E9FF843D...</small>  <b>By:</b> _____  <b>Name:</b> <u>Alex Kusmenkovsky</u>  <b>Title:</b> <u>Data Protection Officer</u>  <b>Signature Date:</b> <u>Sept 22<sup>nd</sup> 2021</u></p> <p><b>Address:</b>                  440 N Wolf Road                  Sunnyvale, CA, 94085                  USA</p> <p><b>Attention:</b> General Counsel</p>	<p><b>Customer Name (Required):</b>                  _____                  (full legal entity name)</p> <p><b>By (Signature Required):</b> _____  <b>Your Printed Name (Required):</b> _____  <b>Your Title (Optional):</b> _____  <b>Signature Date (Required):</b> _____</p> <p><b>Customer Address (Required):</b>                  _____                  _____                  _____</p> <p><b>Attention:</b> _____</p>
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This Addendum includes the Data Processing Terms and the attached Annexes A–B (including Appendices) and supplements Back4App’s Terms of Service available at <https://www.back4app.com/terms-of-service.pdf> (as updated from time to time) (the “**Agreement**”) between Customer and Back4App (collectively, the “**Parties**”). This Addendum will be effective as of the day Back4App receives a complete and executed Addendum from Customer in accordance with the instructions under Sections 1 and 2 below (the “**Addendum Effective Date**”).

**1. Instructions.** This Addendum has been pre-signed on behalf of Back4App, Inc. To enter this Addendum, Customer must:

- a) Complete the table above by signing and providing the Customer’s full legal entity name, address and signatory information; and
- b) Submit the completed and signed Addendum to Back4App via email to [gdpr@back4app.com](mailto:gdpr@back4app.com).

**2. Effectiveness.**

- a) This Addendum will be effective only if it is executed and submitted to Back4App in accordance with Section 1 above and this Section 2, and all items identified as “Required” in the table are completed accurately and in full. If Customer makes any deletions or other revisions to this Addendum, then this Addendum will be null and void.
- b) Customer signatory represents to Back4App that he or she has the legal authority to bind Customer and is lawfully able to enter into contracts (e.g., is not a minor).
- c) This Addendum will terminate automatically upon termination of the Agreement, or as earlier terminated pursuant to the terms of the Addendum.

### 3. Subject Matter and Duration.

- a) **Scope and Rules.** The Addendum applies when Customer Data is Processed by Back4App. In this context, Customer may act as a “Controller or “Processor”, and Back4App may act as “Processor” or “Sub-Processor” with respect to Customer Data.
- b) **Subject Matter.** This Addendum reflects the Parties’ commitment to abide by Applicable Data Protection Laws concerning the Processing of Customer Data under the terms of the Agreement. All capitalized terms that are not expressly defined in this Addendum will have the meanings given to them in the Agreement. If and to the extent language in this Addendum or any of its Annexes conflicts with the Agreement, this Addendum shall control.
- c) **Duration.** This Addendum will become legally binding upon the Addendum Effective Date. Back4App will Process Customer Data until the relationship terminates as specified in the Agreement.

### 4. Definitions.

For the purposes of this Addendum, the following terms and those defined within the body of this Addendum apply.

- a) **“Applicable Data Protection Law(s)”** means the relevant data protection and data privacy laws, rules and regulations to which the Customer Data are subject. “Applicable Data Protection Law(s)” may include, but are not limited to, the EU General Data Protection Regulation 2016/679 (“**GDPR**”) and its respective national implementing legislations; the Swiss Federal Act on Data Protection; the United Kingdom General Data Protection Regulation; and the United Kingdom Data Protection Act 2018.
- b) **“Controller”** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Data.
- c) **“Customer Data”** shall: (i) have the meaning assigned to the terms “Personal Data” or “personal information” under Applicable Data Protection Law(s) and (ii) mean Personal Data or personal information pertaining to Customer’s users or employees located in the European Economic Area, Switzerland, and/or the United Kingdom Processed by Back4App. The Customer Data and the specific purposes of Processing the Customer Data are detailed in **Exhibit A** attached hereto, as required by the GDPR.
- d) **“Process”** or **“Processing”** means any operation or set of operations which is performed on Customer Data or on sets of Customer 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.
- e) **“Processor”** means a natural or legal person, public authority, agency or other body which Processes Customer Data on behalf of Customer subject to this Addendum.
- f) **“Security Incident(s)”** means the breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data Processed by Back4App.
- g) **“Services”** means any and all services that Back4App performs under the Agreement or any Statement of Work that Process Customer Data.

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- h) “**Third Party(ies)**” means Back4App’s authorized contractors, agents, vendors and third party service providers (i.e., sub-processors) that Process Customer Data.

**5. Data Use and Processing.**

- a) Compliance with Laws. Customer Data shall be Processed in compliance with the terms of this Addendum and all Applicable Data Protection Law(s).
- b) Documented Instructions. Back4App and its Third Parties will process Customer Data in accordance with Customer’s instructions. The Parties agree that this Addendum is Customer’s complete and final instructions to Back4App in relation to Processing of Customer Data. Processing outside the scope of this Addendum (if any) will require prior written agreement between Customer and Back4App regarding additional instructions for Processing, including agreement on any additional fees Customer will pay Back4App for carrying out such instructions. Customer may terminate this Addendum if Back4App declines to follow instructions requested by Customer that are outside the scope of this Addendum. Back4App will, unless legally prohibited from doing so, inform Customer in writing if it reasonably believes that there is a conflict between Customer’s instructions and applicable law or otherwise seeks to Process Customer Data in a manner that is inconsistent with Customer’s instructions.
- c) Authorization to Use Third Parties. To the extent necessary to fulfill Back4App’s contractual obligations under the Agreement or any Statement of Work, or to provide certain Services on its behalf, such as providing support services, Customer hereby authorizes (i) Back4App to engage Third Parties and (ii) Third Parties to engage sub-processors. Any Third Party Processing of, or access to, Customer Data shall be consistent with Customer’s documented instructions and comply with all Applicable Data Protection Law(s).
- d) Back4App and Third Party Compliance. Back4App agrees to (i) enter into written agreements with Third Parties regarding such Third Parties’ Processing of, or access to, Customer Data that imposes on such Third Parties (and their sub-processors) data protection and security requirements for Customer Data that are compliant with Applicable Data Protection Law(s); and (ii) remain responsible to Customer for Back4App’s Third Parties’ (and their sub-processors, if applicable) failure to perform their obligations with respect to the Processing of Customer Data.
- e) Right to Object to Third Parties. Prior to engaging any new Third Parties that may Process or access Customer Data, Back4App will notify Customer by updating its list of Third Parties found at <https://www.back4app.com/product/parse-gdpr/gdpr-third-parties> at least fifteen (15) days before it authorizes and permits such Third Parties to Process or access Customer Data. It is Customer’s responsibility to check this website for updates. If Customer has legitimate objections to the appointment of any new Third Party, the parties will work together in good faith to resolve the grounds for the objection for no less than thirty (30) days, and failing any such resolution, Customer may terminate the part of the Service performed under the Agreement that cannot be performed by Back4App without use of the objectionable Third Party.
- f) Confidentiality. Any person or Third Party authorized to Process Customer Data must agree to maintain the confidentiality of such information or be under an appropriate statutory or contractual obligation of confidentiality.
- g) Data Inquiries and Requests. Back4App agrees to comply with all reasonable instructions from Customer related to any requests from individuals exercising the rights granted to them under Applicable Data Protection Law(s) (“**Privacy Request**”). At Customer’s request, Back4App

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agrees to assist Customer in answering or complying with any Privacy Request in so far as it is possible. Customer shall be responsible for any costs arising from Back4App's provision of such assistance.

- h) Data Protection Impact Assessment and Prior Consultation. Back4App agrees to provide reasonable assistance at Customer's sole expense to Customer where, in Customer's judgement, the type of Processing performed by Back4App is likely to result in a high risk to the rights and freedoms of natural persons (e.g., systematic and extensive profiling, Processing sensitive Company Data on a large scale and systematic monitoring on a large scale, or where the Processing uses new technologies) and thus requires a data protection impact assessment and/or prior consultation with the relevant data protection authorities.
- i) Demonstrable Compliance. Back4App agrees to keep records of its Processing in compliance with Applicable Data Protection Law(s) and provide any necessary records to Customer to demonstrate compliance upon reasonable request.

**6. Cross-Border Transfers of Customer Data.**

- a) Cross-Border Transfers of Customer Data. Customer authorizes Back4App and its Third Parties to transfer Customer Data across international borders, including from the European Economic Area, Switzerland, and/or the United Kingdom to the United States.
- b) Data Transfer Impact Assessment Questionnaire. Back4App agrees that it has provided true, complete, and accurate responses to the Data Transfer Impact Assessment Questionnaire attached hereto as **Exhibit B**.
- c) EEA, Swiss, and UK Standard Contractual Clauses. If Customer Data originating in the European Economic Area, Switzerland, and/or the United Kingdom is transferred by Customer to Back4App in a country that has not been found to provide an adequate level of protection under applicable Data Protection Laws, the parties agree that the transfer shall be governed by the Standard Contractual Clauses attached hereto as **Exhibit C**. Where the Standard Contractual Clauses are applicable and Customer acts as a controller of Customer Data with Back4App acting as a processor of Customer Data, each party shall comply with its obligations under Module Two of the Standard Contractual Clauses. Where the Standard Contractual Clauses are applicable and Customer acts as a processor of Customer Data with Back4App also acting as a processor of Customer Data, each party shall comply with its obligations under Module Three of the Standard Contractual Clauses. The parties agree that: (i) the certification of deletion required by Clause 8.5 and Clause 16(d) of the Standard Contractual Clauses will be provided upon Customer's written request; (ii) the measures Back4App is required to take under Clause 8.6(c) of the Standard Contractual Clauses will only cover Back4App's impacted systems; (iii) the audit described in Clause 8.9 of the Standard Contractual Clauses shall be carried out in accordance with Section 9 of this Addendum; (iv) Back4App may engage subprocessors using European Commission Decision C(2010)593 Standard Contractual Clauses for Controllers to Processors or any other adequacy mechanism provided that such adequacy mechanism complies with applicable Data Protection Laws and such use of subprocessors shall not be considered a breach of Clause 9 of the Standard Contractual Clauses; (v) under Module 3, Clause 9(a), Customer shall be responsible for communicating any changes in subprocessors to the controller; (vi) the termination right contemplated by Clause 14(f) and Clause 16(c) of the Standard Contractual Clauses will be limited to the termination of the Standard Contractual Clauses, in which case, the corresponding Processing of Customer Data affected by such termination shall be discontinued unless otherwise agreed by the parties; (vii) unless otherwise stated by Back4App, Customer will be responsible for communicating with data subjects pursuant to Clause 15.1(a) of the Standard Contractual Clauses; (viii) the information required under Clause 15.1(c) will be provided upon Customer's written

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request; and (ix) notwithstanding anything to the contrary, Customer will reimburse Back4App for all costs and expenses incurred by Back4App in connection with the performance of Back4App's obligations under Clause 15.1(b) and Clause 15.2 of the Standard Contractual Clauses without regard for any limitation of liability set forth in the Agreement. Each party's signature to this Addendum shall be considered a signature to the Standard Contractual Clauses to the extent that the Standard Contractual Clauses apply hereunder.

- d) Data Transfer Impact Assessment Outcome. Taking into account the information and obligations set forth in this Addendum and, as may be the case for a party, such party's independent research, to the parties' knowledge, the Customer Data originating in the European Economic Area, Switzerland, and/or the United Kingdom that is transferred pursuant to the attached Standard Contractual Clauses to a country that has not been found to provide an adequate level of protection under applicable Data Protection Laws is afforded a level of protection that is essentially equivalent to that guaranteed by applicable Data Protection Laws.

**7. Information Security Program.**

- a) 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, Back4App shall implement and maintain appropriate technical and organizational measures in such a manner that its Processing of Data will meet the requirements of Applicable Data Protection Law(s), ensure the protection of the rights of the data subjects, and ensure a level of security appropriate to the risk (an "**Information Security Program**").

**8. Security Incidents.**

- a) Security Incident Procedure. Upon becoming aware of a Security Incident, Back4App shall without undue delay inform Customer and provide written details of the Security Incident reasonably required to fulfill Customer's Security Incident reporting obligations under Applicable Data Protection Law(s). Where possible, such details shall include, the nature of the Security Incident, the categories and approximate number of data subjects concerned and the categories and approximate number of Customer Data records concerned, the likely consequences of the Security Incident, and the measures taken or proposed to be taken to mitigate the Security Incident's possible adverse effects.

**9. Audits.**

- a) Back4App Audit. The Parties acknowledge that Back4App will conduct an internal audit to verify the adequacy of its Processing of Customer Data in accordance with this Addendum. This audit:
- i) Will be performed at least annually;
  - (ii) Will be performed against an industry recognized framework;
  - (iii) Will be performed by Back4App; and
  - (iv) Will result in the generation of an executive level summary of the audit report affirming that Back4App's security controls are consistent with industry standards ("**Report**").
- b) Audit Results. At Customer's written request, Back4App will provide Customer with a copy of its Report so that Customer can reasonably verify Back4App's compliance with the security

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and audit obligations under this Addendum. Any provision of such Report to Customer shall be subject to Back4App's security and confidentiality terms and guidelines.

- c) Customer Audit. In the event that Customer demonstrates the Report does not provide sufficient information, Customer and Back4App may designate an independent auditor to, no more than once annually, carry out an inspection of Back4App's operations and facilities with respect to the Processing of Customer Data. Customer must provide Back4App forty-five (45) days written notice of such intention to audit, conduct its audit during normal business hours, and take reasonable measures necessary to prevent unnecessary disruption to Back4App's operations. Any such audit shall be subject to Back4App's security and confidentiality terms and guidelines. Customer shall be solely responsible for any costs arising from such audit (including any costs incurred by Back4App).
- d) Third Parties. In the event that Customer conducts an audit through a third party independent auditor, such third party shall be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Agreement to protect Back4App's and Back4App's customers' confidential and proprietary information.
- e) Audit Results. After conducting an audit, Customer shall notify Back4App of the manner in which Back4App does not comply with any of the applicable security, confidentiality or privacy obligations or Applicable Data Protection Laws herein.

**10. Data Deletion.**

- a) Data Deletion. Upon termination of the Agreement, Back4App will delete all Customer Data to Customer, except where Back4App is required to retain copies under applicable laws, in which case Back4App will isolate and protect that Customer Data from any further Processing except to the extent required by applicable laws.

**Exhibit A to the Data Processing Addendum**

This Exhibit A forms part of the Addendum. Capitalized terms not defined in this Exhibit A have the meaning set forth in the Addendum.

1.1 Subject Matter of Processing	The Processing will involve Processing for:  Compute, Storage and Content Delivery on theBack4App Network.
1.2 Duration of Processing	The Processing will continue until the expiration or termination of the Agreement.
1.3 Categories of Data Subjects	Includes the following: <ul style="list-style-type: none"> <li>• Data exporter’s customers and end-users</li> <li>• Prospects, customers, business partners and vendors of Customer (who are natural persons)</li> <li>• Employees or contact persons of Customer’s prospects, customers, business partners and vendors</li> <li>• Employees, agents, advisors, freelancers of Customer (who are natural persons)</li> <li>• Customer’s users authorized by Customer to use the Services</li> </ul>
1.4 Nature and Purpose of Processing	Includes the following:  Back4App will process Customer Data in accordance with Customer’s instructions. The parties agree that this Addendum is Customer’s complete and final instructions to Back4App in relation to processing of Customer Data. Processing outside the scope of this Addendum (if any) will require prior written agreement between Back4App and Customer on additional instructions for processing, including agreement on any additional fees Customer will pay to Back4App for carrying out such instructions. Customer may terminate this Addendum if Back4App declines to follow instructions requested by Customer that are outside the scope of this Addendum.

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1.5 Types of Personal Data	Includes the following:  The Customer Data relating to individuals which is uploaded onto the Back4App Services by Customer.
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**Exhibit B to the Data Processing Addendum****Data Transfer Impact Assessment Questionnaire**

This Exhibit B forms part of the Addendum. Capitalized terms not defined in this Exhibit B have the meaning set forth in the Addendum.

1. What countries will Customer Data that is transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom be stored in or accessed from? If this varies by region, please specify each country for each region.
  - a. **Answer:** United States, Brazil, India, Pakistan, and Bangladesh.
2. What are the categories of data subjects whose Customer Data will be transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom?
  - a. **Answer:** As set forth in Exhibit A.
3. What are the categories of Customer Data transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom?
  - a. **Answer:** As set forth in the Exhibit A.
4. Will any Customer Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences be transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom? If so, are there any restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures?
  - a. **Answer:** Not to Back4App's knowledge.
5. What business sector is Back4App involved in?
  - a. **Answer:** Software development.
6. Broadly speaking, what are the services to be provided and the corresponding purposes for which Customer Data is transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom?
  - a. **Answer:** Back4App provides services that assist its customers in developing their applications. Customer Data is transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom in order to provide the Services.
7. What is the frequency of the transfer of Customer Data outside of outside of the European Economic Area, Switzerland, and/or the United Kingdom? E.g., is Customer Data transferred on a one-off or continuous basis?
  - a. **Answer:** Customer Data is transferred on a continuous basis by virtue of Customer's use of the Services.
8. When Customer Data is transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom to Back4App, how is it transmitted to Service Provider? Is the Customer Data in plain text, pseudonymized, and/or encrypted?

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**a. Answer:** Customer Data is encrypted when transmitted to Service Provider.

9. What is the period for which the Customer Data will be retained, or, if that is not possible, the criteria used to determine that period?

**a. Answer:** Customer Data will be retained in accordance with the Addendum.

10. Please list the Subprocessors that will have access to Customer Data that is transferred outside of the European Economic Area, Switzerland, and/or the United Kingdom.

**a. Answer:** The list of Back4App's subprocessors can be found at the link below:

<https://www.back4app.com/product/parse-gdpr/gdpr-third-parties>

11. Is Back4App subject to any laws in a country outside of the European Economic Area, Switzerland, and/or the United Kingdom where Customer Data is stored or accessed from that would interfere with Service Provider fulfilling its obligations under the attached Standard Contractual Clauses? For example, FISA Section 702. If yes, please list these laws.

**a. Answer:** As of the effective date of the Addendum, no court has found Back4App to be eligible to receive process issued under the laws contemplated by Question 11, including FISA Section 702 and no such court action is pending.

12. Has Back4App ever received a request from public authorities for information pursuant to the laws contemplated by Question 11 above (if any)? If yes, please explain.

**a. Answer:** No.

13. Has Service Provider ever received a request from public authorities for personal data of individuals located in European Economic Area, Switzerland, and/or the United Kingdom? If yes, please explain.

**a. Answer:** No.

14. What safeguards will Back4App apply during transmission and to the processing of Customer Data in countries outside of the European Economic Area, Switzerland, and/or the United Kingdom that have not been found to provide an adequate level of protection under applicable Data Protection Laws?

**a. Answer:** Those safeguards set forth in the Addendum.

**Exhibit C to the Data Processing Addendum**

This Exhibit C forms part of the Addendum.

**STANDARD CONTRACTUAL CLAUSES**

SECTION I

*Clause 1*

**Purpose and scope**

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter ‘entity/ies’) transferring the personal data, as listed in Annex I.A (hereinafter each ‘data exporter’), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each ‘data importer’)have agreed to these standard contractual clauses (hereinafter: ‘Clauses’).
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.
- (e) To the extent applicable hereunder, these Clauses also apply mutatis mutandis to the Parties’ processing of personal data that is subject to the Swiss Federal Act on Data Protection. Where applicable, references to EU Member State law or EU supervisory authorities shall be modified to include the appropriate reference under Swiss law as it relates to transfers of personal data that are subject to the Swiss Federal Act on Data Protection.
- (f) To the extent applicable hereunder, these Clauses, as supplemented by Annex III, also apply mutatis mutandis to the Parties’ processing of personal data that is subject to UK Data Protection Laws (as defined in Annex III).

*Clause 2***Effect and invariability of the Clauses**

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

*Clause 3***Third-party beneficiaries**

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

*Clause 4***Interpretation**

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

*Clause 5*

**Hierarchy**

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

*Clause 6***Description of the transfer(s)**

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

*Clause 7 – Optional***Docking clause – Omitted**

## SECTION II – OBLIGATIONS OF THE PARTIES

*Clause 8***Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**MODULE TWO: Transfer controller to processor****8.1 Instructions**

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

**8.2 Purpose limitation**

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

**8.3 Transparency**

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

**8.4 Accuracy**

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

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

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

## 8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

## 8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and

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offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

**8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

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

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

**8.9 Documentation and compliance**

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

**MODULE THREE: Transfer processor to processor****8.1 Instructions**

- (a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.

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

**8.2 Purpose limitation**

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

**8.3 Transparency**

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

**8.4 Accuracy**

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

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

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

**8.6 Security of processing**

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the



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risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

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

**8.7 Sensitive data**

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

**8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or

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- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

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

**8.9 Documentation and compliance**

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

*Clause 9***Use of sub-processors****MODULE TWO: Transfer controller to processor**

- (a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least fifteen (15) days in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other

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confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

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

**MODULE THREE: Transfer processor to processor**

- (a) The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least fifteen (15) days in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

*Clause 10***Data subject rights****MODULE TWO: Transfer controller to processor**

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the

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appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

**MODULE THREE: Transfer processor to processor**

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

*Clause 11*

**Redress**

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

**MODULE TWO: Transfer controller to processor**

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- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
  - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
  - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

*Clause 12*

**Liability****MODULE TWO: Transfer controller to processor****MODULE THREE: Transfer processor to processor**

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- (e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

*Clause 13***Supervision****MODULE TWO: Transfer controller to processor****MODULE THREE: Transfer processor to processor**

- (a) Where the data exporter is established in an EU Member State, the following section applies: The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679, the following section applies: The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679, the following section applies: The

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supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

**SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES**

*Clause 14*

**Local laws and practices affecting compliance with the Clauses**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
  - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
  - (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;
  - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a

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measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). For Module Three: The data exporter shall forward the notification to the controller.

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

*Clause 15***Obligations of the data importer in case of access by public authorities****MODULE TWO: Transfer controller to processor****MODULE THREE: Transfer processor to processor****15.1 Notification**

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
- (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
  - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

For Module Three: The data exporter shall forward the notification to the controller.

- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). For Module Three: The data exporter shall forward the information to the controller.
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.

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- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

**15.2 Review of legality and data minimisation**

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

**SECTION IV – FINAL PROVISIONS***Clause 16***Non-compliance with the Clauses and termination**

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

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

- (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same



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shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

**Governing law**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third- party beneficiary rights. The Parties agree that this shall be the law of Ireland.

Clause 18

**Choice of forum and jurisdiction**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Ireland.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

APPENDIX

ANNEX I

**A. LIST OF PARTIES**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

**Data exporter(s):**

1. Name: Customer.

Address: As set forth in the Notices section of the Agreement.

Contact person's name, position and contact details: As set forth in the Notices section of the Agreement.

Activities relevant to the data transferred under these Clauses: As set forth in Exhibit B of the Addendum.

Role (controller/processor): Controller or Processor.

**Data importer(s):**

1. Name: Back4App.

Address: As set forth in the Notices section of the Agreement.

Contact person's name, position and contact details: As set forth in the Notices section of the Agreement.

Activities relevant to the data transferred under these Clauses: As set forth in Exhibit B of the Addendum.

Role (controller/processor): Processor.

**B. DESCRIPTION OF TRANSFER**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

*Categories of data subjects whose personal data is transferred*

As set forth in Exhibit B of the Addendum.

*Categories of personal data transferred*

As set forth in Exhibit B of the Addendum.

*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*

As set forth in Exhibit B of the Addendum.

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*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

As set forth in Exhibit B of the Addendum.

*Nature of the processing*

As set forth in Exhibit B of the Addendum.

*Purpose(s) of the data transfer and further processing*

As set forth in Exhibit B of the Addendum.

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

As set forth in Exhibit B of the Addendum.

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*

As set forth in Exhibit B of the Addendum.

**C. COMPETENT SUPERVISORY AUTHORITY**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

The supervisory authority mandated by Clause 13. If no supervisory authority is mandated by Clause 13, then the Irish Data Protection Commission (DPC), and if this is not possible, then as otherwise agreed by the parties consistent with the conditions set forth in Clause 13.

*ANNEX II*

**TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

**MODULE TWO: Transfer controller to processor**

**MODULE THREE: Transfer processor to processor**

*Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.*

Data importer shall implement and maintain appropriate technical and organisational measures designed to protect personal data in accordance with the Addendum.

Pursuant to Clause 10(b), data importer will provide data exporter assistance with data subject requests in accordance with the Addendum.

*ANNEX III***Standard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018**

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**UK Addendum to the EU Commission Standard Contractual Clauses****Date of this Addendum:**

1. The Clauses are dated as of the same date as the Addendum.

**Background:**

2. The Information Commissioner considers this Addendum provides appropriate safeguards for the purposes of transfers of personal data to a third country or an international organisation in reliance on Articles 46 of the UK GDPR and, with respect to data transfers from controllers to processors and/or processors to processors. This Addendum forms part of and supplements the Clauses to which it is attached. If personal data originating in the United Kingdom is transferred by data exporter to data importer in a country that has not been found to provide an adequate level of protection under UK Data Protection Laws, the Parties agree that the transfer shall be governed by the Clauses as supplemented by this Addendum.

**Interpretation of this Addendum**

3. Where this Addendum uses terms that are defined in the Annex those terms shall have the same meaning as in the Annex. In addition, the following terms have the following meanings:

This Addendum	This Addendum to the Clauses
The Annex	The Standard Contractual Clauses set out in the Annex of Commission Implementing Decision (EU) 2021/914 of 4 June 2021
UK Data Protection Laws	All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018.
UK GDPR	The United Kingdom General Data Protection Regulation, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.
UK	The United Kingdom of Great Britain and Northern Ireland

4. This Addendum shall be read and interpreted in the light of the provisions of UK Data Protection Laws, and so that it fulfils the intention for it to provide the appropriate safeguards as required by Article 46 UK GDPR.
5. This Addendum shall not be interpreted in a way that conflicts with rights and obligations provided for in UK Data Protection Laws.

6. Any references to legislation (or specific provisions of legislation) means that legislation (or specific provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this Addendum has been entered into.

### **Hierarchy**

7. In the event of a conflict or inconsistency between this Addendum and the provisions of the Clauses or other related agreements between the Parties, existing at the time this Addendum is agreed or entered into thereafter, the provisions which provide the most protection to data subjects shall prevail.

### **Incorporation of the Clauses**

8. This Addendum incorporates the Clauses which are deemed to be amended to the extent necessary so they operate:
  - a. for transfers made by the data exporter to the data importer, to the extent that UK Data Protection Laws apply to the data exporter's processing when making that transfer; and
  - b. to provide appropriate safeguards for the transfers in accordance with Articles 46 of the UK GDPR Laws.
9. The amendments required by Section 8 above, include (without limitation):
  - a. References to the "Clauses" means this Addendum as it incorporates the Clauses
  - b. Clause 6 Description of the transfer(s) is replaced with:

"The details of the transfers(s) and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred) are those specified in Annex I.B where UK Data Protection Laws apply to the data exporter's processing when making that transfer."
  - c. References to "Regulation (EU) 2016/679" or "that Regulation" are replaced by "UK Data Protection Laws" and references to specific Article(s) of "Regulation (EU) 2016/679" are replaced with the equivalent Article or Section of UK Data Protection Laws.
  - d. References to Regulation (EU) 2018/1725 are removed.
  - e. References to the "Union", "EU" and "EU Member State" are all replaced with the "UK"
  - f. Clause 13(a) and Part C of Annex II are not used; the "competent supervisory authority" is the Information Commissioner;
  - g. Clause 17 is replaced to state "These Clauses are governed by the laws of England and Wales".

h. Clause 18 is replaced to state:

“Any dispute arising from these Clauses shall be resolved by the courts of England and Wales. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of any country in the UK. The Parties agree to submit themselves to the jurisdiction of such courts.