

This Data Processing Addendum (“DPA”) forms part of any agreement between Miso Technologies, Inc. (“Miso”) and Customer (“Agreement”) that incorporates this DPA by reference, including without limitation the Miso Software-as-a-Service License Agreement and reflects the parties’ agreement with regard to the Processing of Personal Data performed pursuant to any of the foregoing.

By signing the Agreement, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent Miso processes Personal Data for which such Authorized Affiliates qualify as the Controller. For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and Authorized Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

In the course of providing the Services to Customer pursuant to the Agreement, Miso may Process Personal Data on behalf of Customer and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

DATA PROCESSING TERMS

1. DEFINITIONS

“**Authorized Affiliate**” means any of Customer’s Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, and/or the United Kingdom, and (b) is permitted to use the Services pursuant to the Agreement between Customer and Miso, but has not signed its own Order Form with Miso and is not a “Customer” as defined under the Agreement.

“**Controller**” means the entity which determines the purposes and means of the Processing of Personal Data.

“**Customer Data**” means what is defined in the Agreement as “Customer Data” or “Your Data.”

“**Data Protection Laws and Regulations**” means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

“**Data Subject**” means the identified or identifiable person to whom Personal Data relates.

“**GDPR**” means the 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, and repealing Directive 95/46/EC (General Data Protection Regulation).

“**Personal Data**” means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each (i) or (ii), such data is Customer Data.

“**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic 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.

“**Processor**” means the entity which Processes Personal Data on behalf of the Controller.

“**Security, Privacy and Documentation**” means the Security, Privacy Documentation applicable to the specific Services purchased by Customer, as updated from time to time, and accessible via <https://Miso.com/privacy/> or as otherwise made reasonably available by Miso.

“**Miso Group**” means Miso and its Affiliates engaged in the Processing of Personal Data.

“**Standard Contractual Clauses**” means the agreement executed by and between Customer and Miso and attached hereto as Schedule 1 pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

“**Sub-processor**” means any Processor engaged by Miso or a member of the Miso Group.

“**Supervisory Authority**” means an independent public authority which is established by an EU Member State pursuant to the GDPR.

2. PROCESSING OF PERSONAL DATA

2.1 Roles of the Parties. The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Miso is the Processor and that Miso or members of the Miso Group will engage Sub-processors pursuant to the requirements set forth in Section 5 “Sub-processors” below.

2.2 Customer’s Collection of Personal Data. Customer shall, in its use of the Services, Collect and Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Customer’s instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Without limiting Miso’s: (i) obligations regarding its Processing of Personal Data set out in this Section 2; and/or (ii) security commitments at Section 6, Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data. Miso will use reasonable efforts to immediately inform Customer if, in its opinion, any of the instructions of Customer infringes the requirements of Data Protection Laws and Regulations.

2.3 Miso’s Processing of Personal Data. Miso shall treat Personal Data as Confidential Information and shall only Process Personal Data on behalf of and in accordance with Customer’s documented instructions for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

2.4 Details of the Processing. The subject-matter of Processing of Personal Data by Miso is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Schedule 2 (Details of the Processing) to this DPA.

3. RIGHTS OF DATA SUBJECTS

3.1 Data Subject Request. Miso shall, to the extent legally permitted, promptly notify Customer if Miso receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making, or any other right afforded a Data Subject by the various Data Protection Laws and Regulations ("Data Subject Request"). Taking into account the nature of the Processing, Miso shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, Miso shall upon Customer's request provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Miso is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Customer shall be responsible for any costs arising from Miso's provision of such assistance.

4. MISO PERSONNEL

4.1 Confidentiality. Miso shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. Miso shall ensure that such confidentiality obligations survive the termination of the personnel engagement.

4.2 Limitation of Access. Miso shall ensure that Miso's access to Personal Data is limited to those personnel where it is reasonably necessary for performing Services in accordance with the Agreement.

5. SUB-PROCESSORS

5.1 Appointment of Sub-processors. Customer acknowledges and agrees that (a) Miso Affiliates may be retained as Sub-processors; and (b) Miso and Miso Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. Miso or a Miso Affiliate has entered into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this Agreement with respect to the protection of Customer Data to the extent applicable to the nature of the Services provided by such Sub-processor. As of the effective date of this Agreement, Miso engages Amazon Web Services ("AWS") to provide certain application and data hosting services. AWS' terms of service are found at: <https://aws.amazon.com/service-terms/> and AWS' DPA is available at: https://d1.awsstatic.com/legal/aws-gdpr/AWS_GDPR_DPA.pdf. Miso reserves its rights to engage additional sub-processors, or to substitute other processors, in AWS' stead.

5.2 Objection Right for New Sub-processors. Miso shall provide reasonable notice of a new Sub-processor(s) before authorizing any new Sub-processor(s) to Process Personal Data in connection with the provision of the applicable Services. Customer may object to Miso's use of a new Sub-processor by notifying Miso promptly in writing within ten (10) business days after receipt of Miso's notice of a new subprocessor. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Miso will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If an acceptable solution cannot be found in a reasonable amount of time, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Miso without the use of the objected-to new Sub-processor by providing written notice to Miso. Miso will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer. For the sake of clarity, Customer may not be able to access the Services during the objection and workaround period as described in this section.

5.3 Liability. Miso shall be liable for the acts and omissions of its Sub-processors to the same extent Miso would be liable if performing the services of each Sub-processor directly under the terms of the Agreement (including this DPA).

6. SECURITY

6.1 Controls for the Protection of Customer Data. Taking into account the principles of data protection-by-design and data protection-by-default, Miso shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer Data), confidentiality and integrity of Customer Data, as set forth in our current Security and Privacy Documentation. Miso regularly monitors compliance with these measures. Miso will not materially decrease the overall security of the Services offered in order to protect the confidentiality and integrity of Customer Data during a subscription term.

6.2 Regulatory Co-Operation. Miso will cooperate with, and provide reasonable assistance to, Customer at Customer's written request in case of any request to Customer made by a EU data protection authority. To the extent legally permitted, Customer shall be responsible for any costs of Miso, or to the extent applicable Miso's Sub-processors (where such expenses are reasonable and documented) arising from Miso's, or to the extent applicable Miso's Sub-processors', provision of such cooperation and assistance.

7. CUSTOMER DATA INCIDENT MANAGEMENT AND NOTIFICATION

Miso shall maintain and perform in accordance with the security incident management policies and procedures specified in the Security and Privacy Architecture Documentation and shall, notify Customer without undue delay, and in respect of the Service, in any event within 48 hours after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data, including Personal Data, transmitted, stored or otherwise Processed by Miso or its Sub-processors of which Miso becomes aware (a "Customer Data Incident"). Miso shall make reasonable efforts to identify the cause of such Customer Data Incident and take those steps as Miso deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within Miso's reasonable control. The obligations herein shall not apply to incidents that are caused by Customer or Customer's Users.

8. RETURN AND DELETION OF CUSTOMER DATA

Miso shall return Customer Data to Customer and, to the extent allowed by applicable law, delete Customer Data in accordance with the procedures and timeframes specified in the Security and Privacy Documentation.

9. DATA TRANSFERS FROM EU TO US

Any transfers of Personal Data under this DPA from the European Union, the European Economic Area and/or their member states, and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations will be in accordance with the Standard Contractual Clauses set out in Schedule 3.

SCHEDULE 1 – TRANSFER MECHANISMS (ONLY APPLICABLE WHEREBY THERE IS A TRANSFER OF DATA FROM EU TO US)

1.1 Instructions. This DPA and the Agreement are Customer's complete and final instructions at the time of signature of the Agreement to Miso 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 Standard Contractual Clauses, the following is deemed an instruction by the Customer to process Personal Data: (a) Processing in accordance with the Agreement and applicable Order Form(s); (b) Processing initiated by Users in their use of the Services and (c) Processing to comply with other reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

1.2 Appointment of new Sub-processors and List of current Sub-processors. Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that (a) Miso's Affiliates may be retained as Sub-processors; and (b) Miso and Miso's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. Miso shall make available to Customer the current list of Sub-processors in accordance with Section 5.2 of this DPA.

1.3 Notification of New Sub-processors and Objection Right for new Sub-processors. Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that Miso may engage new Sub-processors as described in Section 5 of the DPA.

1.4 Copies of Sub-processor Agreements. The parties agree that the copies of the Sub-processor agreements that must be provided by Miso to Customer 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 Miso beforehand; and, that such copies will be provided by Miso, in a manner to be determined in its discretion, only upon request by Customer.

1.5 Upon Customer's request, and subject to the confidentiality obligations set forth in the Agreement, Miso shall make available to Customer that is not a competitor of Miso (or Customer's independent, third-party auditor that is not a competitor of Miso) information regarding the Miso Group's compliance with the obligations set forth in this DPA in the form of the certifications and audits set forth in the Security and Privacy Documentation. Customer shall reimburse Miso for any time expended for any such on-site audit at the Miso Group's then-current professional services rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Miso shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Miso. Customer shall promptly notify Miso with information regarding any non-compliance discovered during the course of an audit.

1.6 Certification of Deletion. 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 Miso to Customer only upon Customer's request.

1.7 Conflict. In the event of any conflict or inconsistency between the body of this DPA and any of its Schedules (not including the Standard Contractual Clauses) and the Standard Contractual Clauses in Schedule 5, the Standard Contractual Clauses shall prevail.

SCHEDULE 2 – DETAILS OF THE PROCESSING

Nature and Purpose of Processing. Miso will Process Personal Data as necessary to perform the Services pursuant to the Agreement, as further specified in the Documentation, and as further instructed by Customer in its use of the Services.

Duration of Processing. Subject to Section 8 of the DPA, Miso will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

Categories of Data Subjects. Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

natural persons or Individuals

Type of Personal Data. Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

First and last name

Title

Position

Employer

Contact information (company, email, phone, physical business address)

ID data

Professional life data

Personal life data

Connection data

Localization data

SCHEDULE 3 – STANDARD CONTRACTUAL CLAUSES

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.

Clause 1 – Definitions

For the purposes of the Clauses:

- (a) ‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) ‘the data exporter’ means the controller who transfers the personal data;
- (c) ‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) ‘the sub-processor’ means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) ‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) ‘technical and Organizational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2 – Details of the Transfer

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

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

Clause 4 - Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and Organizational security measures specified 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, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5 - Obligations of the data importer

The data importer agrees and warrants:

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

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

(c) that it has implemented the technical and Organizational 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 unauthorized access, and

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

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

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

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of 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 sub-processing, it has previously informed the data exporter and obtained its prior written consent;

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

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

Clause 6 - Liability

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

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

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

Clause 7 - Mediation and jurisdiction

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

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

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

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

Clause 8 - Cooperation with supervisory authorities

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

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

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

Clause 9 - Governing Law

The Clauses shall be governed by the law of the State of California.

Clause 10 - Variation of the contract

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

Clause 11 - Sub-processing

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

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

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

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

Clause 12 - Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

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