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T-PD(2022)[1rev8](#) |

**CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION
OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING
OF PERSONAL DATA**

CONVENTION 108

Model Contractual Clauses for the Transfer of Personal Data

Cover Note

(...)

These Model Contractual Clauses aim to ensure an appropriate level of protection for the transfer of personal data to countries that are not Parties to Convention 108 as amended by the Protocol CETS No 223 and may be subject to transposition and/or approval under the domestic legislation of the respective Party in accordance with Article 14(3) (b) of Convention 108 as amended by the Protocol CETS No 223. These Model Contractual Clauses may also be used by public authorities to ensure that an appropriate level of protection is ensured when transferring personal data to a country that is not Party to Convention 108+.

[It is for each Party to decide whether to introduce/approve these clauses as standardised contractual -these clauses as a tool for data transfers. In doing so, each Party will also have to consider whether these clauses are compatible with its domestic mandatory requirements]

(...)

COUNCIL OF EUROPE
CONVENTION 108+

Model Contractual Clauses for the Transfer of Personal Data from Controller to Controller

[Term: Start date [MM/DD/YEAR] – End date [MM/DD/YEAR]]

Data exporter information

Full legal name:

Trading name (if different):

Main Address (if a company registered address):

City, Country, zip code:

Official registration number (if any):

Key contact (full name, job title, contact details including email):

Email:

Data importer information

Full legal name:

Trading name (if different):

Main Address (if a company registered address):

City, Country, zip code:

Official registration number (if any):

Key contact (full name, job title, contact details including email):

Email:

By the signatures of their authorised representatives below, the Data exporter and the Data importer Parties agree to be bound by these Model Contractual Clauses (hereinafter “the Clauses”) terms of this agreement.

Signed for and on behalf of the Data exporter

Signed:

Date of signature Date [MM/DD/YEAR]

Full name:

Job title:

Signed for and on behalf of the Data importer

Signed:

Date of signature [MM/DD/YEAR]

Full name:

Job title:

MODEL CONTRACTUAL CLAUSES

Model Contractual Clauses for the transfer of Personal data from Controller to Controller

The Data exporter and the Data importer (hereinafter, "the Parties") agree to these Model Contractual Clauses (hereinafter "the Clauses"):

PART I – GENERAL CLAUSESMODEL CONTRACTUAL CLAUSES

PART I – HORIZONTAL CLAUSES

Clause 1. Purpose and scope

The aim of these Clauses is to ensure compliance with the requirements for the transfer of Personal data to a Non-Party under Convention 108 as amended by the Protocol CETS No. 223¹ (hereinafter "the Convention").

1.1. In this regard, these Clauses, together with their Annexes which form an integral part thereof provide an appropriate level of protection for the transfer of Personal data within the meaning of Article 14(2), (3)(b) of the Convention. The aim of these Clauses is to ensure

¹ adopted by the Committee of Ministers of the Council of Europe on 18 May 2018

~~compliance with the requirements for the transfer of Personal data to a Non-Party under These Clauses provide an appropriate level of protection for the transfer of Personal data within the meaning of Article 14(2), (3)(b) of the Convention.~~

~~1.2. These Clauses shall apply to the Transfer of Personal data as described in Annex 1.~~

~~**Description of the transfer**~~

~~These Clauses shall apply to the transfer of Personal data as described in Annex 1.~~

~~1.3. The purpose of the Transfer of Personal data is described in Annex 1.~~

~~**Purpose of the transfer**~~

~~The purpose of the transfer of Personal data is described in Annex 1.~~

Clause 2. Definitions

[Note: Apart from the sources cited with respect to each defined term, see also document T-PD(2020)06rev3, [Interpretation of provisions, May 7, 2021](#)].

As used in these Clauses, the following terms starting with a capital letter shall have the following specific meanings:

Applicable law: domestic rules for the protection of personal data applicable in the jurisdiction of the Data exporter~~domestic data protection law of the jurisdiction of the Data exporter.~~

Biometric data: data resulting from a specific technical processing of Personal data concerning the physical, biological or physiological characteristics of a natural person that allows the unique identification or authentication of such individuals~~person~~.
[Source: Par. 58 of Explanatory Report].

Convention: Convention for the Protection of Individuals with regard to the processing of Personal Data (CETS No. 108), as amended by Protocol CETS No. 223, adopted by the Committee of Ministers at its 128th Session in Elsinore on 18 May 2018.

Controller: the natural or legal person, public authority, service, agency or any other body which, alone or jointly with others, has decision-making powers with respect to the Processing.
[Source: Article 2 of the Convention]

Data breach: any accidental or unauthorised access to, destruction, loss, use, modification or disclosure of Personal data due to a violation of the principle of data security.
[Source: Article 7 of the Convention]

Data exporter: the Controller or Processor that transfers Personal data to a Data importer and is located in a country that is a Party to the Convention.

Data importer: the Controller or Processor to which the Data exporter transfers Personal data and that is located in a country that is a Non-Party to the Convention.

Genetic data: all Personal data relating to the genetic characteristics of an individual that have been either inherited or acquired during early prenatal development, as they result from an analysis of a biological sample from the individual concerned including chromosomal, DNA or RNA analysis or analysis of any other element enabling equivalent information to be obtained.
[Source: Par. 57 of the Explanatory Report]

Non-Party: a State that has not ratified the Convention or where it is not yet in force.
[Source: Article 26-(3) of the Convention]

Onward transfer: the transfer of Personal data by the Data importer to another Controller or Processor located in the same or in another jurisdiction.

Party (or Parties): the Data importer and Data exporter signatories to these Clauses.

Personal data: any information relating to an identified or identifiable individual (hereinafter “Data subject”), whatever his/her nationality or residence.
[Source: Article 2 of the Convention; Par. 15 of the Explanatory Report]

Processing: any operation or set of operations performed on Personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data. Where automated processing is not used, processing means an operation or set of operations performed upon Personal data within a structured set of such data which are accessible or retrievable according to specific criteria.
[Source: Article 2 of the Convention]

Processor: a natural or legal person, public authority, service, agency or any other body that processes Personal data on behalf and under the instructions of the Controller.
[Source: Article 2 of the Convention]

~~**Processing:** any operation or set of operations performed on Personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data. Where automated processing is not used, processing means an operation or set of operations performed upon Personal data within a structured set of such data which are accessible or retrievable according to specific criteria.~~

Recipient: a natural or legal person, public authority, service, agency or any other body to whose Personal data are transferred.
[Source: Article 2 of the Convention]

Special categories of data: (i) Genetic data; (ii) Personal data relating to offences, criminal proceedings and convictions, or related security measures; (iii) Biometric data processed for the purpose of uniquely identifying a person; or (iv) Personal data for the information they reveal

~~relating to racial or ethnic origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life.~~

~~[Source: Article 6 of the Convention]~~

~~**Supervisory authority/ies:** one or more authorities responsible for ensuring compliance with the provisions of the Convention as incorporated by the Applicable law.~~

~~[Source: Article 15 of the Convention]~~

~~**Third party beneficiary:** the Data subject whose Personal data have been transferred under these Clauses ~~the Data subject whose Personal data is the object of a transfer under these Clauses.~~~~

~~**Third Party:** a natural or legal person, public authority, service, agency or any other body that is not a Party to these Clauses but to which the Personal data is onward transferred by the Data importer, located in the same or in a different jurisdiction as the Data importer.~~

~~**Data exporter:** the Controller or Processor that transfers Personal data to a Data importer and is located in a country that is a Party to the Convention.~~

~~**Genetic data:** all Personal data relating to the genetic characteristics of an individual that have been either inherited or acquired during early prenatal development, as they result from an analysis of a biological sample from the individual concerned including chromosomal, DNA or RNA analysis or analysis of any other element enabling equivalent information to be obtained.~~

~~**Transfer of personal data:** the disclosure or making available of Personal data to a recipient subject to the jurisdiction of a country that is a Non-Party to the Convention.~~

~~[Source: Article 14 of the Convention, Paragraphs 102 to 104 of the Explanatory report, and the legal opinion provided by the Legal Advisor DLAPIL02/2021_JP/DG3]~~

~~**Onward transfer:** the transfer of Personal data by the Data importer to another Controller or Processor located in the same or in another jurisdiction.~~

3.1. Invariability of the Clauses

These Clauses set out appropriate safeguards, including, obligations for Controllers, enforceable Data subject rights and effective legal remedies, pursuant to Articles 14(2) and 14(3)(b) of the Convention, provided they are not modified, except to add or update information in the Annexes.

3.2 These Clauses are without prejudice to obligations to which the Data exporter is subject by virtue of the Applicable law.

3.2. Clause 4. Interpretation and relation with other agreements

3.2. Interpretation

4.1 Where these Clauses use terms that are defined in the Convention, those terms shall have the same meaning as in the Convention, unless they have a specific meaning as set out in Clause 2.

4.2 These Clauses shall be read and interpreted in the light of the provisions of the Convention and its Explanatory Report.

4.3 These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in the Convention as incorporated by the Applicable law. If the meaning of the Clauses is unclear or there is more than one meaning, the meaning which most closely aligns with the Applicable law Convention applies. ~~(change to Convention)~~

4.4 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. The exception to this is where the conflicting terms of the related agreements provide greater protection for Data subjects, in which case those terms shall prevail over these Clauses.

3.3-Clause 5. Execution of the Clauses and Notices

5.1 These Clauses may be executed in any number of counterparts. Once each Party has received a counterpart signed by the other Party (or a digital copy of that signed counterpart), those counterparts will together constitute one and the same instrument and each of which will be, and will be deemed to be, an original.

5.2 Each Party represents and warrants that it has full corporate power, and has been duly authorized by all necessary corporate action on its part, to enter into, execute, deliver and perform its obligations under these Clauses.

5.3 All notices and requests under these Clauses by a Party to another Party shall be in writing and shall be served by mail, or by electronic mail to the key contact indicated on the Cover Page, or at such different addresses as may be communicated by the Party by written notice to the other Party. If the notice or request is sent by e-mail, it will be deemed to have been delivered at the time the e-mail was sent, or if that time is outside of the receiving Party's normal business hours, the receiving Party's next normal business day, and provided no notice of non-delivery or bounce back is received.

Clause 64. Accession clause

6.1 An entity that is not a Party to these Clauses may, with the agreement of the other Parties, accede to these Clauses at any time, either as a Data exporter or as a Data importer, by completing and signing Annex 2 and, if required, updating the description of the transfer in Annex 1.

6.2 Once it has completed and signed Annex 2, the acceding entity shall become a Party to these Clauses and shall have the rights and obligations of a Data exporter or Data importer in accordance with its designation in Annex 2.

6.3 The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

Clause 75. Third party beneficiaries

7.1 The Parties agree and acknowledge that any Data subject whose Personal data were transferred under these Clauses shall be entitled to invoke the safeguards and guarantees set out in Section II and III of these Clauses as a Third-party beneficiary with respect to any provisions of these Clauses affording a right, action, claim, benefit or privilege to such Data subject.

7.2 Any waiver of a right or remedy under or in relation to these Clauses by a Party, which must be explicit, specific and in writing, shall not affect the exercise of any Third party beneficiary rights by the concerned Data subject to which the respective provisions of the Clauses give rise.

SECTION II – RIGHTS AND OBLIGATIONS OF THE PARTIES

Clause 86. Due diligence and cooperation~~Data protection safeguards~~

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

8.2 The Data exporter shall cooperate with and provide reasonable assistance to the Data importer if that is necessary to allow [to enable?] the Data importer to comply with its obligations this Section.

Clause 97. Purpose limitation

9.1 The Data importer shall process the Personal data only for the specific purpose(s) of the ~~T~~transfer, as set out in Annex 1. It may also process the Personal data

- (a) when this is necessary to preserve the vital interests of the Data subject;
- (b) for the establishment, exercise, or defence of legal claims [in the context of specific administrative, regulatory or judicial proceedings in a particular case]

Clause 108. Transparency of processing

108.1 In order to enable Data subjects to exercise their rights effectively pursuant to these Clauses, the Data importer shall proactively inform them, free of charge, either directly or through the Data exporter of:

- (a) ~~his or her~~ identity and the contact details;
- (b) the legal basis and the purpose(s) of the intended Processing;

- ~~(c)-~~ the categories of Personal data processed;
- ~~(d)-~~ the Recipients or categories of Recipients of the Personal data, if any;
- ~~(e)-~~ the means of exercising the rights set out in these Clauses;
- ~~(f)-~~ any necessary additional information in order to ensure fair and transparent Processing of the Personal data such as the retention period, the logic underlying the Processing (in particular in case of the use of algorithms for automated decision making, including profiling) or information on Onward transfers (including the grounds therefor and the measures taken in order to guarantee an appropriate level of protection); and
- ~~(g)-~~ the right to obtain a copy of these Clauses.

~~10.2. Paragraph 1 shall not apply when the Processing is expressly prescribed by law, the Data subject already has the relevant information or informing the Data subject proves to be impossible or involves disproportionate efforts. 8.2. Paragraph 1 shall not apply when the Personal data are not collected from the data subject and the processing is expressly prescribed by law, or informing the Data subject proves to be impossible or involves disproportionate efforts.~~

Clause 119. Accuracy and data minimisation

11.1 Each Party shall ensure that the Personal data is accurate and, where necessary, kept up to date. The Data importer shall take every reasonable step to ensure that Personal data that is inaccurate, having regard to the purpose(s) of ~~p~~Pprocessing, is erased or rectified without delay.

11.2 If the Data importer is informed by the Data exporter of corrections made by the Data exporter to the Personal data, the Data importer shall promptly implement those corrections.

11.3 The Data importer shall ensure that the Personal data is adequate, relevant and not excessive in relation to the purpose(s) of ~~p~~Pprocessing.
[Source: Article 5(4)(d) of the Convention]

Clause 120. Limited retention period

The Data importer shall retain the Personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical and organizational measures to ensure compliance with this obligation, including erasure or anonymisation of the data and all back-ups at the end of the retention period.

Clause 134. Data security

13.1 ~~The Data importer and, during transmission, also the Data exporter shall implement appropriate security measures, both of a technical and organizational nature, for each Processing, in particular to protect against the risk of Data breaches. In adopting such measures, they shall take into account, in particular, the nature of the Processing, the nature and volume of the Personal data processed, the degree of vulnerability of the technical architecture used for the Processing, the state of the art and the cost of implementation. The measures should be~~

~~commensurate with the seriousness and probability of the potential risks. The Parties shall consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose(s) of Processing can be achieved in that manner]. The Data importer and, during transmission, also the Data exporter shall implement appropriate security measures including with relation to any person acting under their authority against risks such as accidental or unauthorized access to, destruction, loss, use, modification or disclosure of Personal data.~~

13.2 The Parties have agreed on the technical and organizational measures set out in Annex 3. The Data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security and shall update them where this is no longer the case.

13.3 If there is a substantial change in the security measures implemented and described in Annex 3, the Parties shall update the Annex.

13.4 In the event of a Data breach concerning Personal data processed by the Data importer under these Clauses, the Data importer shall take appropriate measures to address the Data breach, including measures to mitigate its possible adverse effects.

13.5 The Data importer shall notify – without undue delay and, where feasible, not later than 72 hours after having become aware of the Data breach –, at least the Data exporter, who shall notify the competent Supervisory authority in case the Data breach may interfere with the rights and fundamental freedoms of Data subjects.

13.6 In addition, the Data importer shall notify, without undue delay, the Data subjects concerned by the Data breach ~~without undue delay~~, where it is likely to result in a high risk to their rights and freedoms. Such notification is not required if appropriate technical and organisational measures have been applied to the Personal data affected that render it unintelligible to any person not authorised to access it, if the Data importer has taken subsequent measures which ensure that the high risk is no longer likely to materialise, or if it would involve disproportionate efforts (in which case the Data importer shall instead make a public communication or take a similar measure whereby the Data subjects are informed in an equally effective manner).

13.7 In both cases, the notification shall include adequate and meaningful information on, notably, the nature of the Data breach, the contact points where more information can be obtained and possible measures that Data subjects could take to address the Data breach, including measures to mitigate its possible adverse effects.

13.8 Where not all the relevant information related to the Data breach is available, notification may take place “in stages”, with more information to be provided as soon as it becomes available.

Clause 142. Special categories of data

14.1 Where the ~~T~~transfer involves Special categories of data, the Data importer shall apply additional safeguards that ~~must~~ guard against and ~~be~~ are adapted to the risks that the Processing of such data may present for the interests, rights and fundamental freedoms of the Data subject, notably the risk of discrimination.

14.2 The Parties have agreed on the safeguards as set out in Annex 4.
[Source: Article 6 of the Convention and ~~Par. agraphs~~ 56 to 61 of the Explanatory Report]

Clause 153. Onward transfers

15.1 The Data importer shall not onward transfer the Personal data to a ~~T~~third party unless:

- ~~(a)~~ the law of the ~~T~~third party's jurisdiction, including its international commitments under applicable international treaties or agreements, ensures an appropriate level of protection ~~in accordance with~~ in the meaning of Article 14 (3)(a) of the Convention, [in accordance with the provisions in this regard under the Convention]/[under Applicable law];
- ~~(b)~~ the ~~T~~third party enters into a legally binding and enforceable instrument with the Data importer ensuring the same level of data protection as under these Clauses, and the Data importer provides a copy of these safeguards to the Data exporter;
- ~~(c)~~ the Onward transfer ~~it~~ is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings in a particular case;
- ~~(d)~~ the Onward transfer ~~it~~ is necessary in a specific case in order to protect the vital interests of the Data subject or of another natural person; or
- ~~(e)~~ where none of the other conditions apply, the Data importer has obtained the explicit consent of the Data subject for the specific Onward transfer, after having informed him/her in writing of its purpose(s), the identity of the third party and the possible risks of such transfer to him/her due to the lack of an appropriate level of data protection. In this case, the Data importer shall inform the Data exporter of the Onward transfer based on consent and, at the request of the latter, shall transmit to it a copy of the information provided to the Data subject.

15.2 Any Onward transfer is subject to compliance by the Data importer with all the other safeguards under these Clauses, in particular as regards purpose limitation.

Clause 164. Processing under the authority of the Data importer

16.1. The Data importer shall ensure that any person acting under its authority, [including a Processor], processes the data only ~~under on~~ its instructions and in compliance with these Clauses.

16.2 The Data importer remains fully liable to the Data exporter, the competent Supervisory authority/ies and Data subjects for its obligations under these Clauses where it has sub-

~~contracted any obligations to its Processors or authorised an employee or other person to perform them.~~

Clause 175. Documentation and compliance

~~17.1~~ Each Party shall be able to demonstrate compliance with its obligations under these Clauses. ~~To this end, it~~

~~The 17.2 Each Party Data exporter~~ shall make such documentation available to the competent Supervisory authority/ies on request.

~~The Data importer shall take all appropriate measures to comply with its obligations under these Clauses and be able to demonstrate such compliance to the competent Supervisory authority/ies.~~

~~17.3~~ The Data importer guarantees that it has ~~carefully considered~~ ~~paid due regard to~~ the impact the intended Processing might have on the rights and fundamental freedoms of Data subjects prior to the commencement of such Processing, according to the circumstances of the specific Transfer, and has taken the necessary ~~and appropriate~~ technical and organisational measures to comply with these Clauses, ~~and to demonstrate such compliance to the competent Supervisory/ies.-~~

[Source Articles 10(2) and 10(3) of the Convention]

Clause 186 – Rights of Data subjects

~~18.1~~ Without undue delay, and at the latest within ~~ten days to~~ one month of the receipt of the enquiry or request the Data importer, if necessary, with the assistance of the Data exporter, shall deal with any enquiries and requests it receives from a Data subject related to the Processing of his/her Personal data, including ~~Onward~~ transfers, and the exercise of his/her rights under these Clauses. That period may be extended by ~~up to~~ two further months where necessary, taking into account the complexity and number of the enquiries and requests. The Data importer shall inform the Data subject of any such extension ~~as soon as possible, and no later than five days before the end of the maximum period indicated in the first sentence~~ within one month of receipt of the enquiry or request, together with the reasons for the delay.

~~18.2~~ ~~To this end, 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 competent to receive requests to exercise individual rights and handle complaints. Data subject shall have the right to obtain assistance, at any time and no cost, from such a contact point.

~~18.3~~ The Data importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of Data subject rights. Any information provided to the Data subject shall be in an intelligible and easily accessible form, using clear and plain language.

~~18.4.~~ Data subjects shall ~~exercise~~ ~~have~~, the following rights against the Data importer:

- (a) not to be subject to a decision significantly affecting them based solely on the automated processing of their Personal data without having the right to challenge such a decision, putting forward their point of view and argument, and obtain a human review, unless the automated decision is authorised by law which provides s for suitable measures to safeguard ~~the data subject's~~ rights, fundamental freedoms and legitimate interest of the Data subject;
- (b) to obtain, on request, at reasonable intervals and without excessive delay, confirmation of the Processing of Personal data relating to them, the communication in an intelligible form of the data processed, and all available information on their origin, on the retention period as well as any other information that the Data importer is required to provide in order to ensure the transparency of processing in accordance with Clause 108.1;
- (c) to obtain, on request, information on the reasoning underlying the Data-processing where the results of such Processing are applied to them;
- (d) to object at any time, on grounds relating to their situation, to the Processing of Personal data concerning them unless the Data importer demonstrates legitimate grounds for the Processing which override their interests or rights and fundamental freedoms;
- (e) to obtain, on request without excessive delay, rectification of their Personal data that is incorrect or out of date, or erasure if their Personal data are being, or have been, processed contrary to these Clauses or the Applicable law;
- (f) to obtain a copy of these Clauses, provided that the Data importer may redact any information ~~contained~~ contained in the Annexes of these Clauses that it or, following consultation, the Data exporter has reasonably identified as a trade secret or other confidential information
- (g) to be provided with information on a contact person, whose responsibility it is to ensure compliance with letters (a) to (f) of this Clause. Data subjects shall be free to contact this person at any time and at no cost in relation to the Data processing, including Onward transfers, and where applicable, obtain assistance in exercising their rights.

18.5 The exercise of these rights shall be free of charge.

[Source: Article 9 of the Convention and pPara. 111 of the Explanatory Memorandum-Report of Convention]

18.6 The Data importer ~~can may~~ restrict or refuse the exercise of those rights if ~~#this~~ is provided for by its domestic law, such restriction or refusal [has been assessed in accordance with Clause 22.2.] respects the essence of fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for: ~~the~~

- ~~(a)~~ the protection of national security, defence, public safety, important economic and financial interests of the State, the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties, and other essential objectives of general public interest;
- (b) the protection of the Data subject or the rights and fundamental freedoms of others, notably freedom of expression;
- (c) ~~the~~

[In order to consider a restriction or refusal lawful, the Parties need to make sure it complies with the conditions and standards set forth by the Convention notably on the right of data subjects to have judicial and non-judicial remedy where his/her rights have been violated, to benefit from the assistance of the supervisory authority in exercising his/her rights and on the requirement that processing activities for national security and defense purposes are subject to independent and effective review and supervision under the domestic legislation-.]

[Source: Article ~~s-9,11,12~~ of the Convention]

Clause 197. Redress for the Data subject

~~19.1 Where the Data subject invokes a Third party beneficiary right pursuant to Clause 7, the Data importer [has to facilitate] – [cannot obstruct] [shall accept] the decision of the Data subject to lodge a complaint with the competent Supervisory authority/ies pursuant to Clause 21, or to refer the dispute to the competent courts pursuant to Clause 26.~~

~~Any possibility to lodge a complaint with an independent dispute resolution body does not exclude or alter the right of the Data subject afforded by these Clauses or the Applicable law to lodge a complaint with the Supervisory Authority/ies or the courts of the competent jurisdiction.~~

~~[Option: 19.2 The Data importer agrees that Data subjects may lodge a complaint with [INDICATE INDEPENDENT DISPUTE RESOLUTION BODY] at no cost to them. It shall inform the Data subjects in a transparent and easily accessible format, through individual notice or on its website, of such a redress mechanism and that they are not required to use it or follow a particular sequence in seeking redress.~~

~~Note: The Data importer may offer independent dispute resolution through an arbitration body only if such body is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.]~~

~~The Data importer agrees that Data subjects may lodge a complaint with an independent dispute resolution body at no cost to them. It shall inform the Data subjects in a transparent and easily accessible format, through individual notice or on its website, of such a redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.~~

~~Where the Data subject invokes a Third party beneficiary right pursuant to Clause 5, the Data importer shall accept the decision of the Data subject to lodge a complaint with the competent Supervisory authority/ies pursuant to Clause 19, or to refer the dispute to the competent courts pursuant to Clause 24.~~

Clause 2018. Liability

~~20.1 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.~~

20.2 Each Party shall be liable to the Data subject, and the Data subject shall be entitled to receive compensation, for any material or non-material damages ~~as foreseen by Applicable law~~ that the Party causes the Data subject by breaching these Clauses. This is without prejudice to the liability of the Data exporter under the Applicable law.

20.3 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.

20.4 The Parties agree that if one Party is held liable under the previous paragraph, it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to the other Party's/Parties' responsibility for the damage.

20.5 The Controller remains responsible for the Processing ~~also~~ where it engages a Processor to act on its behalf. The Parties may not invoke the conduct of a Processor or sub-Processor to avoid their own liability.

[Source: Para. 22 of the Explanatory Report]

Clause 219. Supervisory authority

21.1 The Supervisory authority/ies with responsibility for ensuring compliance by the Data exporter with the Applicable law as regards the Transfer shall act as competent Supervisory authority/ies.

21.2 The Data importer ~~takes note~~ accepts that the ~~S~~supervisory authority in order to protect the rights and fundamental freedoms of data subjects, is entitled to prohibit transfers, suspend them or subject them to conditions notably in cases where the Clauses are not complied with.]

[Source: article 14. ~~(6)~~ of the Convention]

21.3 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 and commit itself to abide by its decision. In particular, the Data importer agrees to respond to enquiries, submit to review or 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 22. Local laws and practices affecting compliance with the Clauses

~~22.1 (a)~~ — The Parties warrant that they have no reason to believe that the laws and practices in the country of destination applicable to the ~~Data p~~Processing by the Data importer, including any requirements to disclose Personal data or measures authorizing 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 which respect the essence of the human rights and fundamental freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 11(1) of the Convention, are not in contradiction with these Clauses.

~~22.2 b)~~ [The Parties declare that in providing the warranty in paragraph ~~22.1(a)~~, they have taken due account in particular of the following elements:

- ~~(a-i)~~ the specific circumstances of the ~~T~~transfer, including the length of the processing chain, the number ~~and type~~ 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;
- ~~(b-ii)~~ the laws (including case-law) and practices in the country of destination ~~including those requiring the disclosure of data to public authorities or authorizing access by such authorities – relevant in light of the specific circumstances of the Transfer,~~ and the applicable limitations and safeguards; ~~in this regard, the assessment of application of the law in practice included reports by independent oversight bodies~~
- ~~(c-iii)~~ any relevant contractual, technical or organizational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the ~~P~~rocessing of the Personal data in the country of destination.]

[Alternative- proposal for ~~b)22.2~~:

The Parties declare that in providing the warranty stated in the previous paragraph, they have taken due account in particular of the following elements:

- ~~(a)~~ the specific circumstances of the ~~T~~transfer
- ~~(b)~~ the laws and practices ~~relevant in the specific circumstances of the Transfer~~ in the country of destination ~~relevant in the specific circumstances of the Transfer~~
- ~~(c)~~ any relevant contractual, technical or organizational safeguards put in place to supplement the safeguards under these Clauses]

~~22.3 (c)~~ — The Data importer warrants that, in carrying out the assessment under paragraph ~~(b);22.2~~, it has made its best efforts to provide the Data exporter [at regular intervals] with relevant information, and agrees that it will continue to cooperate with the ~~d~~Data exporter in ensuring compliance with these Clauses.

~~22.4 (d) T~~—The Parties ~~agree shall~~ document the assessment under paragraph ~~2(b)2.2~~ and the competent Supervisory authority on request.

~~22.5 (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)22.1~~, including following a change in the laws of the country of destination or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph ~~22.1(a)~~.

~~22.6 (f)~~—Following a notification pursuant to paragraph ~~(e)22.5~~, 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. The Data exporter shall suspend the ~~data T~~ transfer if it considers that no appropriate safeguards for such ~~T~~ transfer can be ensured, or if instructed by the competent Supervisory authority to do so. In this case, the Data exporter shall be entitled to terminate the contract, insofar as it concerns the ~~P~~ 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 ~~24.42(d)~~ and ~~(e)24.5~~ shall apply.

Clause ~~23~~4. Obligations of the Data importer in case of access by public authorities

~~23~~4.1. Notification

~~(a)~~ The Data importer ~~agrees shall~~ 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 Data importer.

~~(b)~~ If the Data importer is prohibited from notifying the Data exporter and/or the ~~D~~ data subject under the laws of the country of destination, it 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~~ to the Data exporter, on request.

- (c) Where permissible under the laws of the country of destination, the Data importer agrees to provide the Data exporter, on request, with as much relevant information as possible on any requests for disclosure it has 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.).
- (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.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the Data importer pursuant to Clause 20(e) and Clause 22-24 to inform the Data exporter promptly where it is unable to comply with these Clauses.]

[Option:

- ~~(a) The Data importer agrees to shall~~ notify the Data exporter ~~[and the Data subject]~~ or use its best efforts to do so if it is compelled to preserve, grant access, make available or disclose Personal data transferred from the Data exporter to a third party including to a public authority.
- ~~(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, it 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 to the Data exporter, on request.]~~

234.2. Review of legality and data minimisation

- (a) The Data importer ~~agrees to shall~~ review the legality of any request for disclosure, in particular whether it ~~remains is~~ 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 22.5 and Clause 24.10(e).
- (b) The Data importer ~~agrees to shall~~ 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, it shall make the documentation available to the Data exporter. It shall also make it available to the competent Supervisory authority on request.

- (c) The Data importer ~~agrees to shall~~ 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 24.2. Non-compliance with the Clauses and termination

24.1 Each Party shall promptly inform ~~each the~~ other ~~p~~Party/ies if it is unable to comply with these Clauses, for whatever reason.

24.2 (b) In the event that the ~~[Data exporter has clear and reliable evidence that the]~~ Data importer is in breach of these Clauses or unable to comply with these Clauses ~~[based on clear and reliable evidence]~~, the Data exporter shall suspend the transfer of Personal data to the Data importer under these Clauses until compliance is again ensured or the contract is terminated. This is without prejudice to Clause ~~22.60(f)~~.

24.3 (e) The Data exporter shall be entitled to terminate the contract, insofar as it concerns the Processing of Personal data under these Clauses, where:

(a) the Data exporter has suspended the Transfer of Personal data to the Data importer pursuant to paragraph ~~24.2(b)~~ and compliance with the Clauses is not restored within a reasonable time and in any event within one month of suspension;

(b) the Data importer is in substantial or persistent breach of these Clauses; or

(c) the Data importer fails to comply with a binding decision of a competent court or a competent Supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent Supervisory authority 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 non-compliant~~ Party, unless the Parties have agreed otherwise.

24.4 (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph ~~24.3(e)~~ shall at the choice of the Data exporter immediately be returned to the Data exporter or deleted in its entirety ~~unless their processing is permissible on another legitimate ground and for compatible purposes~~. The same shall apply to any copies of the data.

24.5 The Data importer shall certify the deletion of the ~~d~~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.

Clause 253. Governing law

These Clauses shall be governed by the law of the country of the Data Exporter, ~~provided such law allows for Third party beneficiary rights.~~

[Alternative in case the law of the country of the Data exporter does not allow for Third party beneficiary rights:] These Clauses shall be governed by the law of [INDICATE LAW THAT ENSURES THIRD PARTY BENEFICIARY RIGHTS].

Clause 264. Choice of forum and jurisdiction

26.1 Any dispute arising from these Clauses shall be resolved by the courts of [_____].

26.2 ~~Data subjects may also bring legal proceedings against the Data exporter and/or Data importer before the courts of the country in which they have their habitual residence.~~

26.3 The Parties agree to submit themselves to the jurisdiction of such courts.

Clause 275. Arbitration

[OPTION 1]

Any dispute, controversy or claim between the Parties arising under, out of or relating to these Clauses including, ~~without limitation,~~ their formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim shall be decided in accordance with the law of the country of the Data exporter.

[WIPO CLAUSE - Arbitration clause only for B2B conflicts]

[Adapted from <https://www.wipo.int/amc/en/clauses/arbitration/index.html>]

[Source https://www.wipo.int/amc/en/center/specific-sectors/b2b_data/]

[OPTION 2]

If the Parties are unable to resolve amicably any difference they may have, the dispute shall be finally settled under the Rules of Arbitration (~~hereinafter,~~ the “Rules”) of the International Chamber of Commerce (“ICC”) by three ~~(3)~~ arbitrators designated by the Parties. Each Party shall designate one arbitrator. The third arbitrator shall be designated by the two arbitrators designated by the

Parties. If either Party fails to designate an arbitrator within thirty ~~(30)~~ days after the filing of the with the ICC, such arbitrator shall be appointed in the manner prescribed by the Rules ~~of the ICC~~. arbitration proceeding hereunder shall be conducted in [City, Country], and shall be conducted in the [~~English~~specify] language. The decision or award of the arbitrators shall be in writing and is binding on both Parties.

[Clause 26. General Provisions

[The following are standard clauses in contracts. They may be merged with the general clauses of the first section of these Clauses in order not to have two general sections]

Notices. All notices and demands hereunder by a Party to the other will be in writing and will be served by personal service, or by email at the address set forth in the Cover Page, or at such different addresses as may be designated by a Party by written notice to the other party. All such notices or demands by mail will be by certified or registered mail, return receipt requested, or by a nationally recognised private express courier, and will be deemed complete upon receipt.

All Waivers in Writing. Any waiver by either party of a breach of any provision of this Agreement must be in writing.

Authority. Each Party hereby represents and warrants that the execution, as applicable, delivery and performance by such Party of this Agreement is within its corporate powers and has been duly authorized by all necessary corporate action on its part.

Separate Counterparts. This Agreement may be simultaneously executed in separate counterparts, all of which will constitute one and the same instrument and each of which will be, and will be deemed to be, an original.

The Annexes to this Agreement constitute an integral part of this Agreement. All the Annexes to these Clauses are an integral part of these Clauses.]

Annex 1 Information about the transfer

EXPLANATORY NOTE:

Description of the transfer: [...]

[Option:

- The categories of ~~e~~**D**ata subjects whose data are transferred;
- The categories of ~~P~~**p**ersonal data transferred;
- ~~The sensitive~~ **Special categories of** data transferred (where applicable) and the restrictions or safeguards applied, which take full account of the nature of the data and the risks involved, such as, for example, strict purpose limitation, access restrictions (including access only for staff who have received specific training), retention of records of data sharing, restrictions on ~~O~~**e**nward transfers or additional security measures;
- The frequency of data transfers (e.g. whether data are transferred once or continuously);
- The nature of the ~~p~~**P**rocessing;
- The purpose(s) of the data ~~T~~**t**ransfer and ~~onward~~**further** processing;
- The period for which the ~~p~~**P**ersonal data will be stored ~~and or~~, where this is not possible, the criteria for determining this period;
- ~~[In the case of transfers to sub-processors, the subject matter, nature and duration of the processing must also be specified.]~~
-

Annex 2
Acession-Signature form

Agreement number [xx/2022]

Designation: [Data Exporter] or [Data importer]

Name:

Address:

City, Country, zip code:

Email:

By the signatures of their authorized representatives below, [Company name] agrees to become, with immediate effect, a Party to and agrees to be bound by the terms of these Clauses.

By Name:

Title: [xxxx]

Signature Date [xxxx]

Annex 3 Security measures

[This annex has to be completed and updated by the Data importer. The technical and organisational measures must be described in specific (and not generic) terms. It must be clearly indicated which measures apply to each transfer/set of transfers.]

[Examples of possible measures:

Measures of pseudonymisation and encryption of Personal data

Measures for ensuring ongoing confidentiality, integrity, availability and resilience of Processing systems and services

Measures for ensuring the ability to restore the availability and access to Personal data in a timely manner in the event of a physical or technical incident

Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the Processing

Measures for user identification and authorisation

Measures for the protection of Personal data during transmission

Measures for the protection of Personal data during storage

Measures for ensuring physical security of locations at which Personal data are processed

Measures for ensuring events logging

Measures for ensuring system configuration, including default configuration

Measures for internal IT and IT security governance and management

Measures for certification/assurance of processes and products

Measures for ensuring data minimisation

Measures for ensuring data quality

Measures for ensuring limited data retention

Measures for ensuring accountability

Measures for allowing data portability and ensuring erasure]

Annex 4