

DATA PROCESSING AGREEMENT FOR VENDORS

This Data Protection Agreement, including its Addenda ("DPA") is by and between the Emburse entity and the Vendor entity named in the Order Form to which this DPA is attached. This DPA shall become effective at the time of execution. This DPA sets forth terms for and governs Processing Personal Data and compliance with Data Protection Laws under Master Service Agreement between Emburse and Vendor (the "Agreement"). This DPA shall amend, replace and supersede any terms of the Agreement governing processing of personal data and information. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

1. PURPOSE AND SCOPE

- 1.1. This DPA shall govern the Processing of Personal Data through the parties' performance of the Agreement in compliance with Data Protection Laws. The subject matter, nature, and purpose of the Processing, type of Personal Data, categories of Data Subjects, and the appropriate technical and organizational measures for security of Personal Data are set forth in Addendum I.
- 1.2. The current list of Sub-processors is provided, and hereby incorporated, in Appendix 3.
- 1.3. EU Standard Contractual Clauses and the UK International Data Transfer Agreement are set forth in Addenda II and III.
- 1.4. This DPA is intended for the purposes of compliance with Data Protection Laws as defined in Section 13.
- 1.5. Emburse shall be the Data Exporter and Vendor shall be the Data Importer as defined in Section 13.

2. COMPLIANCE RESPONSIBILITIES

VENDOR

- 2.1. Vendor shall Process Personal Data in compliance with Data Protection Laws and this DPA.
- 2.2. Vendor shall Process Personal Data in accordance with Emburse's documented instructions but only if such instructions are: (i) based in and for the purpose of performing the terms of the Agreement, and (ii) in compliance with Data Protection Laws. Vendor shall immediately notify Emburse if Vendor reasonably believes that Vendor is unable to comply with such instruction or such instruction is not in

compliance as set forth in (ii) above, or Vendor is required by applicable law or order to Process or discontinue Processing.

- 2.3. Vendor shall limit disclosure or access to Personal Data to any employee, agent, or contractor who need to know or have access to the Personal Data for Vendor's provision of the Service and performance of the Agreement, and Vendor shall guarantee that its Sub-processors undertake the same.
- 2.4. Vendor shall immediately notify Emburse if Vendor receives a request from a Data Subject to exercise the Data Subject's rights of access, rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, or objection to the Processing. Vendor shall cooperate with Emburse in responding to such Data Subject requests.
- 2.5. Vendor shall immediately notify Emburse if it receives any request, complaint, or inquiry from a Data Subject, Supervisory Authority, or third party. Vendor shall fully cooperate with Emburse in the response to such request, complaint, or inquiry. If Emburse seeks a protective order against such request, complaint or inquiry, Vendor shall fully cooperate with Emburse to so seek a protective order to the extent permitted by applicable law
- 2.6. Vendor shall maintain a written record of Processing including the name and contact details of the Sub-Processors, Vendor's data protection officer or representative, categories of Processing, transfers of Personal Data, and a detailed description of appropriate safeguards. Vendor shall make such written records available to a Supervisory Authority upon request.

EMBURSE

- 2.7. Emburse shall take reasonable measures to export, transfer, and otherwise provide Personal Data to Vendor in compliance with Data Protection Laws and this DPA.
- 2.8. Emburse shall respond to, and resolve any request, complaint or inquiry from a Data Subject, Supervisory Authority, or third party.
- 2.9. Emburse shall obtain the relevant agreements, authorizations, consents, instructions or permissions for the Processing of Personal Data.
- 2.10. Except where applicable laws and regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against Vendor directly, the parties agree that: (i) Emburse shall exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (ii) Emburse shall exercise any such rights or remedies under this DPA not separately for each Authorized Affiliate but in a combined manner for itself and all of its Authorized Affiliates together.

3. SECURITY

- 3.1. Vendor shall maintain state of the art technical and organizational measures to ensure a level of security required by Data Protection Laws and any other applicable regulations, including, but not limited to:
 - 3.1.1. Pseudonymization and encryption of Personal Data;
 - 3.1.2. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - 3.1.3. The ability to restore availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - 3.1.4. A process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.
- 3.2. Vendors who will have access to Emburse clients must maintain a level of security, risk, compliance, and privacy that is equal to or stronger than those offered to clients by Emburse.

4. SUB-PROCESSORS

- 4.1. Emburse hereby grants Vendor specific authorization to appoint the third parties set forth in Annex 3 to Process Personal Data as Sub-processors.
- 4.2. Sub-Processors shall Process Personal Data for Vendor only under a written contract executed by Vendor and Sub-processor that includes: (i) the same data protection obligations as set out in in this DPA, in particular sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of Data Protection Laws; and (ii) Standard Contractual Clauses and International Data Transfer Agreement, as applicable.
- 4.3. Vendor shall incorporate the latest version of Standard Contractual Clauses and International Data Transfer Agreement with its Sub-Processors. Vendor shall further ensure that the aforementioned Personal Data transfer mechanisms are compliant with Data Protection Laws and updated if so required by Supervisory Authorities.
- 4.4. Vendor shall be liable for the Processing of Personal Data by its Sub-processors to the same extent Vendor would be liable under this DPA for Processing Personal Data itself.
- 4.5. Emburse may avail itself of all other rights and remedies regarding Sub-processors set forth in this DPA.

5. PERSONAL DATA BREACH NOTIFICATION

- 5.1. Vendor shall notify Emburse of a Personal Data Breach affecting Emburse's Personal Data, without undue delay within twenty four (24) hours upon Vendor becoming aware of the Personal Data Breach. Said notification by Vendor to Emburse shall include the following: (i) the approximate number of Data Subjects and categories of Personal Data affected by the Personal Data Breach; (ii) a point of contact for Emburse to receive further information from Vendor about the Personal Data Breach; (iii) the likely consequences of the Personal Data Breach; and (iv) the measures taken or proposed to be taken by Vendor to investigate and remediate the Personal Data Breach.
- 5.2. Vendor shall not notify any third party, Supervisory Authority, and/or Data Subject of a Personal Data Breach without previously notifying Emburse of the Personal Data Breach.
- 5.3. Once Emburse is properly notified of the Personal Data Breach, Emburse and Vendor shall jointly notify Data Subjects and Supervisory Authorities of the Personal Data Breach affecting Emburse's Personal Data, as required by applicable law.
- 5.4. Such actions shall include the establishment of a point of contact for Vendor's receipt and response to inquiries from Data Subjects, and an electronic method of providing information to Data Subjects regarding the Personal Data Breach.
- 5.5. Vendor shall investigate, notify of, remediate, and mitigate a Personal Data Breach. Emburse shall be able to audit Vendor to ensure Vendor's compliance with this clause 5.5.
- 5.6. Vendor shall provide Emburse with any and all assistance in fulfilling its obligations with Section 5. Vendor shall be solely financially responsible for any assistance, investigation, remediation, and mitigation of a Personal Data Breach.
- 5.7. Vendor shall, without limitation of any kind whatsoever, indemnify, defend and hold harmless Emburse and its Authorized Affiliates against and from any and all damages, penalties, costs and expenses, and claims, arising from: (i) Vendor's breach of this DPA or non-compliance with Data Protection Laws; and (ii) any Personal Data Breach, loss, corruption or misappropriation of, or unauthorized access to, Personal Data due to Vendor's negligence, willful misconduct, or non-compliance with Data Protection Laws.

6. DATA PROTECTION IMPACT ASSESSMENT

- 6.1. Vendor shall, upon Emburse's written request, assist Emburse in conducting a Data Protection Impact Assessment.

- 6.2. Emburse shall bear the internal costs associated with the Data Protection Impact Assessment. Vendor shall bear all other costs of conducting the Data Protection Impact Assessment.
- 6.3. Vendor shall assist Emburse mitigate risks, if the Data Protection Impact Assessment indicates a high level of risk in Processing.

7. RETENTION AND DELETION OF PERSONAL DATA

- 7.1. Vendor, its Affiliates and Sub-processors shall retain Personal Data for a period of ninety (90) days from the effective date of expiration or termination of the Agreement.
- 7.2. Upon the effective date of expiration or termination of the ninety (90) day period set forth in Section 7.1, Vendor shall immediately destroy all copies of such Personal Data, and direct its Affiliates and Sub-processors to undertake the same. Vendor shall provide to Emburse a certification of the destruction of Personal Data upon Emburse's request.
- 7.3. During the term of the Agreement, Emburse may at any time, upon request, access, export and retrieve Emburse Personal Data in a standard format.
- 7.4. Vendor shall grant Emburse access to the Service for thirty (30) days after termination for the sole purpose of export and retrieval. Vendor shall not be entitled to additional fees or payments for this assistance.

8. CERTIFICATIONS AND AUDITS

- 8.1. Vendor shall provide to Emburse information on Vendor's technical and organizational measures as set forth in this DPA, including third party certifications and security documentation, upon the written request of Emburse.
- 8.2. Emburse may audit Vendor in the course of business if: (i) Vendor fails to provide the information required under Section 8.1; or (ii) an audit is requested by a Supervisory Authority.
- 8.3. Emburse may not request such an audit more than once in any twelve (12) month period, except when the audit is required for regulatory purposes and/or as part of a Personal Data Breach investigation.
- 8.4. Emburse shall give Vendor reasonable prior written notice of any audit initiated pursuant to Section 8.2. The date, time, place and scope of such audits shall be mutually agreed by the parties.
- 8.5. Audits shall be limited to a reasonable period of time according to industry standards and best practices. Emburse shall make reasonable efforts to avoid and mitigate risk of

any damage, injury or disruption to Vendor's premises, equipment, personnel, operations, services and business in the course of such audit.

- 8.6. Emburse shall bear the costs and expenses of audits initiated pursuant to Section 8.2; provided, Vendor shall bear its own costs and expenses in making reasonable efforts to cooperate with such audit.
- 8.7. The restrictions reflected in Sections 8.3, 8.4, 8.5, and 8.6 shall not apply in case of a Personal Data breach or if the audit arises from Vendor's violation of this DPA.
- 8.8. In case of a Personal Data Breach and/or Vendor violation of this DPA, Vendor shall bear all financial costs associated with the audit.
- 8.9. Audits pursuant to Section 8.7 shall have no limitations and shall be conducted at Emburse sole discretion and to Emburse full satisfaction.

9. RESTRICTED INTERNATIONAL DATA TRANSFERS

9.1. EEA Restricted International Data Transfers - Standard Contractual Clauses

- 9.1.1. Vendor and Emburse agree that in respect to Restricted International Transfers subject to GDPR the parties hereby enter Module 3 of the EEA Standard Contractual Clauses.
- 9.1.2. Module 3 of the EEA Standard Contractual Clauses shall also apply to Restricted International Transfers affecting Personal Data originated in Switzerland.
- 9.1.3. Module 3 of the EEA Standard Contractual will come into effect upon the commencement of a Restricted International Transfer.
- 9.1.4. Emburse shall be the Data Exporter and Vendor shall be the Data Importer.
- 9.1.5. Vendor and Emburse agree to the following:
 - 9.1.5.1. Clause 7 - *Docking Clause* shall apply
 - 9.1.5.2. Clause 9 - *Use of Sub-Processors Option 1* shall apply and the "time period" shall be 30 days.
 - 9.1.5.3. Clause 11(a) - *Redress* optional language shall not apply.
 - 9.1.5.4. Clause 13(a) - *Supervision*
 - 9.1.5.4.1. Where Emburse is established in an EU Member State, the following shall apply: "*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 1(C), shall act as the supervisor authority of the Member State in which Emburse is established of (if different) the lead supervisory authority of the Emburse in respect of a cross-border processing activity;” OR

- 9.1.5.4.2. Where the Emburse is not established in an EU Member State, but falls within the territorial scope of the application of the GDPR, in accordance with Article 3(2) and has appointed a representative pursuant to Article 27(1) of the GDPR the following shall apply: *“The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of the Regulation (EU) 2016/679 is established, as indicated in Annex 1(C) shall act as the competent authority;” OR*
- 9.1.5.4.3. Where Emburse is not established in an EU Member State, but falls within the territorial scope of application of the GDPR in accordance with Article 3(2) without however having to appoint a representative the following shall apply: *“The supervisory authority of one of the Member States in which the data subjects whose personal data in transferred under these Clauses in relation to the offering of goods or services to them, or whose behavior is monitored, are located, as indicated in Annex 1(C), shall act as a competent supervisory authority”*
- 9.1.5.5. Clause 17 - *Governing Law* Option 2 shall apply and the “Member State” shall be Germany
- 9.1.5.6. Clause 18 - *Choice of Forum and Jurisdiction* the Member State shall be Germany
- 9.1.5.7. Annex 1
 - 9.1.5.7.1. Emburse shall be the Data Exporter
 - 9.1.5.7.2. Vendor shall be the Data Processor
 - 9.1.5.7.3. The Processing operations shall be those specified in the Agreement and supporting documents
- 9.1.5.8. Annex 2 - See Addendum I
- 9.1.5.9. Annex 3 - List of Sub-Processors

9.2. UK Restricted International Data Transfers

- 9.2.1. In cases of Restricted International Data Transfers subject to UK GDPR, the EEA Standard Contractual Clauses shall be read alongside with, and amended by, the provisions of Part 2 (Mandatory Clauses) of the UK IDTA.
- 9.2.2. Emburse and Vendor agree that the information required for the completion of Part 1 of the UK IDTA shall be included in Addendum III.

9.3. Vendor and Sub-Processors Restricted International Transfers

- 9.3.1. Vendor and its Sub-Processors shall enter Module 3 of the EEA Standard Contractual Clauses whenever appropriate and necessary for compliance with Data Protection Laws.
- 9.3.2. Vendor and its Sub-Processors shall enter the UK IDTA whenever appropriate and necessary for compliance with Data Protection Laws.

9.4. Amendments, Updates, Additional Protections

- 9.4.1. Vendor and Emburse acknowledge and agree that if the European Commission and/or the UK Government issue any amendment or replacements of the Standard Contractual Clauses pursuant to Article 46(5) of the GDPR or Article 46 of the UK GDPR, such clauses will automatically become in full force and effect.
- 9.4.2. Vendor and Emburse agree that if at any time during the length of the Agreement a Supervisory Authority or court of competent jurisdiction mandates additional specific safeguards prior to a Restricted International Data Transfer, Emburse and Vendor shall negotiate in good faith the implementation of the new safeguards required for compliance.

10. PROCESSING OF PERSONAL DATA AS RELATED TO CCPA

- 10.1. To the extent CCPA applies to any Personal Data, such Personal Data will be disclosed by Emburse to Vendor for a “Business Purpose” and Vendor will act as Emburse’s “Service Provider” as defined by CCPA. Vendor shall not retain, use, sell, rent, or disclose Personal Data for any purpose other than for the specific purpose of providing Services as described in the Agreement or as permitted or required by CCPA.
- 10.2. Vendor may disclose Personal Data to Emburse’s service providers as needed to provide the Service contracted by Emburse.
- 10.3. Vendor may engage service providers to fulfill its Processing obligations, pursuant to Emburse’s specific approval. In such cases, Vendor’s service providers are only granted

permission to Process Personal Data to the extent needed for Vendor to provide Services.

- 10.4. Vendor shall bind its service providers to comply with materially similar obligations to those included in this DPA.

11. SEVERANCE

If any provision of this DPA is held invalid or unenforceable, the parties agree that the remainder of this DPA shall remain valid and in force. Any such invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, or (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

12. NOTICES

All instructions, requests, consents, notices, and other communications under and regarding this DPA, from either party or from third parties, shall be sent or forwarded to the following representatives of Emburse and Vendor as directed by this DPA and the Agreement:

Emburse: Emburse Inc.

Attn: Emburse Legal Department, 320 Cumberland Ave., Portland, ME 04101
privacy@emburse.com.

Vendor: as stipulated in the Agreement

Vendor point of contact: As stipulated in the Agreement

13. DEFINITIONS

In this DPA, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

- 13.1. "**Affiliate**" means each legal entity (other than non-operating holding companies) that is controlled by, or is or under common control with Emburse on or after the Effective Date and for so long as such entity remains controlled by, or is under common control with Emburse or Vendor (where "**controls**", in its various forms herein, means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).
- 13.2. "**Authorized Affiliate**" means any Vendor Affiliate which is: (i) subject to Data Protection Laws; and (ii) permitted to use the Services pursuant to the Agreement between Vendor and Emburse.

- 13.3. “**CCPA**” means the California Consumer Privacy Act, Cal. Civ. Code § 1978.00 et seq., and its implementing regulations and the California Privacy Rights and Enforcement Act of 2020.
- 13.4. “**CPRA**” means the California Privacy Rights Act of 2020, enhancing the protection of California residents granted by CCPA.
- 13.5. “**Vendor**” means the entity that executed the Agreement together with its Affiliates (for so long as they remain Affiliates).
- 13.6. “**Data Protection Laws**” means any and all legislations protecting the Personal Data of natural persons that is applicable to the processor of Personal Data including, but not limited to, GDPR, UK GDPR, CCPA, CPRA and any legislation that supplements or amends the aforementioned.
- 13.7. “**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/ED (General Data Protection Regulation).
- 13.8. “**Personal Data**” means any information about an individual that (i) can be used to identify, contact, or locate a specific individual, (ii) can be combined with other information that can be used to identify, contact, or locate a specific individual, or (iii) is defined as “Personal Data” or “Personal Information” by Data Protection Laws or regulations relating to the collection, use, storage, or disclosure of the information about an identifiable individual.
- 13.9. “**Restricted International Data Transfer**” means a transfer of Personal Data from Emburse to Vendor where such transfer would be prohibited by Data Protection Laws in the absence of executed Standard Contractual Clauses.
- 13.10. “**Standard Contractual Clauses**” means the EEA Module 3 Processor to Processor Standard Contractual Clauses established by the Commission Implementing Decision (EU) 2021/915 of 4 June 2021. The Standard Contractual Clauses current as of the effective date of the Agreement are attached hereto as Addendum II.
- 13.11. “**Sub-Processor**” means Vendor Affiliates and third parties engaged by Vendor or its Affiliates in connection with the Service and which Process Personal Data in accordance with this DPA.
- 13.12. “**Subscription Term**” shall have the meaning set forth in the Terms and Conditions referenced in the Order Form.



- 13.13. **“UK Data Protection Laws”** means United Kingdom General Data Protection Regulation (**“UK GDPR”**), the Data Protection Act 2018, and any law implementing or supplementing such legislation.
- 13.14. The terms **“Business Purpose,” “Controller,” “Data Exporter,” “Data Importer,” “Data Protection Impact Assessment,” “Data Subject,” “Personal Data Breach,” “Processing,” “Processor,” “Service Provider,” “Special Categories of Data,”** and **“Supervisory Authority”** shall have the meaning described in the Data Protection Laws, and in each case their cognate terms shall be construed accordingly.

IN WITNESS WHEREOF, the Parties have caused this Data Protection Agreement to be executed by their duly authorized representatives, as of the Effective Date.

**Emburse, Inc. for itself and on behalf of
for itself and on behalf of its Affiliates:**

Vendor :

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ADDENDUM I

RESERVED FOR SECURITY EXHIBIT

ADDENDUM II

STANDARD CONTRACTUAL CLAUSES

Processor to Processor (Module 3)

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)^[1] 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.

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) Clause 8 - Module One: Clause 8.5 (e) and Clause 8.9(b); 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); Module Four: Clause 8.1 (b) and Clause 8.3(b);
 - (iii) Clause 9 - Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
 - (iv) Clause 12 - Module One: Clause 12(a) and (d); 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 One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- (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

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

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 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.
- (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^[5].

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 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^[6] (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
- (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 THREE: Transfer processor to processor

- (a) **OPTION 1: SPECIFIC PRIOR AUTHORISATION** The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the prior specific written authorisation of the controller. The data importer shall submit the request for specific authorisation at least **30 days** prior to the engagement of the sub-processor, together with the information necessary to enable the controller to decide on the authorisation. It shall inform the data exporter of such engagement. The list of sub-processors already authorised by the controller can be found in Annex III. The Parties shall keep Annex III up to date.

~~OPTION 2: GENERAL WRITTEN AUTHORISATION~~ 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 [*Specify time period*] 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.^[9] 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 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.

~~[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body^[11] at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]~~

MODULE THREE: Transfer processor to processor

- (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 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 THREE: Transfer processor to processor

- (a) [Where the data exporter is established in an EU Member State:] 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 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 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 THREE: Transfer processor to processor

(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

- (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^[12];
 - (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 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 [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 [for Module Three: the controller or] 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 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 THREE: Transfer processor to processor

(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

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.
- (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 [for Module Three: and 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) [For Modules One, Two and Three: 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 shall apply to any copies of the data.] [For Module Four: Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof.] 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 THREE: Transfer processor to processor

~~[OPTION 1: 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 _____ (specify Member State).]~~

[OPTION 2 (for Modules Two and Three): These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of Germany (*specify Member State*).]

Clause 18

Choice of forum and jurisdiction

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 **Germany** (*specify Member State*).
- (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

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. LIST OF PARTIES

Data exporter(s): [*Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union*]

1. Name: Emburse: Emburse Inc.



Address: Emburse Legal Department, 320 Cumberland Ave., Portland, ME 04101
privacy@emburse.com.

Contact person's name, position and contact details: Bill Bowman - DPO

Activities relevant to the data transferred under these Clauses: ...

Signature and date: ...

Role (controller/processor): **Processor**

2. ...

Data importer(s): *[Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]*

1. Name: ...

Address: ...

Contact person's name, position and contact details: ...

Activities relevant to the data transferred under these Clauses: ...

Signature and date: ...

Role (controller/processor): ...**Subprocessor**

2. ...

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

.....

Categories of personal data transferred

.....

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.

.....

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

Continuous

Nature of the processing

.....

Purpose(s) of the data transfer and further processing

Services as stipulated in the Order Form

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

.....

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

.....

C. COMPETENT SUPERVISORY AUTHORITY

Identify the competent supervisory authority/ies in accordance with Clause 13

As stated in the DPA

As stipulated in Section 9.1.5.4 of the DPA

ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

See Amendment I

EXPLANATORY NOTE:

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

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.

[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 data during transmission

Measures for the protection of 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]

For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter

ANNEX III – LIST OF SUB-PROCESSORS

MODULE THREE: Transfer processor to processor

EXPLANATORY NOTE:

This Annex must be completed for Modules Two and Three, in case of the specific authorisation of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

1. Name: ...

Address: ...

Contact person's name, position and contact details: ...

Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised): ...

[1] Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295 of 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations

as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision [...].

- [2] This requires rendering the data anonymous in such a way that the individual is no longer identifiable by anyone, in line with recital 26 of Regulation (EU) 2016/679, and that this process is irreversible.
- [3] The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.
- [4] The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.
- [5] See Article 28(4) of Regulation (EU) 2016/679 and, where the controller is an EU institution or body, Article 29(4) of Regulation (EU) 2018/1725.
- [6] The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purposes of these Clauses.
- [7] This includes whether the transfer and further processing 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 or offences.
- [8] This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.
- [9] This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.
- [10] That period may be extended by a maximum of two more months, to the extent necessary taking into account the complexity and number of requests. The data importer shall duly and promptly inform the data subject of any such extension.
- [11] The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.
- [12] As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such

requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

ADDENDUM III

IDTA

International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

VERSION B1.0, in force 21 March 2022

This Addendum has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

Part 1: Tables

Table 1: Parties

Start date		
The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
Parties' details	<p>Full legal name: Emburse Inc.</p> <p>Trading name (if different):</p> <p>Main address (if a company registered address): Emburse Legal Department, 320 Cumberland Ave., Portland, ME 04101</p> <p>Official registration number (if any) (company number or similar identifier):</p>	<p><i>As stated in the Agreement</i></p> <p>Full legal name:</p> <p>Trading name (if different):</p> <p>Main address (if a company registered address):</p> <p>Official registration number (if any) (company number or similar identifier):</p>
Key Contact	<p>Full Name (optional):</p> <p>Job Title:</p> <p>Contact details including email:</p>	<p>Full Name (optional):</p> <p>Job Title:</p> <p>Contact details including email:</p>
Signature (if required for the purposes of Section 2)		

Table 2: Selected SCCs, Modules and Selected Clauses

Addendum EU SCCs	<p>The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information:</p> <p>Date:</p> <p>Reference (if any):</p> <p>Other identifier (if any):</p> <p>Or</p> <p>the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum:</p>
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Module	Module in operation	Clause 7 (Docking Clause)	Clause 11 (Option)	Clause 9a (Prior Authorisation or General Authorisation)	Clause 9a (Time period)	Is personal data received from the Importer combined with personal data collected by the Exporter?
1						
2		Y	N	Option 1	30 days	
3						
4						

Table 3: Appendix Information

“**Appendix Information**” means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

Annex 1A: List of Parties:

Annex 1B: Description of Transfer:

Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data:

Annex III: List of Sub processors (Modules 2 and 3 only):

Table 4: Ending this Addendum when the Approved Addendum Changes

Ending this Addendum when the Approved Addendum changes	Which Parties may end this Addendum as set out in Section 19: Importer Exporter neither Party
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Part 2: Mandatory Clauses

Entering into this Addendum

1. Each Party agrees to be bound by the terms and conditions set out in this Addendum, in exchange for the other Party also agreeing to be bound by this Addendum.
2. Although Annex 1A and Clause 7 of the Approved EU SCCs require signature by the Parties, for the purpose of making Restricted Transfers, the Parties may enter into this Addendum in any way that makes them legally binding on the Parties and allows data subjects to enforce their rights as set out in this Addendum. Entering into this Addendum will have the same effect as signing the Approved EU SCCs and any part of the Approved EU SCCs.

Interpretation of this Addendum

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

Addendum	This International Data Transfer Addendum which is made up of this Addendum incorporating the Addendum EU SCCs.
Addendum EU SCCs	The version(s) of the Approved EU SCCs which this Addendum is appended to, as set out in Table 2, including the Appendix Information.
Appendix Information	As set out in Table 3.
Appropriate Safeguards	The standard of protection over the personal data and of data subjects' rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR.
Approved Addendum	The template Addendum issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18.
Approved EU SCCs	The Standard Contractual Clauses set out in the Annex of Commission Implementing Decision (EU) 2021/914 of 4 June 2021.
ICO	The Information Commissioner.
Restricted Transfer	A transfer which is covered by Chapter V of the UK GDPR.
UK	The United Kingdom of Great Britain and Northern Ireland.

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	As defined in section 3 of the Data Protection Act 2018.

4. This Addendum must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties' obligation to provide the Appropriate Safeguards.
5. If the provisions included in the Addendum EU SCCs amend the Approved SCCs in any way which is not permitted under the Approved EU SCCs or the Approved Addendum, such amendment(s) will not be incorporated in this Addendum and the equivalent provision of the Approved EU SCCs will take their place.
6. If there is any inconsistency or conflict between UK Data Protection Laws and this Addendum, UK Data Protection Laws applies.
7. If the meaning of this Addendum is unclear or there is more than one meaning, the meaning which most closely aligns with UK Data Protection Laws applies.
8. 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

9. Although Clause 5 of the Approved EU SCCs sets out that the Approved EU SCCs prevail over all related agreements between the parties, the parties agree that, for Restricted Transfers, the hierarchy in Section 10 will prevail.
10. Where there is any inconsistency or conflict between the Approved Addendum and the Addendum EU SCCs (as applicable), the Approved Addendum overrides the Addendum EU SCCs, except where (and in so far as) the inconsistent or conflicting terms of the Addendum EU SCCs provides greater protection for data subjects, in which case those terms will override the Approved Addendum.
11. Where this Addendum incorporates Addendum EU SCCs which have been entered into to protect transfers subject to the General Data Protection Regulation (EU)

2016/679 then the Parties acknowledge that nothing in this Addendum impacts those Addendum EU SCCs.

Incorporation of and changes to the EU SCCs

12. This Addendum incorporates the Addendum EU SCCs which are amended to the extent necessary so that:
 - a. together they operate for data 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 data transfer, and they provide Appropriate Safeguards for those data transfers;
 - b. Sections 9 to 11 override Clause 5 (Hierarchy) of the Addendum EU SCCs; and
 - c. this Addendum (including the Addendum EU SCCs incorporated into it) is (1) governed by the laws of England and Wales and (2) any dispute arising from it is resolved by the courts of England and Wales, in each case unless the laws and/or courts of Scotland or Northern Ireland have been expressly selected by the Parties.
13. Unless the Parties have agreed alternative amendments which meet the requirements of Section 12, the provisions of Section 15 will apply.
14. No amendments to the Approved EU SCCs other than to meet the requirements of Section 12 may be made.
15. The following amendments to the Addendum EU SCCs (for the purpose of Section 12) are made:
 - a. References to the "Clauses" means this Addendum, incorporating the Addendum EU SCCs;
 - b. In Clause 2, delete the words:

"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";
 - c. 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.";
 - d. Clause 8.7(i) of Module 1 is replaced with:

“it is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer”;

- e. Clause 8.8(i) of Modules 2 and 3 is replaced with:

“the onward transfer is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer;”

- f. References to “Regulation (EU) 2016/679”, “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)” and “that Regulation” are all replaced by “UK Data Protection Laws”. References to specific Article(s) of “Regulation (EU) 2016/679” are replaced with the equivalent Article or Section of UK Data Protection Laws;

- g. References to Regulation (EU) 2018/1725 are removed;

- h. References to the “European Union”, “Union”, “EU”, “EU Member State”, “Member State” and “EU or Member State” are all replaced with the “UK”;

- i. The reference to “Clause 12(c)(i)” at Clause 10(b)(i) of Module one, is replaced with “Clause 11(c)(i)”;

- j. Clause 13(a) and Part C of Annex I are not used;

- k. The “competent supervisory authority” and “supervisory authority” are both replaced with the “Information Commissioner”;

- l. In Clause 16(e), subsection (i) is replaced with:

“the Secretary of State makes regulations pursuant to Section 17A of the Data Protection Act 2018 that cover the transfer of personal data to which these clauses apply;”;

- m. Clause 17 is replaced with:

“These Clauses are governed by the laws of England and Wales.”;

- n. Clause 18 is replaced with:

“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.”; and

- o. The footnotes to the Approved EU SCCs do not form part of the Addendum, except for footnotes 8, 9, 10 and 11.

Amendments to this Addendum

16. The Parties may agree to change Clauses 17 and/or 18 of the Addendum EU SCCs to refer to the laws and/or courts of Scotland or Northern Ireland.
17. If the Parties wish to change the format of the information included in Part 1: Tables of the Approved Addendum, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.
18. From time to time, the ICO may issue a revised Approved Addendum which:
 - a. makes reasonable and proportionate changes to the Approved Addendum, including correcting errors in the Approved Addendum; and/or
 - b. reflects changes to UK Data Protection Laws;

The revised Approved Addendum will specify the start date from which the changes to the Approved Addendum are effective and whether the Parties need to review this Addendum including the Appendix Information. This Addendum is automatically amended as set out in the revised Approved Addendum from the start date specified.

19. If the ICO issues a revised Approved Addendum under Section 18, if any Party selected in Table 4 “Ending the Addendum when the Approved Addendum changes”, will as a direct result of the changes in the Approved Addendum have a substantial, disproportionate and demonstrable increase in:
 - a its direct costs of performing its obligations under the Addendum; and/or
 - b its risk under the Addendum,

and in either case it has first taken reasonable steps to reduce those costs or risks so that it is not substantial and disproportionate, then that Party may end this Addendum at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved Addendum.

20. The Parties do not need the consent of any third party to make changes to this Addendum, but any changes must be made in accordance with its terms.

Alternative Part 2 Mandatory Clauses:

**Mandatory
Clauses**

Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.