Appendix 13 – Draft GDPR Processor Agreement

The undersigned

1. EIT Digital IVZW, located Rui Guimard 7, B-1040, Brussels Belgium, hereinafter referred to as "Client", lawfully represented by its legal representative CEO Mr. Prof. W. Jonker,

And

2. NAME CONTRACTOR, established in (STREET, NUMBER, POSTAL CODE, CITY, COUNTRY), hereinafter referred to as "Contractor", lawfully represented by its legal representative NAME AND FUNCTION.

Hereinafter individually or collectively referred to as "Party" or "Parties".

Considering the following:

- Client is a leading European digital innovation and entrepreneurial education organisation driving Europe's digital transformation.
- To obtain accountancy and project administration services, Client has conducted a procurement procedure in accordance with its own procurement policy, in which it launched a request for proposal (RFP) for the assignment: accountancy and project administration (hereinafter "the Assignment").
- Contractor specializes in accountancy services and project administration and it is in that capacity, able and willing to provide services and/or deliveries according to the RFP Documents;
- Contractor has submitted its offer on March 30st, 2018 (hereinafter "the Tender");
- Client entered into the agreement to provide the accountancy and administration services (Hereinafter: "Principal Agreement") for the full initial contract duration and its renewals as provided for in the RFP (in total 5 years), it being understood that Client only undertakes legally binding commitments for the initial contract term of 1 year, due to the annual cycle of its business plan according to the FPA and SGA;
- Contractor agrees to perform the services all upon the terms and subject to the conditions set forth in the Principal Agreement;
- Terms defined in the RFP shall have the same meaning in this Agreement unless otherwise provided for.

The following are agreed as follows:

This GDPR Processor Agreement (hereinafter "the Agreement") forms part of the Principal Agreement between: Contractor acting on its own behalf and as agent for each of its legally affiliated entities, and Client acting on its own behalf and as agent for each of its legally affiliated entities.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement. Except where the context requires otherwise, references in this Agreement to the Principal Agreement are to the Principal Agreement as amended by, and including, this Agreement.

1. Definitions

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

Applicable Laws - (a) European Union or Member State laws with respect to any Client Personal Data in respect of which any Client Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Client Personal Data in respect of which any Client Group Member is subject to any other Data Protection Laws;

Client Affiliate - An entity that owns or controls, is owned or controlled by or is or under common control or ownership with Client, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;

Client Group Member - Client or any Client Affiliate;

Client Personal Data - Any Personal Data Processed by a Contracted Processor on behalf of a Client Group Member pursuant to or in connection with the Principal Agreement;

Contractor Affiliate - An entity that owns or controls, is owned or controlled by or is or under common control or ownership with Contractor, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

Contracted Processor - Contractor or a Subprocessor;

Data Protection Laws - EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

EEA - The European Economic Area;

EU Data Protection Laws - EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR ;

GDPR - EU General Data Protection Regulation 2016/679;

Restricted Transfer -
- A transfer of Client Personal Data from any Client Group Member to a Contracted Processor, or;
- An onward transfer of Client Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under section [6.4.c or] 12 below;

Services - The services and other activities to be supplied to or carried out by or on behalf of Contractor for Client Group Members pursuant to the Principal Agreement;

Standard Contractual Clauses - The contractual clauses set out in Annex 2, amended as indicated (in square brackets and italics) in that Annex and under section 13.4;

Subprocessor - Any person (including any third party and any Contractor Affiliate, but excluding an employee of Contractor or any of its sub-contractors) appointed by or on behalf of Contractor or any Contractor Affiliate to Process Personal Data on behalf of any Client Group Member in connection with the Principal Agreement; and

The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" - Have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

The word "**include**" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

2. Authority

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

3. Processing of Client Personal Data

1. Contractor and each Contractor Affiliate shall:
   a. comply with all applicable Data Protection Laws in the Processing of Client Personal Data and;
   b. not Process Client Personal Data other than on the relevant Client Group Member's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case Contractor or the relevant Contractor Affiliate shall to the extent permitted by Applicable Laws inform the relevant Client Group Member of that legal requirement before the relevant Processing of that Personal Data.
2. Each Client Group Member:
   a. instructs Contractor and each Contractor Affiliate (and authorises Contractor and each Contractor Affiliate to instruct each Subprocessor) to:
      i. Process Client Personal Data, and;
      ii. In particular, transfer Client Personal Data to any country or territory,
      As reasonably necessary for the provision of the Services and consistent with the Principal Agreement, and;
   b. warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 3.2 sub a on behalf of each relevant Client Affiliate.
3. Annex 1 to this Agreement sets out certain information regarding the Contracted Processors' Processing of the Client Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent

requirements of other Data Protection Laws). Client may make reasonable amendments to Annex 1 by written notice to Contractor from time to time as Client reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this section 3.3) confers any right or imposes any obligation on any party to this Agreement.

4. Contractor and Contractor Affiliate Personnel

Contractor and each Contractor Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Client Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Client Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

5. Security

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Contractor and each Contractor Affiliate shall in relation to the Client Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
2. In assessing the appropriate level of security, Contractor and each Contractor Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

6. Subprocessing

1. Each Client Group Member authorises Contractor and each Contractor Affiliate to appoint (and permit each Subprocessor appointed in accordance with this section 6 to appoint) Subprocessors in accordance with this section 6 and any restrictions in the Principal Agreement.
2. Contractor and each Contractor Affiliate may continue to use those Subprocessors already engaged by Contractor or any Contractor Affiliate as at the date of this Agreement, subject to Contractor and each Contractor Affiliate in each case as soon as practicable meeting the obligations set out in section 6.4.
3. Contractor shall give Client prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within thirty (30) days of receipt of that notice, Client notifies Contractor in writing of any objections (on reasonable grounds) to the proposed appointment.
4. With respect to each Subprocessor, Contractor or the relevant Contractor Affiliate shall:
   a. before the Subprocessor first Processes Client Personal Data (or, where relevant, in accordance with section 6.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Client Personal Data required by the Principal Agreement;
   b. ensure that the arrangement between on the one hand (a) Contractor, or (b) the relevant Contractor Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same

level of protection for Client Personal Data as those set out in this Agreement and meet the requirements of article 28(3) of the GDPR;

    c. if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) Contractor, or (b) the relevant Contractor Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, or before the Subprocessor first Processes Client Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the relevant Client Group Member(s) (and Client shall procure that each Client Affiliate party to any such Standard Contractual Clauses co-operates with their population and execution), and;

    d. provide to Client for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) as Client may request from time to time.

5. Contractor and each Contractor Affiliate shall ensure that each Subprocessor performs the obligations under sections 3.1, 4, 5, 7.1, 8.2, 9 and 11.1, as they apply to Processing of Client Personal Data carried out by that Subprocessor, as if it were party to this Agreement in place of Contractor.

7. Data Subject Rights

1. Taking into account the nature of the Processing, Contractor and each Contractor Affiliate shall assist each Client Group Member by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client Group Members' obligations, as reasonably understood by Client, to respond to requests to exercise Data Subject rights under the Data Protection Laws .

2. Contractor shall:

    a. promptly notify Client if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Client Personal Data, and;

    b. ensure that the Contracted Processor does not respond to that request except on the documented instructions of Client or the relevant Client Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case Contractor shall to the extent permitted by Applicable Laws inform Client of that legal requirement before the Contracted Processor responds to the request.

8. Personal Data Breach

1. Contractor shall notify Client without undue delay upon Contractor or any Subprocessor becoming aware of a Personal Data Breach affecting Client Personal Data, providing Client with sufficient information to allow each Client Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

2. Contractor shall co-operate with Client and each Client Group Member and take such reasonable commercial steps as are directed by Client to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

9. Data Protection Impact Assessment and Prior Consultation

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

10.   Deletion or return of Client Personal Data

1. Subject to sections 10.2 and 10.3 Contractor and each Contractor Affiliate shall promptly and in any event within thirty (30) days of the date of cessation of any Services involving the Processing of Client Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Client Personal Data.

2. Subject to section 10.3, Client may in its absolute discretion by written notice to Contractor within thirty (30) days of the Cessation Date require Contractor and each Contractor Affiliate to (a) return a complete copy of all Client Personal Data to Client by secure file transfer in such format as is reasonably notified by Client to Contractor; and (b) delete and procure the deletion of all other copies of Client Personal Data Processed by any Contracted Processor. Contractor and each Contractor Affiliate shall comply with any such written request within thirty (30) days of the Cessation Date.

3. Each Contracted Processor may retain Client Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Contractor and each Contractor Affiliate shall ensure the confidentiality of all such Client Personal Data and shall ensure that such Client Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

4. Contractor shall provide written certification to Client that it and each Contractor Affiliate has fully complied with this section 10 within thirty (30) days of the Cessation Date.

11.   Audit rights

1. Subject to sections 11.2 to 11.4, Contractor and each Contractor Affiliate shall make available to each Client Group Member on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by any Client Group Member or an auditor mandated by any Client Group Member in relation to the Processing of the Client Personal Data by the Contracted Processors.

2. Information and audit rights of the Client Group Members only arise under section 11.1 to the extent that the Principal Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

3. A Client Group Member may only mandate an auditor for the purposes of section 11.1 if the auditor is identified in the list set out in Annex 3 to this Agreement, as that list is amended by agreement between the parties in writing from time to time. Contractor shall not unreasonably withhold or delay agreement to the addition of a new auditor to that list.

4. Client or the relevant Client Affiliate undertaking an audit shall give Contractor or the relevant Contractor Affiliate reasonable notice of any audit or inspection to be conducted under section 11.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it

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

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

where Client or the relevant Client Affiliate undertaking an audit has identified its concerns or the relevant requirement or request in its notice to Contractor or the relevant Contractor Affiliate of the audit or inspection.

12.   Restricted Transfers

1. Subject to section 12.3, each Client Group Member (as "Data Exporter") and each Contracted Processor, as appropriate, (as "Data Importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that Client Group Member to that Contracted Processor.
2. The Standard Contractual Clauses shall come into effect under section 12.1 on the later of:
   a. the Data Exporter becoming a party to them;
   b. the Data Importer becoming a party to them; and
   c. commencement of the relevant Restricted Transfer.
3. Section 12.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.
4. Contractor warrants and represents that, before the commencement of any Restricted Transfer to a Subprocessor which is not a Contractor Affiliate , Contractor's or the relevant Contractor Affiliate's entry into the Standard Contractual Clauses under section 12.1, and agreement to variations to those Standard Contractual Clauses made under section 13.4.a, as agent for and on behalf of that Subprocessor will have been duly and effectively authorised (or subsequently ratified) by that Subprocessor.

13.   General Terms

1. Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:

a. the parties to this Agreement hereby submit to the choice of jurisdiction stipulated in the Principal Agreement with respect to any disputes or claims howsoever arising under this Agreement, including disputes regarding its existence, validity or termination or the consequences of its nullity, and;

b. this Agreement and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Principal Agreement.

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

3. Subject to section 13.2, with regard to the subject matter of this Agreement, in the event of inconsistencies between the provisions of this Agreement and any other agreements between the parties, including the Principal Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Agreement, the provisions of this Agreement shall prevail.

4. Client may:
   a. by at least 30 (thirty) calendar days written notice to Contractor from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under section 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and
   b. propose any other variations to this Agreement which Client reasonably considers to be necessary to address the requirements of any Data Protection Law.

5. If Client gives notice under section 13.4.a:
   a. Contractor and each Contractor Affiliate shall promptly co-operate (and ensure that any affected Subprocessors promptly co-operate) to ensure that equivalent variations are made to any agreement put in place under section 6.4.c, and;
   b. Client shall not unreasonably withhold or delay agreement to any consequential variations to this Agreement proposed by Contractor to protect the Contracted Processors against additional risks associated with the variations made under section 13.4.a and/or 13.5.a.

6. If Client gives notice under section 13.4.b, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Client's notice as soon as is reasonably practicable.

7. Neither Client nor Contractor shall require the consent or approval of any Client Affiliate or Contractor Affiliate to amend this Agreement pursuant to this section 13.5 or otherwise.

8. Should any provision of this Agreement be invalid or unenforceable, then the remainder of this Agreement shall remain valid and in force. The 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, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Agreement is entered into and becomes a binding part of the Principal Agreement with effect from the date first set out above.

Thus, agreed and signed per Esigning

To PLACE dated DATE

Client   NAME CONTRACTOR

Prof. W. Jonker   NAME

CEO   FUNCTION

ANNEX 1: DETAILS OF PROCESSING OF CLIENT PERSONAL DATA

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

Subject matter and duration of the Processing of Client Personal Data

The subject matter and duration of the Processing of the Client Personal Data are set out in the Principal Agreement and this Agreement.

The nature and purpose of the Processing of Client Personal Data

[Include description after consultation with Contractor]

The types of Client Personal Data to be Processed

[Include list of data types here after consultation with Contractor]

The categories of Data Subject to whom the Client Personal Data relates

[Include categories of data subjects here after consultation with Contractor]

The obligations and rights of Client and Client Affiliates

The obligations and rights of Client and Client Affiliates are set out in the Principal Agreement and this Agreement.

ANNEX 2: STANDARD CONTRACTUAL CLAUSES

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

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

Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

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

Name of the data exporting organisation:

Address:

Tel.: _____; fax: _____; e-mail: _____

Other information needed to identify the organisation

………………………………………………………………

(the Data Exporter)

And

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

Name of the data importing organisation:

Address:

Tel.: _____; fax: _____; e-mail:_____

Other information needed to identify the organisation:

…………………………………………………………………

(the Data Importer)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Data Exporter to the Data Importer of the personal data specified in Appendix 1.

Background

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

1. Definitions

For the purposes of the Clauses:

Applicable data protection law - The legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the Data Exporter is established;

Data Exporter - The controller who transfers the personal data;

Data Importer - The processor who agrees to receive from the Data Exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; [If these Clauses are not governed by the law of a Member State, the words "and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC" are deleted.]

'Personal data', **'Special categories of data'**, **'Process/processing'**, **'Controller'**, **'Processor'**, **'Data subject'** and **'Supervisory authority'** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; [If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words "except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data" are added.]

Subprocessor - Any processor engaged by the Data Importer or by any other subprocessor of the Data Importer who agrees to receive from the Data Importer or from any other subprocessor of the Data Importer personal data exclusively intended for processing activities to be carried out on behalf of the Data Exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

Technical and organisational security measures - Those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

2. Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

3. Third-party beneficiary clause

1.   The data subject can enforce against the Data Exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2.   The data subject can enforce against the Data Importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the Data Exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity.

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

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

4. Obligations of the Data Exporter

The Data Exporter agrees and warrants:

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

2.   that it has instructed and throughout the duration of the personal data processing services will instruct the Data Importer to process the personal data transferred only on the Data Exporter's behalf and in accordance with the applicable data protection law and the Clauses;

3.   that the Data Importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

4. that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
5. that it will ensure compliance with the security measures;
6. that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
7. to forward any notification received from the Data Importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the Data Exporter decides to continue the transfer or to lift the suspension;
8. to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
9. that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the Data Importer under the Clauses; and
10. that it will ensure compliance with Clause 4(a) to (i).

5. Obligations of the Data Importer

The Data Importer agrees and warrants:

1. to process the personal data only on behalf of the Data Exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Exporter of its inability to comply, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
2. that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Data Exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the Data Exporter as soon as it is aware, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
3. that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
4. that it will promptly notify the Data Exporter about:
   a. any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
   b. any accidental or unauthorised access, and

c. any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

5. to deal promptly and properly with all inquiries from the Data Exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

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

7. to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the Data Exporter;

8. that, in the event of subprocessing, it has previously informed the Data Exporter and obtained its prior written consent;

9. that the processing services by the subprocessor will be carried out in accordance with Clause 11;

10. to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the Data Exporter.

6. Liability

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

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

3. The Data Importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

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

7. Mediation and jurisdiction

1. The Data Importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the Data Importer will accept the decision of the data subject:
    a. to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
    b. to refer the dispute to the courts in the Member State in which the Data Exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

8. Cooperation with supervisory authorities

1. The Data Exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the Data Importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the Data Exporter under the applicable data protection law.
3. The Data Importer shall promptly inform the Data Exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the Data Importer, or any subprocessor, pursuant to paragraph 2. In such a case the Data Exporter shall be entitled to take the measures foreseen in Clause 5 (b).

9. Governing Law

The Clauses shall be governed by the law of the Member State in which the Data Exporter is established.

10. Variation of the contract

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

11. Subprocessing

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

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

3.   The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Exporter is established.

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

12.   Obligation after the termination of personal data processing services

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

2.   The Data Importer and the subprocessor warrant that upon request of the Data Exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the Data Exporter:

[Populated with details of, and deemed signed on behalf of, the Data Exporter:]
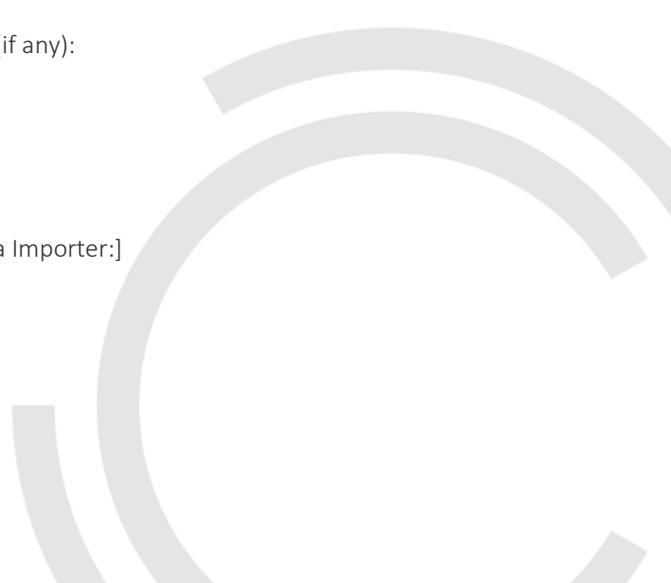
Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

On behalf of the Data Importer:

[Populated with details of, and deemed signed on behalf of, the Data Importer:]

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

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

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter

The Data Exporter is:

[TO BE COMPLETED]

Data importer

The Data Importer is:

[TO BE COMPLETED]

Data subjects

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

[TO BE COMPLETED]

Categories of data

The personal data transferred concern the following categories of data:

[TO BE COMPLETED]

Special categories of data (if appropriate)

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

[TO BE COMPLETED]

Processing operations

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

[TO BE COMPLETED]

DATA EXPORTER

[Populated with details of, and deemed to be signed on behalf of, the Data Exporter:]

Name:………………………………

Authorised Signature ……………………

DATA IMPORTER

[Populated with details of, and deemed to be signed on behalf of, the Data Importer:]

Name:………………………………

Authorised Signature ……………………

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

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

Description of the technical and organisational security measures implemented by the Data Importer in accordance with Clauses 4(d) and 5(c):

[TO BE COMPLETED]

ANNEX 3: LIST OF MANDATED AUDITORS

[TO BE COMPLETED]