

Data Processing Addendum

This Data Processing Addendum (the “Addendum”) forms part of the Customer Subscription Terms of Service found at <https://legal.nuclei.ai>, unless Customer has entered into a superseding written master agreement (the “Agreement”) entered into between Nuclei, Inc. (“Nuclei”) and the party countersigning this Addendum (“Customer”).

This Addendum has been pre-signed on behalf of Nuclei. If you are accepting this Addendum on behalf of Customer, you warrant that: (a) you have full legal authority to bind Customer to this Addendum; (b) you have read and understand the Addendum; and (c) you agree, on behalf of Customer, to this Addendum. If you do not have the legal authority to bind Customer, please do not accept this Addendum.

HOW TO EXECUTE THIS DPA

- 1) This DPA consists of two parts: the main body of the DPA, and ANNEX A.
- 2) This DPA has been pre-signed on behalf of Nuclei.
- 3) To complete this DPA, Customer must complete the information in the signature box and sign on Page 6. An electronic signature shall have the same effect as a manual one.
- 4) Send the completed and signed DPA to Nuclei by email, indicating Customer’s Customer number, to legal@nuclei.ai.

Upon receipt of the validly completed DPA by Nuclei at this email address, this DPA will become legally binding.

HOW THIS DPA APPLIES TO CUSTOMER AND ITS AFFILIATES

If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement. In such case, the Nuclei entity that is party to the Agreement is party to this DPA.

If the Customer entity signing this DPA has executed an Order Form with Nuclei or its affiliate pursuant to the Agreement, but is not itself a party to the Agreement, this DPA is an addendum to that Order Form and applicable renewal Order Forms, and the Nuclei entity that is party to such Order Form is party to this DPA.

If the Customer entity signing this DPA is neither a party to an Order Form nor the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA.

BACKGROUND

The Customer and Nuclei entered into an agreement that may require Nuclei to process Personal Data on behalf of the Customer (the “**Agreement**”). This Addendum sets out the additional terms, requirements and conditions on which Nuclei will process Personal Data when providing services under the Agreement. This Addendum contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) for contracts between controllers and processors.

AGREED TERMS

1.1 Definitions:

Authorized Persons: the persons or categories of persons that the Customer authorizes to give Nuclei personal data processing instructions.

Business Purposes: the services described in the Agreement or any other purpose specifically identified in ANNEX A.

Data Subject: an individual who is the subject of Personal Data.

Personal Data: means any information relating to an identified or identifiable natural person that is processed by Nuclei as a result of, or in connection with, the provision of the services under the Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Processing, processes and process: either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties.

Data Protection Legislation: all applicable privacy and data protection laws of the European Union, the European Economic Area and their member states, and the United Kingdom regarding the Processing of Personal Data including the General Data Protection Regulation (EU) 2016/679.

Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

1.2 The Annex forms part of this Addendum and will have effect as if set out in full in the body of this Addendum. Any reference to this Addendum includes the Annex. A reference to writing or written includes faxes and email.

1.3 In the case of conflict or ambiguity between this Addendum and the Agreement, the terms of the Addendum will govern.

1.4 The Customer and Nuclei acknowledge that for the purpose of the Data Protection Legislation, the Customer is the controller and Nuclei is the processor. The Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to Nuclei.

1.5 ANNEX A describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types in respect of which Nuclei may process to fulfil the Business Purposes of the Agreement.

2. Nuclei's obligations

2.1 Nuclei will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Customer's written instructions from Authorized Persons. Nuclei will not process the Personal Data for any other purpose or in a way that does not comply with this Addendum or the Data Protection Legislation. Nuclei must

promptly notify the Customer if, in its opinion, the Customer's instruction would not comply with the Data Protection Legislation.

2.2 Nuclei must promptly comply with any Customer request or instruction from Authorized Persons requiring Nuclei to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorized processing.

2.3 Nuclei will maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless the Customer or this Addendum specifically authorizes the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires Nuclei to process or disclose Personal Data, Nuclei must first inform the Customer of the legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the law prohibits such notice.

2.4 Nuclei will reasonably assist the Customer with meeting the Customer's compliance obligations under the Data Protection Legislation, taking into account the nature of Nuclei's processing and the information available to Nuclei, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.

3. Nuclei's Employees

Nuclei will ensure that all employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data.

4. Security

Nuclei must implement appropriate technical and organizational measures against unauthorized or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data.

5. Personal Data Breach

5.1 Nuclei will promptly and without undue delay notify the Customer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. Nuclei will restore such Personal Data at its own expense.

5.2 Nuclei will promptly and without undue delay notify the Customer if it becomes aware of:

- (a) any accidental, unauthorized or unlawful processing of the Personal Data; or
- (b) any Personal Data Breach.

5.3 Where Nuclei becomes aware of (a) and/or (b) above, it shall, without undue delay, also provide the Customer with the following information:

- (a) description of the nature of (a) and/or (b), including the categories and approximate number of both Data Subjects and Personal Data records concerned;
- (b) the likely consequences; and
- (c) description of the measures taken, or proposed to be taken to address (a) and/or (b), including measures to mitigate its possible adverse effects.

5.4 Immediately following any unauthorized or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Nuclei will reasonably co-operate with the Customer in the Customer's handling of the matter, including:

- (a) assisting with any investigation;

- (b) providing the Customer with physical access to any facilities and operations affected;
 - (c) facilitating interviews with Nuclei's employees, former employees and others involved in the matter;
 - (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Customer; and
 - (e) taking reasonable and prompt steps to mitigate the effects and to minimize any damage resulting from the Personal Data Breach or unlawful Personal Data processing.
- 5.5 Nuclei will not inform any third party of any Personal Data Breach without first obtaining the Customer's prior written consent, except when required to do so by law.
- 5.6 Nuclei agrees that the Customer has the sole right to determine:
- (a) whether to provide notice of the Personal Data Breach to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and
 - (b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
- 5.7 The Customer will cover all reasonable expenses associated with the performance of the obligations under clause 5.2 and clause 5.4.
- 5.8 The Customer will also reimburse Nuclei for actual reasonable expenses that Nuclei incurs when responding to a Personal Data Breach to the extent that the Customer caused such a Personal Data Breach, including all costs of notice and any remedy as set out in clause.

6. Cross-border processing of personal data

Nuclei will not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or Nuclei has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies; and
- (c) Nuclei complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.

7. Subcontractors

7.1 Nuclei shall be entitled to engage subcontractors to process the Personal Data if: Nuclei enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Addendum, in particular, in relation to requiring appropriate technical and organizational data security measures, and, upon the Customer's written request, provides the Customer with copies of such contracts and Nuclei maintains control over all Personal Data it entrusts to the subcontractor.

7.2 Those subcontractors approved as at the commencement of this Addendum are as set out in ANNEX A. Nuclei must list all approved subcontractors in ANNEX A.

7.3 The Parties consider Nuclei to control any Personal Data controlled by or in the possession of its subcontractors.

8. Complaints, data subject requests and third party rights

8.1 Nuclei must take such technical and organizational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, at Customer's expense, to enable the Customer to comply with:

(a) the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and

(b) information or assessment notices served on the Customer by any supervisory authority under the Data Protection Legislation.

8.2 Nuclei must notify the Customer immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.

8.3 Nuclei must notify the Customer within three (3) working days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation.

8.4 Nuclei will give the Customer its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.

Nuclei must not disclose the Personal Data to any Data Subject or to a third party other than at the Customer's request or instruction, as provided for in this Addendum or as required by law.

9. Term and termination

This Addendum will remain in full force and effect so long as:

(a) the Agreement or subscription remains in effect, or

(b) Nuclei retains any Personal Data related to the Agreement in its possession or control (**Term**).

10. Data return and destruction

10.1 At the Customer's request and expense, Nuclei will give the Customer a copy of or access to all or part of the Customer's Personal Data in its possession or control in the format and on the media reasonably specified by the Customer.

10.2 On termination of the Agreement for any reason or expiry of its term, Nuclei will securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any Personal Data related to this Addendum in its possession or control, except for one copy that it may retain and use for three (3) months for audit purposes only.

10.3 If any law, regulation, or government or regulatory body requires Nuclei to retain any documents or materials that Nuclei would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

10.4 Nuclei will certify in writing that it has destroyed the Personal Data.

11. Audit

11.1 Nuclei will permit the Customer and its third-party representatives to audit Nuclei's compliance with its Addendum obligations, at the Customer's expense, on at least twenty (20) days' notice, during the Term.

- 11.2 Customer shall reimburse Nuclei for any time expended for any such on-site audit at the Nuclei’s then-current rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Nuclei shall mutually agree upon the scope, timing, and duration of the audit, in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Nuclei.
- 11.3 Nuclei will give the Customer and its third-party representatives all necessary assistance to conduct such audits.
- 11.4 The notice requirements in clause 11.1 will not apply if the Customer reasonably believes that a Personal Data Breach occurred or is occurring, or Nuclei is in breach of any of its obligations under this Addendum or any Data Protection Legislation.
- 11.5 On the Customer’s written request and sole expense, Nuclei will make all of the relevant audit reports available to the Customer for review. The Customer will treat such audit reports as Nuclei’s confidential information under this Addendum.
- 11.6 At the Customer’s expense, Nuclei will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by Nuclei’s management.

12. Warranties

The Customer warrants and represents that Nuclei’s expected use of the Personal Data for the Business Purposes and as specifically instructed by the Customer will comply with the Data Protection Legislation.

13. Indemnification

Any exclusions or limitations of liability set forth in the Agreement will apply to this Addendum.

This agreement has been entered into on the date on which the last party executes the agreement.

Nuclei, Inc.	Customer
Signature for and on behalf of Nuclei, Inc:  Name: Eric Franzen Title: CEO Date Signed: November 11, 2019	Signature for and on behalf of: Name: Title: Date Signed:
Address: Nuclei, Inc. 619 Lake Ave Asbury Park, NJ 07712	Address:
Contact for Data Protection Inquiries <u>legal@nuclei.ai</u>	Contact for Data Protection Inquiries Name / Role: Email:

ANNEX A

Personal Data Processing Purposes and Details

Nature of processing

Nuclei will process Personal Data as necessary to perform the Services purchased by Customer under the Agreement, as further specified in any Order Forms, and as further instructed by the Customer in its use of the Services. Depending on the Services purchased by the Customer, the purpose of processing is the capture, analysis, and archiving of electronic communications for legal, regulatory, or similar purposes.

Duration of Processing

Nuclei will process Personal Data for the duration of the Agreement and will retain Customer Data for a minimum of six months following the termination of the Agreement, unless otherwise agreed upon in writing. Nuclei will destroy Customer Data upon the earlier of 12 months following the termination or expiration of the Agreement or upon Customer's request.

Personal Data Categories

Personal Data relating to the following categories of data subjects:

- Prospects, Customer, business partners and vendors of Customer (who are natural persons)
- Employees or contact persons of Customer's prospects, customers, business partners and vendors
- Employees, agents, advisors of Customer (who are natural persons)
- Those users Customer authorizes to use the Services

Data Subject Types

Nuclei Services receive communication data from Customer specific communication applications, platforms, or systems. Personal Data may include, but is not limited to the following categories of Personal Data depending on the Services purchased by the Customer:

- Sender and recipient first name, last name, e-mail address, social media handle, telephone number
- Communication data such as:
 - The content of messages sent and received
 - The audio content of spoken conversations
- Communication data may include professional or personal data, information about business transactions, or similar kinds of communications.
- Business information such as position, employer, and contact information.

Approved Subcontractors

Infrastructure

Nuclei may use the following Subprocessors to host Customer Data or to provide the infrastructure required to deliver our Services

Entity Name	Subprocessing Activities	Entity Country
Amazon Web Services	Cloud Service Provider	United States
Google	Cloud Service Provider	United States
Microsoft	Cloud Service Provider	United States

Other

Nuclei may use the following Subprocessors to enable miscellaneous functions provided in the Services:

Entity Name	Subprocessing Activities	Entity Country
ASC Technologies	Communications Recording	Germany, United States
Beautiful.ai	Information about our customers	United States
Hubspot	Information about our customers	United States
Proposify	Information about our customers	United States
Smarsh	Communications Archiving	United States

ANNEX B

E.U. 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 the data exporter and 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.

Clause 1

Definitions

For the purposes of the Clauses:

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

Clause 2

Details of the transfer

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

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, 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;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer(2)

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses,

it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) 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;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

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

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

Clause 7

Mediation and jurisdiction

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

Clause 8

Cooperation with supervisory authorities

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

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely ...

Clause 10

Variation of the contract

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

Clause 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses ⁽³⁾. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

(3) This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.



On behalf of the data exporter:

Name (written out in full):

Position:

Address:

Signature

On behalf of the data importer:

Name (written out in full): Eric Franzen

Position: CEO

Address: 619 Lakehouse Ave, Asbury Park, NJ 07712

A handwritten signature in blue ink, appearing to read "Eric Franzen".

Signature

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