

DATA PROCESSING AGREEMENT

1 APPLICATION OF THIS AGREEMENT

- 1.1 This Data Processing Agreement, including its Schedules, (**Agreement**) forms part of the Terms of Use (Terms) and sets out the parties' agreement in relation to the processing of Personal Data (as defined below) in accordance with Applicable Data Protection Laws (as defined below).
- 1.2 We are located in New Zealand, which has been determined provides adequate protection for the purposes of:
- a Article 45 of the GDPR by the European Commission; and
 - b section 17A of the UK Data Protection Act 2018 by the UK Government.
- 1.3 However, as part of the Service, we may also transmit Personal Data to third countries which are not the subject of an adequacy determination by the European Commission and/or the UK Government. To provide you with additional assurance as to our data protection commitments, this Agreement includes Standard Contractual Clauses (as defined below), which are pre-signed by us. If our Processing of Personal Data is subject to EU/UK Data Protection Laws and you would like to opt in to the Standard Contractual Clauses, please complete the necessary details, countersign the Standard Contractual Clauses, and return a counter-signed copy to us at security@couchdrop.io.
- 1.4 In the case of inconsistency between this Agreement (including the Standard Contractual Clauses, if applicable) and the Terms, this Agreement prevails to the extent of that inconsistency. Otherwise, all terms and conditions set out in the Terms apply to this Agreement.

2 INTERPRETATION

- 2.1 Unless the context requires otherwise:
- a capitalised terms used, but not defined, in this Agreement will have the meanings given to them in the Applicable Data Protection Laws (or, if not defined in the Applicable Data Protection Laws, given to them in the Terms);
 - b the rules of interpretation set out in the Terms apply to this Agreement; and
 - c references to *paragraphs* are references to the paragraphs in this Agreement.

- 2.2 In this Agreement:

Applicable Data Protection Laws means EU/UK Data Protection Laws and the NZ Privacy Act 2020

Data Subject has the meaning given in EU/UK Data Protection Laws and includes an *individual* as defined in the NZ Privacy Act 2020 and any other identified or identifiable natural person to whom any information relates

EU/UK Data Protection Laws means all laws and regulations of the European Union and its member states, and the United Kingdom, that apply to the processing of Personal Data, including (where applicable) the GDPR and the UK Data Protection Laws

GDPR means the European Union General Data Protection Regulation 2016/679

Instruction means the instructions set out in paragraph 3.4 or agreed under paragraph 3.5

Personal Data means all information which is personal data, personally identifiable information or personal information under Applicable Data Protection Laws (as applicable under those laws)

Processing means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. *Process* has a consistent meaning

Standard Contractual Clauses means:

- a where the Data Subject is subject to GDPR, the EU Standard Contractual Clauses approved by the European Commission under Commission Implementing Decision (EU) 2021/914 of 4 June 2021 as set out in Schedule 2 and as may be amended under paragraph 12.1; and
- b where the Data Subject is subject to UK Data Protection Laws, the International Data Transfer Addendum to the EU Standard Contractual Clauses set out in Schedule 3 and as may be amended under paragraph 12.1

Sub-Processor means any person appointed by us or on our behalf to Process Personal Data on your behalf in connection with the Terms

UK Data Protection Laws means 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 UK Data Protection Act 2018.

UK GDPR has the meaning given in the UK Data Protection Act 2018.

2.3 To the extent that there is any conflict between any of the following, they will have precedence in the descending order of priority set out below:

- a the Standard Contractual Clauses (if applicable);
- b this Agreement; and
- c the remainder of the Terms.

3 PROCESSING OF PERSONAL DATA

3.1 With respect to the Processing of Personal Data under the Terms:

- a for the purposes of EU/UK Data Protection Laws:
 - i you act as the Data Controller; and
 - ii we act as the Data Processor;
- b we are acting as your agent for the purposes of the NZ Privacy Act 2020; and
- c subject to paragraph 6, we may engage the Sub-Processors listed on the Website (see Annex 3 to the Standard Contractual Clauses for a link).

- 3.2 We will comply with all Applicable Data Protection Laws that apply to our Processing of Personal Data on your behalf, including, if applicable, all EU/UK Data Protection Laws that apply to Data Processors.
- 3.3 You must, when using the Website and the Service, comply with all Applicable Data Protection Laws that apply to your Processing of Personal Data, including, if applicable, all EU/UK Data Protection Laws that apply to Data Controllers.
- 3.4 You instruct us to Process Personal Data and in particular, subject to paragraph 6, transfer Personal Data to any country or territory:
- a as reasonably necessary to provide the Service in accordance with the Terms;
 - b as initiated through the use of the Service by you and any Authorised User; and
 - c to comply with any further instruction from you (including by email or through our support channels) that is consistent with the Terms and this Agreement.
- 3.5 This Agreement and the remainder of the Terms are your complete and final instructions for the Processing of Personal Data as at the time this Agreement takes effect. Any additional or alternate instructions must be agreed between us and you separately in writing.
- 3.6 We will not Process Personal Data other than on your Instructions unless required by any law to which we are subject, in which case we will to the extent permitted by applicable law inform you of that legal requirement before we Process that Personal Data.
- 3.7 As required by Article 28(3) of the GDPR, Article 28(3) of the UK GDPR and, if applicable, equivalent requirements of other Applicable Data Protection Laws, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this Agreement are set out in Schedule 1. We may amend Schedule 1 from time to time on written notice to you as we reasonably consider necessary to meet the requirements of Applicable Data Protection Laws.
- 3.8 The duration of Processing is limited to the duration of the Terms. Our obligations in relation to Processing will continue until the Personal Data has been properly deleted or returned to you in accordance with paragraph 11 of this Agreement.
- 3.9 You are solely responsible for ensuring that your Instructions comply with Applicable Data Protection Laws. It is also your responsibility to enter into data processing agreements with other relevant Data Controllers in order to allow us and our Sub-Processors to Process Personal Data in accordance with this Agreement.
- 3.10 If, in our reasonable opinion, an Instruction infringes Applicable Data Protection Laws, we will notify you as soon as reasonably practicable and will not be required to comply with that Instruction. To avoid doubt, we will not be in breach of this Agreement for any failure to comply with instructions given by you if this would violate Applicable Data Protection Laws.

4 DATA SUBJECT REQUESTS

- 4.1 To the extent permitted by law, we will notify you promptly if we receive a request from a Data Subject to exercise the Data Subject's rights under Applicable Data Protection Laws relating to any Personal Data (**Data Subject Request**).

- 4.2 Taking into account the nature of the Processing, we will assist you by implementing appropriate technical and organisational measures, to the extent possible, to fulfil your obligation to respond to a Data Subject Request under Applicable Data Protection Laws.
- 4.3 To the extent you do not have the ability to address a Data Subject Request, we will, on your written request, provide reasonable assistance in accordance with Applicable Data Protection Laws to facilitate that Data Subject Request. You will reimburse us for the costs arising from this assistance.
- 4.4 We will not respond to a Data Subject Request except on your written request or if required by applicable law.

5 OUR PERSONNEL

- 5.1 We will:
- a take reasonable steps to ensure the reliability of any of our Personnel engaged in the Processing of Personal Data;
 - b ensure that access to Personal Data is limited to our Personnel who require that access as strictly necessary for the purposes of exercising our rights and performing our obligations under the Terms;
 - c ensure that our Personnel engaged in Processing Personal Data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality; and
 - d ensure that our Personnel engaged in Processing Personal Data are informed of the confidential nature of the Personal Data and receive appropriate training on their responsibilities.
- 5.2 We have appointed a data protection officer who can be contacted at security@couchdrop.io.

6 SUB-PROCESSORS

- 6.1 You acknowledge and agree that we may engage third party Sub-Processors in connection with the provision of the Service.
- 6.2 We have entered into (and will, for any new Sub-Processor, enter into) written agreements with each Sub-Processor containing data protection obligations which offer at least the same level of protection for Personal Data as set out in this Agreement and that meet the requirements of Article 28(3) of the GDPR, Article 28(3) of the UK GDPR, and/or equivalent requirements of other Applicable Data Protection Laws, as applicable to the nature of the services provided by that Sub-Processor.
- 6.3 You may request copies of our written agreements with Sub-Processors (which may be redacted to remove confidential information not relevant to this Agreement).
- 6.4 A list of current Sub-Processors for the Service is set out on our [Website](#). We may update the list of Sub-Processors on the Website from time to time and, subject to paragraph 6.5, we will give at least 30 days' notice of any new Sub-Processor (**Change Notice**).
- 6.5 We may engage Sub-Processors as needed to serve as an Emergency Replacement to maintain and support the Service. *Emergency Replacement* means a sudden replacement of a Sub-

Processor where a change is outside our reasonable control. In this case, we will inform you of the replacement Sub-Processor as soon as reasonably practicable.

- 6.6 You may object to any new Sub-Processor on reasonable grounds by notifying us within 10 days of receipt of a Change Notice. Your notice of objection to any new Sub-Processor must explain the reasonable grounds for your objection. The parties must discuss your concerns about the new Sub-Processor in good faith with a view to resolve the objection to the use of the new Sub-Processor in a commercially reasonable manner. If it is not possible to resolve the objection, you may, despite anything to the contrary in the Terms, terminate the applicable Service under the Terms that cannot be provided to you without that new Sub-Processor. If you do not terminate the relevant Service under the Terms in accordance with this paragraph, you are deemed to have agreed to the new Sub-Processor. Termination of the applicable service is your sole remedy in respect of the change of Sub-Processor.
- 6.7 We are liable for the acts and omissions of our Sub-Processors to the same extent we would be liable if performing the services of each Sub-Processor directly under the terms of this Agreement, except as otherwise set out in this Agreement.

7 SECURITY

We will maintain technical and organisational measures to protect the confidentiality, integrity and security of Personal Data (including protection against unauthorised or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorised disclosure of, or access to, Personal Data), and to manage data security incidents affecting Personal Data, in accordance with the technical and organisation measures set out on the [Website](#) (as updated from time to time by us).

8 SECURITY BREACH MANAGEMENT

- 8.1 We will comply with all Applicable Data Protection Laws requiring notification to you of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data Processed by us or our Sub-Processors of which we become aware (**Breach Incident**).
- 8.2 We will make reasonable efforts to identify the cause of that Breach Incident, notify you within a timely manner to allow you to meet your obligations to report a Breach Incident, cooperate with you in good faith and provide any assistance reasonably necessary for you to comply with your obligations under Applicable Data Protection Laws with respect to a Breach Incident, including any obligations you have under Applicable Data Protection Laws to report, notify or investigate a Breach Incident, and take steps we consider necessary and reasonable to remediate the cause of the Breach Incident, to the extent remediation is within our reasonable control.

9 AUDIT AND COMPLIANCE

- 9.1 Upon your written request, we will, at your cost, submit to your audits or inspections, and provide you all information necessary, to demonstrate that both you and we are complying with our respective obligations under Applicable Data Protection Laws (including our respective obligations under Article 28 of the GDPR and/or Article 28 of the UK GDPR).
- 9.2 You will:
- a give reasonable notice of an audit or inspection and must not conduct more than one audit or inspection in any calendar year;

- b ensure audits or inspections are conducted during our business hours;
- c comply with our reasonable security and confidentiality obligations in respect of the audit or inspection (and will procure any auditor to do the same); and
- d avoid damage, injury or disruption to any premises, equipment, personnel and business the subject of the audit or inspection (and will procure any auditor to do the same).

10 DATA PROTECTION IMPACT ASSESSMENT

Upon your written request, we will, at your cost, provide you with reasonable assistance needed to fulfil your obligations under Applicable Data Protection Laws to carry out a data protection impact assessment relating to your use of the Service, to the extent you do not otherwise have access to the relevant information.

11 RETURN AND DELETION OF PERSONAL DATA

- 11.1 Subject to paragraphs 11.2 and 11.3, following termination of the Terms we will delete all Personal Data within a reasonable period from termination of the Terms.
- 11.2 Subject to paragraph 11.3, you may submit a written request to us within 10 working days of the termination of the Terms requiring us, within 20 working days of your written request, to:
 - a return a complete copy of all Personal Data by secure file transfer in a common format; and
 - b delete all other copies of Personal Data Processed by us or any Sub-Processor.
- 11.3 We, or each Sub-Processor, may retain Personal Data to the extent that it is required by applicable laws, provided that we ensure the confidentiality of all such Personal Data and ensure that such Data is only processed as necessary for the purposes required under applicable laws requiring its Processing and for no other purpose.
- 11.4 If we cannot delete all Personal Data due to technical reasons, we will inform you as soon as reasonably practicable and will take reasonably necessary steps to:
 - a come as close as possible to a complete and permanent deletion of the Personal Data;
 - b fully and effectively anonymise the remaining data; and
 - c make the remaining Personal Data which is not deleted or effectively anonymised unavailable for future Processing.

12 CHANGES IN DATA PROTECTION LAWS

- 12.1 We may on at least 30 days' written notice to you from time to time, make any variations to this Agreement (including to the Standard Contractual Clauses), which we consider (acting reasonably) are required as a result of any change in, or decision of a competent authority under, Applicable Data Protection Laws, to allow transfers and Processing of Personal Data to continue without breach of Applicable Data Protection Laws.
- 12.2 If you object to any variation under paragraph 12.1 on reasonable grounds, you may, despite anything to the contrary in the Terms, terminate the Terms and your right to access and use the Website and the Service without penalty on written notice, provided your notice of termination is received by us before the effective date of our notice. If you do not terminate the Terms and your

right to access and use the Service in accordance with this paragraph, you are deemed to have agreed to the variation.

13 LIMITATION OF LIABILITY

The liability of each party to the other party under or in connection with this Agreement is subject to the limitations and exclusions set out in the Terms, and any reference in the Terms to the liability of a party means the aggregate liability of that party under the Terms and this Agreement together.

14 GENERAL

If any provision of this Agreement is, or becomes unenforceable, illegal or invalid for any reason, the relevant provision is deemed to be varied to the extent necessary to remedy the unenforceability, illegality or invalidity. If variation is not possible, the provision must be treated as severed from this Agreement without affecting any other provisions of this Agreement.

SCHEDULE 1

DETAILS OF PROCESSING

Nature and Purpose of Processing

We will Process Personal Data as necessary to provide the Website and the Service in accordance with the Terms, as further specified in our online documentation relating to the Website and the Service, and as further instructed by you and your Authorised Users through the use of the Website and Service.

Duration of Processing

Subject to paragraph 11 of this Agreement, we will Process Personal Data for the duration of the Terms, unless otherwise agreed upon in writing.

Categories of Data Subjects

You may submit Personal Data to the Service, the extent of which is determined and controlled by you in your sole discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects:

- ▲ Users under the Terms.

Type of Data

You may submit Personal Data to the Service, the extent of which is determined and controlled by you in your sole discretion, and which may include, but is not limited to, the following categories of personal data:

- ▲ Customer data, usernames, email addresses, IP Addresses, billing details
- ▲ Content provided by the customer
- ▲ Configuration, including security keys and other metadata needed to provide the service
- ▲ Audit logs and metadata needed to provide the service.

SCHEDULE 2

EU STANDARD CONTRACTUAL CLAUSES (MODULE TWO – CONTROLLER TO PROCESSORS)

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) 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 1 section 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 1 section 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 1 section 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 - Clause 18(a) and (b).
- (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 1, section 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 Annex 1 and signing it in the appropriate place.
- (b) Once it has completed Annex 1 and signed it in the appropriate place, 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 1.
- (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.

8.1 Instructions

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

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 1 section B, unless on further instructions 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 the measures described in Annex 2 and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall

provide a meaningful summary where the data subject would otherwise not be able to understand the 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. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

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 erase or rectify 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 1 section 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 data exporter 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, the Parties 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 subjects. 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. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex 2. 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 personal 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 the data exporter without undue delay 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 breach including, where appropriate, 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 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 described in Annex 1 section B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (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 Regulation of (EU) 2016/679 with respect to the processing in question;
- (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 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 data exporter.

- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
- (d) 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.
- (e) 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

- (a) The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list (see the Website – a link is included in Annex 3 to the Standard Contractual Clauses). 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 30 days 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. 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

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex 2 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 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (g) 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

- (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. The liability of a Party to the other Party is subject to the limitation and exclusion of liability provisions in the Terms.
- (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

- (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 1 section 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 1 section 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 1 section 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

- (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;
 - (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).
- (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. 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 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

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.
- (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.).
- (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.
- (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 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.

- (h) 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. 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.
- (i) 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

These Clauses shall be governed by the law of the EU Member State in which the data exporter is established.

Clause 18

Choice of forum and jurisdiction

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (j) The Parties agree that those shall be the courts of EU Member State in which the data exporter is established.
- (k) 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.
- (l) The Parties agree to submit themselves to the jurisdiction of such courts.

ANNEX 1 TO THE STANDARD CONTRACTUAL CLAUSES

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]

Name: ...

Address: ...

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

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

SIGNED for and on behalf of **[INSERT**)
FULL LEGAL NAME] by:)

Authorised signatory

Print full name

Role (controller/processor): ...

Data importer(s):

Name: Couchdrop Limited, a New Zealand Company, company number 6709953

Address: 46 Bengal Drive, Christchurch, 8022 , New Zealand

Activities relevant to the data transferred under these Clauses:

Couchdrop provides a secure file transfer and storage service (**Service**). The provision of the Service is governed by the Terms and the EU/UK Data Processing Agreement to which these Clauses are attached.

SIGNED for and on behalf of)
COUCHDROP LIMITED (including as)
data importer if applicable) by:



Authorised signatory

Michael Lawson

CEO/CTO

Print full name

05 / 04 / 2023

Role (controller/processor): Processor

B. DESCRIPTION OF TRANSFER**Categories of data subjects whose personal data is transferred**

As defined in Schedule 1 of this Agreement

Categories of personal data transferred

As defined in Schedule 1 of this Agreement

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

Subject to customer's requirements and use case

Nature of the processing

The nature of the processing of the personal data is set out in the Terms and for the purpose of providing the Services

Purpose(s) of the data transfer and further processing

To provide the Couchdrop service as outlined in the Terms and supporting documents

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

The duration of the processing of the personal data is set out in the Terms

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

The subject matter, nature, and duration of the processing of the personal data are set out in the Terms and as needed to provide the Services, including any applicable sub-processors defined therein.

C. COMPETENT SUPERVISORY AUTHORITY

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

ANNEX 2 TO THE STANDARD CONTRACTUAL CLAUSES: TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Technical and organisational measures ensuring the security of data being processed by Couchdrop can be found in our security whitepaper on our website at

https://www.couchdrop.io/hubfs/privacy/latest/couchdrop_security_overview.pdf

Technical details pertaining to the Movebot product as part of the Couchdrop platform, can be found in our whitepaper on our website at

https://www.couchdrop.io/hubfs/privacy/latest/movebot_security_overview.pdf

ANNEX 3 TO THE STANDARD CONTRACTUAL CLAUSES: LIST OF ALL SUB-PROCESSORS

An up-to-date list of all sub processors can be found on our website at
<https://www.couchdrop.io/privacy/gdpr>

SCHEDULE 3

UK ADDENDUM TO AGREEMENT

This UK addendum to Agreement (“**Addendum**”) applies where the Data Subject is subject to UK Data Protection Laws.

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	This Addendum will take effect on the date this Addendum is signed.	
The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
Parties' Details	See <u>Schedule 2, Annex 1</u> to the Agreement	See <u>Schedule 2, Annex 1</u> to the Agreement
Key Contact	See <u>Schedule 2, Annex 1</u> to the Agreement	See <u>Schedule 2, Annex 1</u> to the Agreement
Signature (if required for the purposes of Section 2)	Where the Exporter has signed Schedule 2, Annex 1 section A, that signature is deemed to be the signing of this Addendum.	Where the Importer has signed Schedule 2, Annex 1 section A, that signature is deemed to be the signing of this Addendum.

Table 2: Selected SCCs, Modules and Selected Clauses

Addendum EU SCCs			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:			
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	2	Yes	Yes	General	30 Days	Yes
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:	As per Table 1 above
Annex 1B: Description of Transfer:	See Schedule 1 to the Agreement
Annex 2: Technical and organisational measures including technical and organisational measures to ensure the security of the data:	See Schedule 2, Annex 2 to the Agreement
Schedule 1: List of Sub processors (Modules 2 and 3 only):	See the <u>Website</u> (a link can be found in Annex 3 to the Standard Contractual Clauses)

Table 4: Ending this Addendum when the Approved Addendum Changes

Ending this Addendum when the Approved Addendum changes	<p>Which Parties may end this Addendum as set out in Section 19:</p> <p><input checked="" type="checkbox"/> Importer</p> <p><input checked="" type="checkbox"/> Exporter</p> <p><input type="checkbox"/> neither party</p>
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Part 2: Mandatory Clauses

Entering into this Addendum

- 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.
- Although Annex 1, section A 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

- 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 if that party is unable or unwilling (on reasonably grounds) to comply with any revisions made by the ICO to the Approved Addendum, then that Party may immediately end this Addendum and the Master Agreement, 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.

Versions

Amendments and changes to this document will be noted below

Version Number	Date	Notes
<i>Version 1.1</i>	<i>12 April 2022</i>	<i>Initial version</i>
<i>Version 1.2</i>	<i>09 December 2022</i>	<i>Updated for UK GDPR</i>
<i>Version 1.3</i>	<i>24 March 2023</i>	<i>Modifications</i>

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File name	GDPR + uk Data Pr...inal [MAR23].docx
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