General Information

Authors and Special Thanks

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Credits

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Standard Data Protection Clauses

Draft and Explanations

Company Name:
Address:
Tel.:
fax:
e-mail:
Other information needed to identify the organization:
(Hereinafter, the Customer), as the Transferring Party

And

Company Name:
Address:
Tel.:
fax:
e-mail:
Other information needed to identify the organization:
(Hereinafter, Provider) as the Receiving Party

each a “Party”; together “the Parties”,

HAVE AGREED on the following Standard Data Protection Clauses (hereinafter “SDPC”), in order to adduce appropriate safeguards according Art.46 (2) lit. c) General Data Protection Regulation (hereinafter “GDPR”) with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer of personal data by the Transferring Party to the Receiving Party.
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**Clause 1  Definitions**

(1) The definitions of GDPR Art. 4 shall apply to these SDPC;

In order to keep the SDPC short and comprehensible, these SDPC mainly rely on the definitions provided in the GDPR. Therefore, any term defined in the GDPR has the same meaning here. These SDPC provide additional definitions as necessary to complement the GDPR. These additional definitions help address the possibility of a processing chain that includes more than one processor or several Sub-Processing Agreements. In order to have specific references, further definitions have been added.

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<th>a)</th>
<th>&quot;Initial Processor&quot; means the processor directly engaged by the controller;</th>
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<tr>
<td>b)</td>
<td>“Sub-Processor” means any processor subsequent to the Initial Processor;</td>
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<tr>
<td>c)</td>
<td>“Transferring Party” means any processor who transfers personal data to the Receiving Party;</td>
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<tr>
<td>d)</td>
<td>“Receiving Party” means any Sub-Processor engaged by a Transferring Party who agrees to receive personal data from the Transferring Party intended for processing on behalf of the controller;</td>
</tr>
<tr>
<td>e)</td>
<td>&quot;Data Processing Agreement&quot; is any agreement according to GDPR Art. 28 (3) between the controller and the Initial Processor;</td>
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</table>

Because the GDPR does not differentiate between different processors within processing chain, the terms “Initial Processor” and “Sub-Processor” have been added to clarify this division of roles.

In contrast to the draft of the WP29, “Transferring Party” and “Receiving Party” do not only refer to a processor in the EU who transfers personal data to a Sub-Processor in a Third Country. They also incorporate a processor that transfers personal data from a Third Country onward to another Sub-Processor.

The Data Processing Agreement is a prerequisite to the lawful processing of personal data which also serves to define the main purposes and means of the processing. Many rights and obligations of the Parties included in these SDPC may be derived from this agreement. Accordingly, it is crucial to provide a definition for such agreements.
f) "Sub-Processing Agreement" means any processing agreement between two processors according to Art. 28 (4) GDPR; The term “Sub-Processing Agreement” refers to all processor-to-processor processing agreements in the processing chain. Although the GDPR provides requirements for such agreements in Art. 28 (4), it does not explicitly provide a definition of these agreements.

g) “Applicable Data Protection Law” means the European General Data Protection Regulation (GDPR) 2016/679, as amended; Within these SDPC there are several references to Applicable Data Protection Law. As these SDPC govern Third Country transfers there may be ambiguities regarding the applicable law. Hence, this definition clarifies that – for these SDPC – the Applicable Data Protection Law shall be the GDPR.

For the avoidance of doubt: there may be cases that national law of the member states provides additional requirements. Such additional requirements are not reflected by these SDPC as such reflection would create a very high level of complexity. These SDPC provide an adequate level of data protection as required by GDPR. If any national law provides additional requirements those should be reflected by the Data Processing Agreement or the Sub-Processing Agreement. As this approach may change, though, in future, this definition eases future adjustments by simply extending the scope of this definition.

h) “Instruction” is a Documented order of the controller or the Transferring Party related to the processing or transfer of personal data in accordance to Art. 28 (3) lit. (a) GDPR that is covered by and made in accordance with these SDPC, Sub-Processing Agreement, the Data Processing Agreement or Applicable Data Protection Law; The term Instruction was added to simplify the references to the rights and obligations of the Parties.

i) “Third Country” means any country or international organization as described in Chapter V of GDPR; The same rules apply to the transfer of personal data to Third Countries and international organizations within the provisions of these
j) “Request” means a demand by a Party or the controller from a Party requiring information related to the processing of personal data that is covered by and made in accordance with these SDPC, Sub-Processing Agreement, the Data Processing Agreement or Applicable Data Protection Law to the extent applicable to the processing of personal data to which the demand relates;

k) “Written” and “Documented” by any auditable means, including electronic means, e.g. emails, dashboards and related log files.

(2) Terms defined by these SDPC will be referenced in Capital Italic Font. All terms defined within Art. 4 GDPR and incorporated into these SDPC will be referenced in small italic font.

(3) Whenever there is a reference to an Article of GDPR, this shall stipulate the applicability of such Articles irrespective of their applicability under Art. 3 GDPR.

Clause 2  Rights of the Transferring Party

(1) Regardless of any rights under the Data Processing Agreement and the Applicable Data Protection Law the Transferring Party shall additionally have the rights as set out in these SDPC and especially in this Clause.

The Transferring Party must ensure the GDPR compliance of its contractual partner (i.e. the Receiving Party). For this purpose, the Transferring Party needs certain adequate rights against the Receiving Party. The following provisions describe and ensure such rights.

(2) The Transferring Party may transfer any personal data to the Receiving Party within the
framework of the Sub-Processing Agreement or the Data Processing Agreement, as applicable.

(3) The Transferring Party is entitled to give any Instruction to the Receiving Party within the framework of the Sub-Processing Agreement, the Data Processing Agreement and the Applicable Data Protection Law.

(4) The Transferring Party is entitled to receive upon Request any relevant information from the Receiving Party to verify the Receiving Party’s compliance with these SDPC, the Sub-Processing Agreement and the Applicable Data Protection Law. Where and insofar as the Sub-Processing Agreement governs modi operandi of the right to audit under Art. 28 GDPR, such modi operandi shall prevail.

Hereby the Transferring Party is enabled to oversee the Receiving Party’s compliance by receiving relevant information. Based on this information the Transferring Party may conclude its further actions. A corresponding obligation for the Receiving Party to properly deal with such Requests is provided in 4 (5).

This is not an explicit Right to Audit with a possibility to perform onsite audits. Again, principally any provisions of such kind are expected to be reflected in the Data Processing Agreement or Sub-Processing Agreement. This provision simply reassures that – in lack of any provisions within any such agreements – at least a minimal safeguard is in place. Realistically one must understand “any relevant information” as comprising both “documents” and – where relevant – also access to the premises to verify compliance.

**Clause 3 Obligations of the Transferring Party**

(1) The Transferring Party agrees and warrants to fulfil the obligations as set out in this Clause.

These SDPC strive to be lean and simple. To reach this goal these SDPC strictly follow a chain-approach. Hence a Transferring Party may also be a Receiving Party in another contractual relationship. The obligations of the Transferring Party are hence limited to those being necessary obligations whilst preventing unnecessary duplicates with the obligations of the Receiving Party.
<table>
<thead>
<tr>
<th>(2) The <strong>Transferring Party</strong> shall take reasonable measures designed to ensure that all <strong>processing</strong> of <strong>personal data</strong> is subject to either a <strong>Data Processing Agreement</strong> or a <strong>Sub-Processing Agreement</strong>.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A <strong>Data-Processing Agreement</strong> or a <strong>Sub-Processing Agreement</strong> is a requirement for <strong>processing personal data</strong> under these SDPC and the GDPR. The SDPC shall provide an additional framework regarding <strong>Third Country</strong> transfers. So, the <strong>Data Processing Agreement</strong> or <strong>Sub-Processing Agreement</strong> shall govern the mere processing and its requirements itself, whereas the SDPC govern <strong>Third Country</strong> transfers. The strict separation of both was a main goal of these SDPC. However, besides signing a <strong>Sub-Processing Agreement</strong> with its <strong>Sub-Processors</strong>, the <strong>Transferring Party</strong> shall take reasonable measures to ensure that the processing chain is not interrupted. This includes a due diligence in both directions: the processing chain downward and upwards. For the latter the SDPC provide supporting rights of <strong>Receiving Parties</strong>, see Clause 3 (12) and Clause 5 (2).</td>
</tr>
<tr>
<td>(3) The <strong>Transferring Party</strong> shall have entered into an effective <strong>Sub-Processing Agreement</strong> with the <strong>Receiving Party</strong> for the duration of the <strong>processing of personal data</strong> on behalf of the <strong>controller</strong> under these SDPC; any terms and conditions of such <strong>Sub-Processing Agreement</strong> must not be less protective than the terms and conditions agreed in the <strong>Data Processing Agreement</strong> or any applicable <strong>Sub-Processing Agreement</strong> the <strong>Transferring Party</strong> is subject to.</td>
</tr>
<tr>
<td>These SDPC work in conjunction with the <strong>Sub-Processing Agreement</strong> that is demanded by GDPR. To ensure that the <strong>Parties</strong> have this obligation, even outside of the territorial scope of the GDPR, this provision requires a <strong>Sub-Processing Agreement</strong> to be signed between the <strong>Parties</strong>. The <strong>Sub-Processing Agreement</strong> together with these SDPC shall provide the adequate level of data protection required for a <strong>Third Country</strong> transfer of <strong>personal data</strong>. Further, the requirement of an effective signed <strong>Sub-Processing Agreement</strong> ensures that the <strong>Parties</strong> have agreed upon technological and organizational measures appropriate to the risk according Art. 32 GDPR.</td>
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<tr>
<td>(4) The <strong>Transferring Party</strong> shall have a prior <strong>Written</strong> authorization of the <strong>controller</strong> or its <strong>Transferring Party</strong> to transfer <strong>personal data</strong> to the <strong>Receiving Party</strong>.</td>
</tr>
<tr>
<td>This provision refers to Art. 28 (2) GDPR, requiring an authorization of the <strong>Transferring Party</strong> to initiate further sub-processing. Without prior authorization, the <strong>Transferring Party</strong> must not transfer <strong>personal data</strong> to the <strong>Receiving Party</strong>.</td>
</tr>
</tbody>
</table>
(5) The *Transferring Party* shall have prior *Written* authorization and/or *Instructions* to transfer to and/or *process* personal data in a *Third Country*.

Having a sole authorization to engage a *Sub-Processor* is not sufficient to transfer *personal data* to or process *personal data* within a *Third Country*. Hence, it is required, that the *Transferring Party* has prior *Written* authorization and/or any *Instruction* to transfer to or process *personal data* within a *Third Country*.

| (6) The *Transferring Party* shall assess whether there is any bilateral agreement on the enforcement of judicial rulings between |
| a) the member state of the court competent according to Clause 10 (2) or Clause 10 (3); and |
| b) the countries of any potential enforcements against the *Receiving Party*. |

The limitation of the competent court to be within EU (as provided by Clause 10 (2) and (3)) shall safeguard an adequate interpretation of these *SDPC* in the light of GDPR and a European understanding of fundamental rights and freedoms of *data subjects*. In order to avoid that any decision against *Receiving Parties* become ineffective, it is necessary to also safeguard the enforcement of such judicial rulings. Any noncompliance of the *Transferring Party* with this provision is a breach of contract as noncompliance would abolish the safeguarding function of Art. 46 (2) GDPR and make the data transfers of *personal data* to a *Third Country* by the *Transferring Party*, without having other safeguards according to Art. 46 (2) GDPR in place, unlawful.

| (7) The *Transferring Party* shall promptly forward the following information to the *Receiving Party* |
| a) any received *Instructions*; and/or |
| b) any received *Requests* |

These *SDPC* distinguish between *Instructions* and *Requests*. *Instructions* always relate to a certain handling of *personal data*, while *Requests* address a wider concept that encompasses all sorts of inquiries (e.g. and mostly to receive more substantive information). The purpose is to ensure that *Instructions* and/or *Requests* from the *controller* always reach the *Party* that the *Instructions/Requests* relate to. Hence, the *controller* stays in control over the processing.

For the avoidance of doubt: GDPR follows the concept that all *processing of personal data* is determined by the *controller*, even if the *controller* engages a *processor*. This provision safeguards that any explicit *Request* or *Instruction* of
(8) The **Transferring Party** shall ensure that all its **Instructions** towards the **Receiving Party** are in accordance with or do not contradict any **Instructions** the **Transferring Party** received itself.

The controller flows down the full processor chain, where applicable.

In practice controllers do not individually instruct every single measure or action within the processor chain. In fact, the controller and the **Initial Processor** agree upon the fundamental principles and level of security and data protection that the implemented technical and organizational measures shall safeguard.

To reflect this approach, this provision ensures that, if the **Transferring Party** needs to instruct the **Receiving Party** (e.g. about a certain way to implement a given technological or organizational measure), the **Transferring Party** shall only issue **Instructions** that are in accordance with the **Instructions** that the **Transferring Party** has received itself. This provision thus ensures that **Instructions** must not originate from the **Transferring Party** that are not in accordance with the **Instructions** of the controller or any other **Transferring Party** – where the respective **Transferring Party** is a **Receiving Party** itself.

(9) The **Transferring Party** shall not transfer any **personal data** to the **Receiving Party** where such a transfer may conflict with any **Instruction**, the **Sub-Processing Agreement**, the **Data Processing Agreement** (where the **Transferring Party** is the **Initial Processor**) or the **Applicable Data Protection Law**.

This provision ensures that the **Transferring Party** always reassesses the transfer of **personal data** in order to avoid conflicts that may arise out of the transfer. Especially the **Transferring Party** needs to ensure that it has the authorization of the **controller** to transfer the **personal data** to another **Sub-Processor** in a **Third Country**.

Even if there is a general authorization for engaging **Sub-Processors** and transfer to or within **Third Countries**, such authorization may be limited to specific **personal data**, or may require additional technical and organizational measures to be in place. This mandatory reassessment shall ensure that any such modifications and limitations of an authorization provided will be respected.
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<th>(10) The <strong>Transferring Party</strong> shall only engage the <strong>Receiving Party</strong> after assessing the applicable law for the <strong>Receiving Party</strong> and reasonably concluding that the applicable law does not conflict with the <strong>Transferring Party</strong>’s obligations under the Sub-Processing Agreement and Applicable Data Protection Law.</th>
</tr>
</thead>
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<tr>
<td>The <strong>Transferring Party</strong> shall not only rely on information provided by the <strong>Receiving Party</strong> on this topic but have an original obligation on conducting on research and risk assessment. This obligation corresponds with the obligation of the <strong>Receiving Party</strong> Clause 4 (8)/(9).</td>
</tr>
<tr>
<td>(11) Where the <strong>Transferring Party</strong> is being notified by the <strong>Receiving Party</strong> about any potential conflicts according to Clause 4 (2) and (9), the <strong>Transferring Party</strong> shall re-assess and, if necessary, adjust its processing activities and implemented appropriate technical organizational measures as agreed upon in the Sub-Processing Agreement to leverage the risks related to the potential conflicts regarding the applicable law of the <strong>Receiving Party</strong>.</td>
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<td>This obligation corresponds with the right of the <strong>Receiving Party</strong> in Clause 5 (2).</td>
</tr>
<tr>
<td>(12) The <strong>Transferring Party</strong> shall promptly and properly deal with all Requests of the <strong>Receiving Party</strong> relating to the processing of the personal data subject to these SDPC, the Sub-Processing Agreement, and the Applicable Data Protection Law; especially the <strong>Transferring Party</strong> shall, upon Request, provide relevant sections of its Sub-Processing Agreement in its role as a <strong>Receiving Party</strong>, i.e. especially whether the <strong>Transferring Party</strong> in its role as a <strong>Receiving Party</strong> is authorized to engage Sub-Processors and to transfer to and/or process personal data in a Third Country, or regarding required technical and organizational measures.</td>
</tr>
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</table>
Clause 4  Obligations of the Receiving Party

(1) The Receiving Party agrees and warrants to fulfil the obligations as set out in this clause.

The Receiving Party is the Party which is subject to the most obligations within the SDPC. Para. (2) provide obligations which have to be fulfilled before executing the SDPC. Paras. (4), (5), and (6) provide obligations which must be fulfilled when processing personal data. Para. (7) covers situations where the Receiving Party must notify the Transferring Party about certain circumstances. Para. (10) provides processing obligations as well as reporting obligations regarding the engagement of another Sub-Processor by the Receiving Party. Para. (11) governs the situation when the controller invokes its third party beneficiary rights. Para. (12) determines the obligations of the Receiving Party when the Transferring Party or the controller has factually disappeared or has ceased to exist in law.

(2) Prior to executing these SDPC and frequently during the term of these SDPC the Receiving Party shall assess the legislation applicable to it and has no reason to believe that this legislation conflicts with obligations provided by these SDPC, the Sub-Processing Agreement, the Data Processing Agreement and the Applicable Data Protection Law. Where there is an adequacy decision in place the assessment of conflict between these SDPC and the applicable law may be reduced to the finding of such adequacy decision; where such decision is declared void the Receiving Party must individually assess the legislation and reason why there is no conflict. For the avoidance of doubt: where an adequacy decision will be declared void, the Receiving Party may no longer reduce its assessment to the finding of such adequacy decision but must individually assess the legislation and reason why there is no conflict.

There might be cases where the national law of a Third Country contradicts the principles of these SDPC, the Sub-Processing Agreement, the Data Processing Agreement or GDPR. In such circumstances, the Receiving Party would be subject to conflicting obligations that finally jeopardizes its compliance with the GDPR. Accordingly, in those cases where the Receiving Party identifies such a conflict, the Receiving Party will not be entitled to process personal data.

Where there is an adequacy decision by the European Commission, the assessment of the applicable law was already made. Nevertheless, it may be of interest of the Parties to sign these SDPC. In such a scenario, the performance of another assessment by each Receiving Party would be inappropriate. Nevertheless, the Receiving Party is obliged to regularly assess the validity of the adequacy decision and, in case such a decision is declared void, the Receiving Party shall be obliged to perform such an assessment.
(3) Where the Receiving Party becomes aware that a bilateral agreement (see Clause 3 (6)) becomes void, the Receiving Party shall notify the Transferring Party.

Although the Transferring Party has to ensure the existence of bilateral agreements, the Receiving Party shall be obliged to inform the Transferring Party, so that the Transferring Party is able to initiate appropriate steps (e.g. strong, encryption, splitting and spreading file segments). This also reflects the situation that the Receiving Party may have easier access to respective information and hence can provide such information to the Transferring Party already, where the Transferring Party have not been aware of it at all.

(4) The Receiving Party shall only process personal data on behalf of the controller and in compliance with the Instructions, these SDPC, the Sub-Processing Agreement, and the Applicable Data Protection Law.

The phrase “in accordance with the Applicable Data Protection Law” means, that the Party is obliged to process personal data in a way that enables the controller to comply with his obligations under the GDPR. This means, that the processor must ensure that his processing guarantees all the rights of the data subject under the GDPR, especially those according Chapter III of the GDPR (e.g. storing personal data only for a given purpose, being able to delete such data, respecting provisions related to automated decision making or profiling, etc.).

(5) The Receiving Party shall promptly and properly deal with all Requests of the Transferring Party relating to the processing of the personal data subject to these SDPC, the Sub-Processing Agreement, and the Applicable Data Protection Law.

Besides others, this includes the obligation corresponding to the right of the Transferring Party, Clause 2 (4)).

(6) The Receiving Party shall take reasonable steps to demonstrate to the Transferring Party upon reasonable Written Request that it implemented the technical and organizational measures according to its obligations under these SDPC, the Sub-Processing Agreement, and Applicable Data Protection Law.

Specific provisions of technical and organizational measures are expected in the Data Processing Agreement and/or Sub-Processing Agreement, and are therefore a matter which shall not be dealt with in detail in these SDPC. Therefore, technical and organizational measures include both, those being required by the Sub-Processing Agreement or the Data Processing Agreement (where the Transferring Party is the Initial Processor) (see Art. 28 (3).
GDPR), and those being required by the Applicable Data Protection Law (Art. 32 GDPR).

However, if the Data Processing Agreement and/or Sub-Processing Agreement stays silent on technical and organisational measures, this provision shall ensure that appropriate measures will be implemented, as required by law.

(7) The Receiving Party shall notify the Transferring Party without undue delay in case:

The purpose of this provision is to secure the flow of information throughout the chain of processors.

Notification duties do not create any obligation to actively investigate whether any of those circumstances apply. This is also reflected in different wording like “becomes aware” (positive fact of actually knowing), and “has reason to believe” (there are indications that raise concerns already, but there is actual knowledge yet).

However, the Receiving Party must not refuse to become aware of circumstances either.

a) the Receiving Party has reason to believe that any Instructions by the Transferring Party conflict with these SDPC, the Sub-Processing Agreement, the Data Processing Agreement or the Applicable Data Protection Law;

Principally, the Receiving Party might only have reason to believe that Instructions conflict with the SDPC, the Sub-Processing Agreement or the Applicable Data Protection Law. However, the Receiving Party may also have reason to believe that Instructions conflict with the Data Processing Agreement, especially if the controller invokes its third party beneficiary rights.

b) the Receiving Party has reason to believe that any Instructions by the Transferring Party conflict with any legislation applicable to the Receiving Party;

c) the Receiving Party receives contradicting Instructions by the controller and the Transferring Party; in such an event, the Receiving Party shall follow the latest Instructions received from the controller;
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<td>d)</td>
<td>the Receiving Party becomes aware of a <strong>personal data breach</strong> related to its <strong>processing of personal data</strong>;</td>
<td><em>Personal data breach</em> here refers to the definition provided in Art. 4 (1) no. 12 GDPR.</td>
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<tr>
<td>e)</td>
<td>the Receiving Party becomes aware of a circumstance which prevents or will prevent the Receiving Party to comply with these SDPC, the <strong>Sub-Processing Agreement</strong>, and the <strong>Applicable Data Protection Law</strong>, notably in the event of a change according to Clause 4 (2), (3) and (4);</td>
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<tr>
<td>f)</td>
<td>of a legally binding request of disclosure of the <strong>personal data</strong> processed by the Receiving Party by competent law enforcement authorities, unless otherwise legally prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation.</td>
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**(8) Where the Receiving Party under the applicable law may be subject to requests of disclosure as set out by Clause 4 (7) f) that the Receiving Party must not communicate to the Transferring Party, either explicitly or aggregated, the Receiving Party shall inform the Transferring Party accordingly and provide information, under which circumstances this might appear in order to enable the Transferring Party to assess related data protection impacts.**

**The information must include whether or not the Receiving Party may be subject to the described requests of disclosure, and if yes, under which circumstances the respective data **processing** between the Receiving Party and the Transferring Party can be affected. This may include information about the respective law, court decisions etc.**

**(9) Where the Receiving Party becomes aware of a change in its applicable legislation or the application and interpretation thereof which is likely to have a substantial adverse effect on the warranties and obligations provided by these SDPC, the Receiving Party shall inform the Transferring Party accordingly and provide information, under which circumstances this might appear in order to enable**

**This obligation extends common provisions in this regard. Principally it is referred to change in the applicable legislation. Literally speaking, this only applies if there was a change in law, which leaves a gap in those scenarios where the law stays the same but its application due to a change in interpretation changed.**

**However, it is not the mere legal text that defines an adequate level of data protection and safeguards the rights and freedoms of data subjects.**
the *Transferring Party* to assess related data protection impacts.

It is the actual application of the law, and that is why this provision slightly extends the common phrasing.

<table>
<thead>
<tr>
<th>(10) Where the <em>Receiving Party</em> engages any other <em>Sub-Processor</em> according to the <em>Sub-Processing Agreement</em> or <em>Data Processing Agreement</em>:</th>
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</thead>
<tbody>
<tr>
<td>Because the <em>Receiving Party</em> poses a risk to the <em>Transferring Party</em> by engaging a further <em>Sub-Processor</em>, this provision governs the obligations regarding sub-processing.</td>
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</table>

<table>
<thead>
<tr>
<th>a) the <em>Receiving Party</em> shall inform the <em>Transferring Party</em> about the engagement of a <em>Sub-Processor</em> and its related sub-processing according to the <em>Applicable Data Protection Law</em>, especially Art. 28 (2) GDPR;</th>
</tr>
</thead>
<tbody>
<tr>
<td>This provision ensures that any <em>processor</em> within the processor chain is bound by these SDPC and therefore maintains the same level of protection for the <em>personal data</em>.</td>
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</table>

| b) the *Receiving Party* shall sign SDPC with such *Sub-Processor* related to the *processing* of *personal data* under these SDPC, the *Sub-Processing Agreement*, the *Data Processing Agreement* and the *Applicable Data Protection Law*. The *Receiving Party* acknowledges and accepts that it is obliged to fulfil the same obligations of a *Transferring Party* as set out in these SDPC in the relation to any *Sub-Processor*. For avoidance of doubt: Any noncompliance of a *Receiving Party* with any obligation as of a *Transferring Party* in relation to any of its *Sub-Processors* results in a breach of contract of these SDPC in the relation to its *Transferring Party*; |

| c) the *Receiving Party* shall make available upon *Request* to the *Transferring Party* a list of all *Sub-Processors* related to the *processing* of *personal data* under these SDPC or the *Sub-Processing Agreement*; the *Receiving Party* shall forward such *Request* to any applicable *Sub-Processors*, if there is no current list of *Sub-Processors* available. Any |

The list of all *Sub-Processors* shall include the full name of the *Sub-Processor*, its legal entity, the country they are located in and where data will be processed, and the type of the sub-processing activity.
lack of completeness – e.g. if a Sub-Processor does not provide a list of Sub-Processors – shall be transparently communicated to the Transferring Party.

d) the Receiving Party shall inform the Transferring Party about any changes to the Sub-Processors related to those Sub-Processors that are processing personal data under these SDPC, the Sub-Processing Agreement;

Changes relevant to these SDPC may be related to, e.g.:

- location of corporate headquarters
- location of processing activities
- legal entity
- merger and acquisitions

e) The Receiving Party shall immediately inform the Transferring Party if it was notified about or otherwise becomes aware of any personal data breaches of its Sub-Processor that affected the processing of the Transferring Party’s personal data;

This obligation is only about the “forwarding” of a data breach notification the Receiving Party received itself by its Sub-Processor. Hence, no reasonable delay is expected and that is why the provision requires an immediate forwarding.

f) the Receiving Party shall instruct its Sub-Processors in accordance with the Instructions the Receiving Party received from the Transferring Party or from the controller;

g) the Receiving Party shall – without undue delay – forward the Requests received from its Transferring Party, provided it relates to the processing of personal data;

h) the Receiving Party shall immediately forward to the Transferring Party any information it has received from its Sub-Processors that materially impacts the processing of personal data under these SDPC, the Sub-Processing Agreement or the Data Processing Agreement; in case the Receiving Party determines the information is not materially
relevant for the Transferring Party, the Receiving Party may refrain from forwarding the information. In this case, the Receiving Party has to document its reason for not forwarding the information;

i) the Transferring Party is entitled to receive upon Request documentation related to the respective non-forwarding of the information according to h) once a year and whenever there is reason to believe that information has not been forwarded appropriately.

(11) In case the controller invokes his third party beneficiary rights against the Receiving Party, the Receiving Party shall fulfil its obligations determined in this Clause to the controller as it would have fulfilled its obligations to the Transferring Party.

This provision ensures that the controller, in case he invokes his third party beneficiary rights, has the same rights as the Transferring Party. This includes, but is not limited, to give instructions directly to the Receiving Party.

(12) In case the Receiving Party becomes aware that its Transferring Party or the controller has factually disappeared or has ceased to exist in law, unless any other legal entity has assumed the entire or relevant legal obligations of the Transferring Party or controller either by contract or by operation of law, as a result of which it takes on the rights and obligations of the Transferring Party or controller, the Receiving Party shall immediately terminate the processing of personal data of the respective Transferring Party or controller – including the deletion of such personal data -, unless otherwise provided by the Sub-Processing Agreement, Data Processing Agreement or Applicable Data Protection Law.

The processing of personal data by any processor is only justified insofar as the processing of the controller is justified. In the event that the controller disappears, this justification becomes void and the processor has no legal grounds to continue processing the respective personal data.

The same applies to any Receiving Party in the event that its Transferring Party disappears. In that moment where the Transferring Party disappeared or has ceased to exist in law, there is still no contractual base to continue the processing.

Notwithstanding the foregoing, the complexity of potential business models and business relationships may allow for specific contractual clauses within the Data Processing Agreement or Sub-Processing Agreement to foresee and plan for such an event. E.g. a Sub-Processing Agreement between a Transferring Party and a Receiving Party may provide that, in the event
(13) Notwithstanding from Clause 4 (12) and in case the Transferring Party has factually disappeared or has ceased to exist in law, unless any other legal entity has assumed the entire or relevant legal obligations of the controller either by contract or by operation of law, as a result of which it takes on the rights and obligations of the controller, the Receiving Party shall inform the controller and act according to the Instructions of the controller; if the Receiving Party cannot determine the controller the Receiving Party shall delete the personal data concerned, unless otherwise provided by the Sub-Processing Agreement, Data Processing Agreement or Applicable Data Protection Law.

In case the Transferring Party has factually disappeared or has ceased to exist in law, the legal ground of processing still exists compared to the situation if the controller has factually disappeared or has ceased to exist in law.

There may be practical needs to address this issue in the Sub-Processing Agreement. The SDPC do not want to limit necessary flexibility in this regard and hence accept solution as provided by Sub-Processing Agreements, as applicable.

(14) The Receiving Party shall designate in writing a representative in the EU according to Art. 27 GDPR.

The SDPC refer to a designated representative several times, mostly related to governing law and courts competent. It is expected that all processors will have such a representative. However, GDPR may lack applicability for very specific business models, which will result in a lack of competent courts in the EU. The latter is considered key under these SDPC as trust-enabler. To circumvent such a potential lack of applicability, this provision requires each Receiving Party to designate a representative as per Art. 27 GDPR.

### Clause 5  Rights of the Receiving Party

(1) Upon reasonable Written Request by the Receiving Party, the Transferring Party shall provide information and documentation sufficient to demonstrate its com-

This provision ensures transparency and enforcement of the requirements that the Transferring Party must meet to engage a Sub-Processor. This includes having a signed Data Pro-
Compliance with the applicable legal and contractual obligations for transferring personal data to the Receiving Party, especially those as under Clause 3 (2), (4) and (5).

(2) Upon Request, the Receiving Party may assess relevant provisions of the Sub-Processing Agreement between its Transferring Party as a Receiving Party and the Transferring Party’s Transferring Party, i.e. the authorization of sub-processing and Third Country transfers, and regarding required technical organizational measures.

Additionally, to Clause 5 (1) this provision clarifies that relevant provisions of the Sub-Processing Agreements must be disclosed.

### Clause 6  Third party beneficiary rights

(1) There shall be third party beneficiary rights for the controller as follows:

The Parties agree that the controller is a third party beneficiary of these SDPC and may act in his own name and on his own behalf. The controller is entitled

The following third party beneficiary rights shall enable the controller to exercise control over the processing to which he is entitled/obliged to do. Therefore, the SDPC grants rights to him that are equivalent to those set by the GDPR and the Data Processing Agreement. By that the controller can effectively assess a legal processing under GDPR without an unnecessarily administrative burden for the Parties.

a) to enforce against the Receiving Party Clause 4 (11); if the controller does so the controller demonstrates to the Receiving Party that the controller is the entitled controller and provides all information necessary for the Receiving Party to follow its Instructions;

This provision enables the controller to assume the role of the Transferring Party. More specifically, it gives the controller the same rights as the Transferring Party to enable it to act against the Receiving Party as necessary to enforce certain Instructions.
b) at its discretion to terminate any transfer and/or instruct the Receiving Party to delete, return, or suspend any processing of all personal data processed under these SDPC, the Sub-Processing Agreement and the Data Processing Agreement if

Even though the controller may not be a contractual partner of either Party, it must have the ability to terminate the transfer in certain circumstances to protect itself and the rights and freedoms of the data subjects concerned. This provision lays out the circumstances in which the controller has the right to terminate transfers to ensure the adequacy of the appropriate safeguards. Such circumstances may include the event that the Receiving Party has factually disappeared, ceased to exist in law, or has become insolvent. In any of these circumstances, the controller may directly enforce his rights.

1. the Receiving Party does not comply with its obligations to the controller according to Clause 4 (11) or

2. the controller becomes aware of any circumstances according to Clause 4 (7) d), e), f) or (10) a), d) or e) regarding the Receiving Party.

c) Notwithstanding Clause 6 (1) b) to request compliance of processing with the Data Processing Agreement, even if the Sub-Processing Agreement unlawfully conflicts the Data Processing Agreement.

(2) There shall be third party beneficiary rights for data subjects as follows:

a) The Parties agree, that any data subject is a third party beneficiary of these SDPC whose personal data are subject to the processing under these SDPC, the Sub-Processing Agreement. The data subject can enforce against the Receiving Party its rights under Chapter III of the GDPR, where

In accordance with the GDPR, these SDPC assume that the primary point of contact for the data subject will always be the controller. If the controller has factually disappeared or has ceased to exist in law, data subjects shall have the possibility to approach to any processor directly.
the controller has factually disappeared or has ceased to exist in law, unless any other legal entity has assumed the entire or relevant legal obligations of the controller either by contract or by operation of law, as a result of which it takes on the rights and obligations of the controller, provided the Receiving Party will be presented appropriate evidence that the respective controller has ceased to exist in law.

b) The Parties do not object to a data subject being represented by a not-for-profit body, organisation or association according to Art. 80 (1) GDPR if the data subject so expressly wishes and if it is not prohibited by Applicable Data Protection Law.

Clause 7 Infringement of the obligations

(1) The Transferring Party shall immediately and thoroughly terminate the transfer in case the Receiving Party does not comply with Clause 4 (2), does not fulfil the obligations according to Clause 4 (3), (4), (6), (7), (10) or (11) or has complained without justification about competence of the court according to Clause 10 (1) lit. a) and shall accordingly instruct the deletion or return and deletion of any personal data processed under these SDPC, the Sub-Processing Agreement or Data Processing Agreement by the Receiving Party.

An infringement of the obligations implies a lack of protection of personal data. Hence, it is mandatory to terminate the transfer immediately in such circumstances because the rights and freedoms of the data subject might be at risk. Clause 7(1) provides an obligation for the Transferring Party to terminate the transfer in the circumstances described herein. Notwithstanding the foregoing, Clause 7(2) provides an exception to this general obligation.

(2) Notwithstanding from Para (1) the Transferring Party may at its discretion suspend the transfer, request deletion and/or request the return of the personal data. This might be the case where the Transferring Party needs appropriate time to manage the porting of respective personal data to another processor or the Receiving Party substantially promises to re-establish its technical

There may be circumstances where a final termination of the transfer seems excessive. This provision gives an example of such circumstances and provides an opportunity for the Receiving Party to renew its compliance with its obligations under the SDPC. The Transferring Party thus retains the possibility to keep its engagement with this Sub-Processor.
and organizational compliance with these SDPC or provide requested information by the Transferring Party in a timely manner. The Transferring Party shall document its reasons why such a suspension was considered appropriate. After a maximum of three months any suspension shall be considered inappropriately with regards to the re-establishment of the technical and organizational compliance. It shall also be considered inappropriately with regards to the provision of any information according Clause 4 (5) and (6) requested by the Transferring Party unless the Receiving Party demonstrates that its delayed provision is caused by circumstances that the Receiving Party has no direct influence on the delay but can demonstrate it has taken all necessary measures to receive the information in a timely manner itself.

Another circumstance may be where the Receiving Party has a justifiable reason for not complying with the Requests of the Transferring Party. This provision provides an exception for those circumstances where a final termination of the relationship between the Parties may seem inappropriate. Such a grace period is also protecting the rights and freedoms of data subjects. Any ad-hoc termination of transfer will most likely trigger the need for an ad-hoc replacement, requiring to transfer personal data from one processor to another, who needs to be appropriately assessed by the Transferring Party prior to any processing. It is obvious that such a burdensome procedure should not be triggered by any infringement, but only to those that are substantial.

Clause 8 Liability

(1) Any data subject who has suffered legally cognizable damage as a result of an infringement of these SDPC and the Sub-Processing Agreement or Data Processing Agreement may request compensation from any Party of these SDPC for the damage suffered, in accordance with Art. 82 GDPR.

The specification of indemnities in Clause 8 follows Art. 82 GDPR. Clause 8 (1) determines the external liability of the Parties towards the data subject, which is essential for full and effective compensation. According to Art. 82 (2) GDPR, this contract provides that the Initial Processor and any Sub-Processors may be held directly liable for damages resulting from processing that is in breach of the obligations set out in GDPR.

This only applies to external liabilities against data subjects. It does not affect any internal liabilities agreed upon by the Parties.

(2) The Parties shall be jointly and severally liable to the controller for any damages the controller has suffered as a result of any breach of the obligations of these SDPC, the Sub-Processing Agreement, the Data Pro-

Clause 8 (2) determines the Parties’ liability towards the controller within the processing chain. Such liability is based on an extensive interpretation of Art. 82 GDPR in conjunction with Art. 28 (4) Sentence 2 GDPR. Both Parties are jointly and severally liable, with the possibility of an internal settlement where compensation may be
cessing Agreement or Applicable Data Protection Law by the Parties and any further Sub-Processors.

(3) Para. (1) is without prejudice to the liability of the controller according to the Data Processing Agreement and Applicable Data Protection Law.

Clause 8 (3) provides the separation of the initial controller’s liability. Because the controller is not a direct contracting Party to these SDPC, this shall be part of the Data Processing Agreement with the controller.

Clause 9  Cooperation with supervisory authorities

The Parties agree that the competent supervisory authority may perform its rights according to Art. 58 GDPR against each of them, to the extent it concerns the processing covered by these SDPC.

This Clause refers to Art. 58 GDPR. Hence, the supervisory authority has the same rights in a Third Country as in the EU. This ensures that the data subject is also protected by an independent body.

Clause 10  Dispute Resolution Mechanism

(1) The Parties acknowledge and agree that with regards to any disputes with the data subject the following applies:

a) The Receiving Party guarantees that it does not challenge or object to the competency or jurisdiction, where any data subject brings procedures related to the processing of its personal data under these SDPC to a court where either the controller or the Receiving Party is established, where the controller or the Receiving Party has registered its representative according to Art. 27 GDPR or where the data subject has its habitual residence. The data subject may explicitly refer to this provision where the Receiving Party complains about the competence of the court.

Art. 79 (2) GDPR grants data subjects very specific rights as regards in which courts data subjects may bring proceedings.

International procedural law, however, will not grant data subjects the same options. Art. 79 (2) GDPR provides that data subjects may bring proceedings in those courts situated where

- the controller or processor has an establishment; or
- the data subject has his or her habitual residence

In both cases, the GDPR takes it for granted that the courts will be situated in a member state.
Considering international transfers, there are two challenges:

- how to address a controller’s or processor’s representative according to Art. 27 GDPR; and
- how to address that processors may not have their establishment in any member state

The mere existence of the necessity for further safeguards in international transfers proves that the legislature did not provide for every circumstance where the GDPR should be applicable to processors. Hence, data subjects would suffer negative effects without an SDPC reflecting the spirit and purpose of Art. 79 GDPR.

b) The data subject may refer its complaint to alternative dispute resolution mechanisms, like mediation by an independent person or, where applicable, by the competent data protection supervisory authority according to the Applicable Data Protection Law, as provided in this section.

If a Party has declared itself subject to an alternative dispute resolution mechanism, the data subject shall refer its dispute to this respective alternative dispute resolution mechanism.

If a Party has not declared itself subject to an alternative dispute resolution mechanism the data subject shall communicate to the Party concerned that it is willing to refer the dispute to an alternative dispute resolution mechanism and to which. The Party concerned shall promptly respond whether it will declare itself subject to this alternative dispute resolution mechanism. If the Party concerned rejects the alternative dispute resolution mechanism proposed by the data subject. It is entitled to directly go to court without taking this chance.
data subject the data subject shall refer to the competent court.

For avoidance of doubt:

- Data subject’s choice to refer any dispute to an alternative dispute resolution mechanism does not prevent the data subject to refer such dispute to court if any such mechanism has failed;

- A data subject should not refer the same dispute between the Party concerned and the data subject to court proceedings and alternative dispute resolution mechanisms at the same time;

- Court proceedings do not require the data subject to have been defeated within any prior alternative dispute resolution on the same dispute.

(2) The Parties acknowledge and agree that with regards to any disputes between the Parties the court competent is the one where the Transferring Party is established. Where the Transferring Party is not established within the EU, the court competent shall be the one where the representative of the Transferring Party is established.

The purpose of Clause 10 (2) is to determine which court shall be exclusively competent regarding disputes between the Parties. Hence it does not affect the court competent for disputes between the controller and one of the Parties or between the data subject and one of the Parties. For disputes related to any data subject this is reflected in Clause 10 (1) a) and b). For disputes related to the controller no provisions were necessary, as International Civil Procedure Law already provides adequate safeguards.

Considering the fact, that the current model clauses for the transfer of personal data to processors (Commission decision 2010/87/EU) also refer the disputes to the courts of the member state were the “data exporter” is established (see Clause 9 Standard Contractual Clauses (Processors)) it was decided within the SDPC to refer the disputes to the courts of the member state were the Transferring Party is established and in case the Transferring Party is not established within the EU, in the member state where
the representative of the Transferring Party is established. This option was chosen since it provides legal certainty and continuity. The link to the EU ensures an adequate application of the GDPR by interpreting these SDPC.

(3) The Parties may agree to a court competent at their choice, provided that such court competent is one within the EU.

It shall be guaranteed that the court competent is a court within the EU in order to safeguard an appropriate application of the GDPR.

(4) The Parties may agree to refer the dispute to mediation by the supervisory authority competent where applicable according to the Applicable Data Protection Law.

Clause 11  Governing Law

(1) Governing law regarding any dispute related to these SDPC claimed by the data subject against a processor according Clause 6 (2) shall be the law of the member state where the data subject has its residence; in case the data subject is a non-EU resident the law of the state where the data subject has its residence shall apply, unless the data subject requests the law of the member state where the processor has registered its EU representative.

Since the data subject will have usually less possibilities to overview which parties are involved and where the Parties are established, it is necessary that the data subject does not have difficulties regarding governing law. In case of a claim, it should not deal with a governing law which it does not know.

In order to avoid complexity, the Parties should agree upon the governing law of the state where the chosen place of jurisdiction is.

(2) As the governing law regarding any dispute related to these SDPC between the Parties, the Parties acknowledge and accept the law of the following member state of the EU______________________________.

The Parties are free to express their choice of governing law with the limitation that it shall be the law of one of the member states of the EU (Art. 28 (4) GDPR).

The Parties acknowledge and agree in case the dispute resulted of these SDPC affects rules of the Sub-Processing Agreement or
**Data Processing Agreement** between the Parties the governing law of these SDPC has precedence.

In case the controller invokes his right according Clause 6 (1) the governing law referred to in Para. (2) of this Clause shall apply. In order to have the same governing law for disputes from the controller towards a Party as between the Parties Para. (3) refers to Para. (2).

### Clause 12  Implementation of a suspensive condition

(1) These SDPC shall only become effective under the suspensive condition that the following appropriate safeguards according Art. 46 (2) GDPR becomes ineffective, namely cases where the Commission has decided that the Third Country ensures an adequate level of protection according to Art. 45 (1) GDPR. Where the transfer of personal data under these SDPC is also subject to an approved Code of Conduct, the provisions of the respective Code of Conduct shall prevail.

The SDPC shall provide an adequate level of protection for the transfer of personal data into or within a Third Country, especially in those circumstances where the Commission has not made a decision on the matter according to Art. 45 GDPR. Moreover, these SDPCs shall enable the processors who use them as a safeguard in circumstances where the decision of the Commission is repealed to amend or suspend the data transfer according to Art. 45 (5) GDPR.

(2) ☐ Notwithstanding from Clause 12 (1) the Parties agree, that these SPDC shall only become effective under the suspensive condition that the following appropriate safeguards become ineffective:

- ☐ adequacy decision of the European Commission, Art. 45 (1) GDPR
- ☐ an approved Code of Conduct, Art. 46. (2) (e)
- ☐ an approved certification mechanism, Art. 46. (2) (f)
- ☐ binding corporate rules, Art. 46. (2) (b)
- ☐ there shall not be any suspensive condition.

This provision can be optionally selected by the Parties as an alternative to Clause 12 (1). There may be cases, where the Parties even prefer to have the SDPC applicable instead of having any suspensive condition at all. For this purpose, Parties may now choose to either take the static provision as provided by the SDPC or to agree upon a more dynamic provision where the Parties select the respective suspensive conditions individually. Remark: in cases, where there shall be no suspensive condition the respective Parties must ensure that all the provisions flowed down do not create any conflicts.
Clause 13  Variation of contract

(1) These SDPC must not be modified or otherwise be amended by the Parties. This does not preclude the Parties from adding clauses on business related issues which they consider as being pertinent for the contract as long as they do not directly or indirectly contradict or otherwise undermine the rights and obligations as set out in these Clauses. In case of conflict, these SDPC precedent over any contrary clauses.

To guarantee the full level of protection for personal data, the Parties are not allowed to amend these Clauses unless they add clauses which do not contradict the content of these SDPC. Different processing activities and business models may require additional business-related provisions which enable them to fulfil their contract. The SDPC shall provide a framework which is useful for these different business models.

(2) Para. (1) does not preclude the Parties from expanding upon these Clauses in further agreement as long as the safeguards of these SDPC are warranted.

Compared to Para. (1), this provision allows the Parties to add safeguards that do not fall below the level of data protection as provided by the SDPCs. This may be the case where a member state requires a higher standard of data protection or where controllers contractually require additional safeguards.

(3) Where the Parties have signed a Sub-Processing Agreement or a Data Processing Agreement without obligation under GDPR – e.g. where Receiving Party is considered to perform services that are not principally related to the processing of personal data, for instance specific types of maintenance services – and hence these SDPC are signed to safeguard Third Country transfers of data under such precautionary executed agreement, i.e. there is no legal obligation under GDPR to sign those SDPC as well, the Parties may modify and adversely derogate these SDPC with regards to the following provisions: Clause 2 (4), Clause 3 (4),(5), (7) a), b), Clause 4 (5), (10) b) (but no derogation that is less protective than Article. 11 para 2 GDPR), c), f) (11) (but no derogation that is less protective than Article. 11 para 2 GDPR), Clause 5, Clause 6 (2), Clause 8 and Clause 9.

Regarding the feedback received there is a practical need of signing Sub-Processing Agreements or Data Processing Agreements and SDPC even in those cases, where this is not mandatory by law.

It is not recommended using the SDPC to solve data protection related issues that are not directly related to Third Country transfers. However, given the practice of signing SDPC as an additional safeguard without legal obligation, the current draft should not hinder this positive practice in future.

Instead of drafting this provision against the background of one specific issue, the approach was to find a solution that will work for the specific scenario reported (maintenance) but also any scenarios that are of a similar kind.

This provision balances both the interest and intent of SDPC to safeguard international transfer and the interest of a flexibility with regards to unnecessary administrative burdens for signees.
The current proposal follows the approach that the SDPC do not govern specific technical or organizational measures related to the processing of personal data in general. Where the Parties consider it necessary, however, to balance such derogations from administrative burdens with intensified provisions regarding limitation of processing purposes or any other technical and organizational measures – e.g. related to the deletion of received personal data or clarify the applicability of Article 28 para 10 GDPR – those provisions shall be subject to the individual Sub-Processing Agreement or Data Processing Agreement but not the SDPC.

Clause 14  Termination of contract

Any Party may terminate these SDPC any time with prior Written notification of one month.

The SDPC contain a regular right to terminate them whereas the draft of the ad hoc Clauses of the WP29 stipulated an obligation for the Transferring Party to terminate the Model Clauses in certain circumstances. Comparatively, this draft refrains from setting an obligation of termination of contract because a Party should have the right to terminate a contract rather than an obligation.

An obligation to terminate the transfer in order to maintain the protection of personal data must be provided, though. This provision is set out in Clause 15 of these SDPC.

Clause 15  Termination of the transfer and instruction of deletion or return and deletion

(1) The Transferring Party shall immediately terminate any transfer and instructs the deletion or return and deletion of any personal data subject to these SDPC by the Receiving Party in case of and where not explicitly provided differently in these SDPC:

Solely terminating the SDPC or the Sub-Processing Agreement would not guarantee the appropriate level of protection of personal data in those circumstances where it is required that the transfer will be stopped immediately. Those cases are addressed in this Clause.
<table>
<thead>
<tr>
<th><strong>a)</strong> the Data Processing Agreement has been terminated;</th>
<th>In the event of the termination of the Data Processing Agreement, the legal ground for sub-processing according to Art. 28 GDPR ceases to apply. Any further transfer of personal data must be prevented.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>b)</strong> the Sub-Processing Agreement has been terminated;</td>
<td>As in the circumstance described above, the legal ground for Sub-Processing according to Art. 28 GDPR ceases to apply when there is a termination of the Sub-Processing Agreement.</td>
</tr>
<tr>
<td><strong>c)</strong> these SDPC are terminated according to Clause 14 and the transfer of personal data is not subject to any other safeguard according Chapter V GDPR;</td>
<td>The normal use case of termination of the transfer is the regular termination of the SDPC.</td>
</tr>
<tr>
<td><strong>d)</strong> the Transferring Party becomes aware of any infringements of these SDPC, the Data Processing Agreement, the Sub-Processing Agreement or Applicable Data Protection Law; where Clause 7 applies Clause 7 shall prevail.</td>
<td>Clause 7 SDPC provides an additional Clause regarding infringements because of its importance. It rules the details of infringements and provides a case where the transfer can be terminated temporarily; that differs this regulation from the others within this Clause.</td>
</tr>
<tr>
<td><strong>(2)</strong> The Transferring Party shall request Written confirmation, and where appropriate any further demonstration, by the Receiving Party to have</td>
<td>In order to ensure the transfer is terminated it is necessary for the Transferring Party to require the Documented termination of the data transfer by the Receiving Party.</td>
</tr>
<tr>
<td><strong>a)</strong> terminated any transfer and instructed deletion or return and deletion of any personal data subject to these SDPC by any Sub-Processor, where applicable</td>
<td></td>
</tr>
<tr>
<td><strong>b)</strong> deleted or returned and deleted any personal data subject to these SDPC.</td>
<td></td>
</tr>
</tbody>
</table>
On behalf of the Provider

Name (written out in full): ...

Position: ...

Address: ...

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

(Stamp of organization) Signature: ...

On behalf of the Customer

Name (written out in full): ...

Position: ...

Address: ...

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

(Stamp of organization) Signature: ...