

ANNEX

STANDARD CONTRACTUAL CLAUSES

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

Name of the data exporting organisation:

.....

Address:

Tel. **fax** **e-mail:**

Other information needed to identify the organisation:

(‘the data **exporter**’)

and

Name of the data importing organisation:

.....

Address:

tel. **fax** **e-mail:**

Other information needed to identify the organisation:

(‘the data **importer**’)

HAVE AGREED on the following contractual clauses (‘the Clauses’) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1:

Clause 1

Definitions

For the purposes of the Clauses:

- a) ‘**personal data**’, ‘**special categories of data**’, ‘**process/processing**’, ‘**controller**’, ‘**processor**’, ‘**data subject**’ and ‘**supervisory authority**’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (‘hereinafter the Directive’);
- b) the ‘**data exporter**’ shall mean the controller who transfers the personal data;
- c) the ‘**data importer**’ shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection.

Clause 2

Details of the transfer

The details of the transfer, and in particular the categories of personal data and the purposes for which they are transferred, are specified in Appendix 1 which forms an integral part of the Clauses.

*Clause 3***Third-party beneficiary clause**

The data subjects can enforce this Clause, Clause 4(b), (c) and (d), Clause 5(a), (b), (c) and (e), Clause 6(1) and (2), and Clauses 7, 9 and 11 as third-party beneficiaries. The parties do not object to the data subjects being represented by an association or other bodies if they so wish and if permitted by national law.

*Clause 4***Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data by him has been and, up to the moment of the transfer, will continue to be carried out in accordance with the relevant provisions of the Member State in which the data exporter is established (and where applicable has been notified to the relevant authorities of that State) and does not violate the relevant provisions of that State;
- (b) that if the transfer involves special categories of data the data subject has been informed or will be informed before the transfer that this data could be transmitted to a third country not providing adequate protection;
- (c) to make available to the data subjects upon request a copy of the Clauses; and
- (d) to respond in a reasonable time and to the extent reasonably possible to enquiries from the supervisory authority on the processing of the relevant personal data by the data importer and to any enquiries from the data subject concerning the processing of this personal data by the data importer.

*Clause 5***Obligations of the data importer**

The data importer agrees and warrants:

- (a) that he has no reason to believe that the legislation applicable to him prevents him from fulfilling his obligations under the contract and that in the event of a change in that legislation which is likely to have a substantial adverse effect on the guarantees provided by the Clauses, he will notify the change to the data exporter and to the supervisory authority where the data exporter is established, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) to process the personal data in accordance with the mandatory data protection principles set out in Appendix 2; or, if explicitly agreed by the parties by ticking below and subject to compliance with the mandatory data protection principles set out in Appendix 3, to process in all other respects the data in accordance with:
 - the relevant provisions of national law (attached to these Clauses) protecting the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data applicable to a data controller in the country in which the data exporter is established, or
 - the relevant provisions of any Commission Decision under Article 25(6) of Directive 95/46/EC finding that a third country provides adequate protection in certain sectors of activity only, if the data importer is based in that third country and is not covered by those provisions, in so far as those provisions are of a nature which makes them applicable in the sector of the transfer;
- (c) to deal promptly and properly with all reasonable inquiries from the data exporter or the data subject relating to his processing of the personal data subject to the transfer and to cooperate with the competent supervisory authority in the course of all its inquiries and abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (d) at the request of the data exporter to submit its data processing facilities for audit which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (e) to make available to the data subject upon request a copy of the Clauses and indicate the office which handles complaints.

*Clause 6***Liability**

1. The parties agree that a data subject who has suffered damage as a result of any violation of the provisions referred to in Clause 3 is entitled to receive compensation from the parties for the damage suffered. The parties agree that they may be exempted from this liability only if they prove that neither of them is responsible for the violation of those provisions.

2. The data exporter and the data importer agree that they will be jointly and severally liable for damage to the data subject resulting from any violation referred to in paragraph 1. In the event of such a violation, the data exporter or the data importer or both.

3. The parties agree that if one party is held liable for a violation referred to in paragraph 1 by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred. (*).

Clause 7

Mediation and jurisdiction

1. The parties agree that if there is a dispute between a data subject and either party which is not amicably resolved and the data subject invokes the third-party beneficiary provision in clause 3, they accept the decision of the data subject:

- (a) to refer the dispute to mediation by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that by agreement between a data subject and the relevant party a dispute can be referred to an arbitration body, if that party is established in a country which has ratified the New York convention on enforcement of arbitration awards.

3. The parties agree that paragraphs 1 and 2 apply without prejudice to the data subject's substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

The parties agree to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under national law.

Clause 9

Termination of the Clauses

The parties agree that the termination of the Clauses at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions under the Clauses as regards the processing of the data transferred.

Clause 10

Governing Law

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

Clause 11

Variation of the contract

The parties undertake not to vary or modify the terms of the clauses.

On behalf of the data exporter:

Name (written out in full):

Position:

Address:

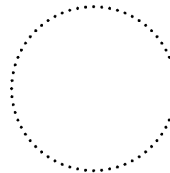
(*) Paragraph 3 is optional.

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

.....

.....

(signature)



(stamp of organisation)

On behalf of the data importer:

Name (written out in full):

Position:

Address:

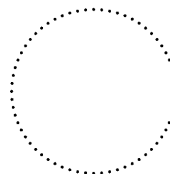
Other information necessary in order for the contract to be binding (if any):

.....

.....

.....

(signature)



(stamp of organisation)
