

## CODA INTELLIGENCE - DATA PROCESSING ADDENDUM

This Data Processing Addendum ("DPA") applies to CODA Intelligence (US) Inc. ("CODA")'s processing of Personal Data provided to CODA by Customer as part of CODA's provision of Services or Software-as-a-Service ("Services") to Customer.

This DPA forms part of the BETA Agreement, Master Services Agreement, Terms of Service, End User License Agreement, or other written or electronic agreement ("Agreement") between CODA and Customer for the purchase of Services to reflect the parties' agreement with regard to the Processing of Personal Data (each as defined below). In the event of a conflict between any of the provisions of this DPA and the remaining provisions of the Agreement, the provisions of this DPA shall prevail to the extent of the conflict.

In the course of providing services to Customer pursuant to the Agreement, CODA may Process Personal Data on behalf of Customer and the parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

The terms of this DPA will be effective and replace any previously applicable data processing terms as of the date of execution of the Agreement.

### Introduction

A. Customer is a Controller of certain Personal Data and wishes to appoint CODA as a Processor to Process this Personal Data on its behalf.

B. The parties are entering into this DPA to ensure that CODA conducts such data Processing in accordance with Customer's instructions and Applicable Data Protection Law requirements, and with full respect for the fundamental data protection rights of the Data Subjects whose Personal Data will be Processed.

### Definitions

In this DPA, the following terms shall have the following meanings:

**"Controller", "Processor", "Data Subject", "Personal Data" and "Processing"** (and **"Process"**) shall have the meanings given in Applicable Data Protection Law. "Personal Data" shall include "Personal information" as that term is defined under Applicable Data Protection Law.

**"Applicable Data Protection Law"** shall mean: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); (ii) EU Directive 2002/58/EC concerning the Processing of Personal Data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications); (iii) any applicable national legislation made under or pursuant to (i) or (ii); (iii) applicable federal and state U.S. data protection laws, including without limitation, the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 et seq. and implementing regulations (the "CCPA"); (iv) any amendments or successor legislation to (i), (ii), (iii), or (v); and (v) any other applicable data protection law, all as updated or superseded from time to time.

**"Model Clauses"** shall mean the model clauses for the transfer of Personal Data to Processors established in third countries approved by the European Commission from time to time, the approved version (at Appendix 4) of which in force at present is that set out in the European Commission's Decision 2010/87/EU of 5 February 2010.

**"Subprocessor"** shall mean any Processor engaged by CODA who agrees to Process Personal Data on behalf of CODA.

## **Data Processing**

1. **Relationship of the Parties.** Customer (the Controller) appoints CODA as a Processor to Process the Personal Data that is the subject matter of the Agreement. Each party shall comply with the obligations that apply to it under Applicable Data Protection Law.
2. **Purpose Limitation.** CODA shall Process the Personal Data as a Processor only as necessary to perform its obligations under the Agreement (the "Permitted Purpose"), except where otherwise required or allowed by Applicable Data Protection Law applicable to CODA. Other than as otherwise agreed upon by the parties in the Agreement or as otherwise permitted under Applicable Data Protection Law, CODA shall not (i) sell the Personal Data, or (ii) retain, use or disclose the Personal Data for any commercial purpose.
3. **International Transfers.** Customer acknowledges and agrees that CODA may transfer and process Personal Data anywhere in the world where CODA, its affiliates or its sub-processors maintain data processing operations. CODA shall not transfer the Personal Data (nor permit the Personal Data to be transferred) outside of the United States, European Economic Area (the "EEA") or the United Kingdom (the "UK") unless it takes such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. In respect of Personal Data originating in the EEA or UK, such measures may include (without limitation) transferring the Personal Data to a recipient in a country that the European Commission or any applicable UK authority (respectively) has decided provides adequate protection for Personal Data, to a recipient that has achieved binding corporate rules authorization in accordance with Applicable Data Protection Law, or to a recipient that has executed Model Clauses. Where required under Applicable Data Protection Law to transfer Personal Data from Customer in the EEA to CODA outside of the EEA, Customer and CODA will be deemed to have entered into Model Clauses with Customer as the "data exporter" and CODA as the "data importer", Appendix 1 and Appendix 2 to the Model Clauses shall be deemed completed with Appendix 1 and Appendix 2 of this DPA, and with the Additional Terms in the Model Clauses set out in Appendix 3 of this DPA. The date of the Model Clauses shall be the date of the Agreement. It is not the intention of either party, nor the effect of this DPA, to contradict or restrict any of the provisions set forth in the Model Clauses. Accordingly, if and to the extent the Model Clauses conflict with any provision of this DPA, the Model Clauses shall prevail to the extent of such conflict. Where CODA is onward transferring Personal Data outside of the EEA or the UK under Model Clauses, Customer authorizes CODA to enter into the Model Clauses for the benefit of Customer.
4. **Confidentiality of Processing.** CODA shall ensure that any person that it authorizes to Process the Personal Data (including CODA's staff, agents and subcontractors) (each an "Authorized Person") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty) and shall not permit any person to Process the Personal Data who is not under such a duty of confidentiality. CODA shall ensure that all Authorized Persons Process the Personal Data only as necessary for the Permitted Purpose.
5. **Security.** CODA shall implement appropriate technical and organizational measures to protect the Personal Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data (a "Security Incident"). Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Such measures may include, as appropriate:
  - a. the pseudonymization and encryption of Personal Data;

- b. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
- c. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- d. a Process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.

6. Subprocessing. Customer specifically authorizes the engagement of CODA's affiliates as Subprocessors. Customer consents to CODA engaging third party Subprocessors to Process the Personal Data provided that: (i) CODA maintains an up-to-date list of its Subprocessors at <https://www.codaintelligence.com/subprocessors>, which it shall update with details of any change in Subprocessors at least 10 days' prior to any such change; (ii) CODA imposes data protection terms on any Subprocessor it appoints that protect the Personal Data to substantially similar terms to the terms of this DPA; and (iii) CODA remains fully liable for any breach of this DPA that is caused by an act, error or omission of its Subprocessors. Customer may object to CODA's appointment or replacement of a third party Subprocessor within thirty (30) days of the update to the list of subprocessors, provided such objection is on reasonable grounds relating to the protection of the Personal Data. In such event, CODA will either not use the Subprocessor to Process Customer's Personal Data or will replace the Subprocessor or, if this is not possible, Customer may terminate the Agreement.

7. Cooperation and Data Subjects' Rights. CODA shall provide all reasonable and timely assistance (including by appropriate technical and organizational measures) to Customer to enable Customer to respond to: (i) any request from a Data Subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a Data Subject, regulator or other third party in connection with the Processing of the Personal Data. In the event that any such request, correspondence, enquiry or complaint is made directly to CODA, CODA shall promptly inform Customer providing details of the same.

8. Data Protection Impact Assessment. If CODA believes or becomes aware that its Processing of the Personal Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, it shall promptly inform Customer and provide Customer with all such reasonable and timely assistance as Customer may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.

9. CCPA. The Parties acknowledge and agree that CODA shall act as a "Service Provider," as such term is defined in the CCPA, and shall collect, access, maintain, use, process and transfer personal information, as that term is defined by the CCPA ("CCPA Personal Information") solely for the purpose of performing CODA's obligations under this Agreement for or on behalf of Customer and for no commercial purpose other than the performance of such obligations.

10. Security Incidents. Upon becoming aware of a Security Incident, CODA shall inform Customer without undue delay and shall provide all such timely information and cooperation as Customer may require in order for Customer to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. CODA shall further investigate the Security Incident and provide such reasonable assistance to Customer (and any law enforcement or regulatory official) as required by

Customer to investigate the Security Incident, and CODA shall take such measures and actions as are necessary to remedy any non-compliance by CODA with this DPA.

10. Deletion or Return of Data. After termination or expiration of the Agreement, or upon Customer's request, CODA shall destroy or return to Customer all Personal Data (including all copies of the Personal Data) in its possession or control (including any Personal Data subcontracted to a third party for Processing). This requirement shall not apply to the extent that CODA is required by any EU (or any EU Member State) or US law to retain some or all of the Personal Data, in which event CODA shall isolate and protect the Personal Data from any further Processing except to the extent required by such law.

11. Audit. Upon Customer's written request and at Customer's cost, if Customer has reasonable cause to believe CODA is in non-compliance with its obligations under this DPA, CODA shall permit a mutually agreed-upon third party auditor (the "**Auditor**") to audit CODA's compliance with this DPA and shall make available to such third party auditor all information, systems and staff necessary for the Auditor to conduct such audit. CODA acknowledges that the Auditor may enter its premises for the purposes of conducting this audit, provided that Customer gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to CODA's operations. Customer will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; or (ii) Customer (acting reasonably) believes a further audit is necessary due to a Security Incident suffered by CODA.

CODA and Customer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

## **Appendix 1**

### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

Data exporter is (i) Customer which is subject to the data protection laws and regulations of the EU, the EEA and/or their member states, Switzerland and/or the UK and, (ii) its Affiliates (as defined in the Agreement).

### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

CODA is a provider of cybersecurity services which process personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

Data exporter may submit Personal Data to data importer through Services, as applicable, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospects, customers, business partners and vendors of data exporter (who are natural persons)
- Employees or contact persons of data exporter's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of data exporter (who are natural persons)
- Data exporter's Users authorized by data exporter to use CODA's products and/or services (who are natural persons)

### **Categories of data**

The personal data transferred concern the following categories of data (please specify):

Data exporter may submit Personal Data to the data importer through Services, as applicable, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First and last name
- Title/Position
- Contact information (company, email, phone, physical business address)
- Network data (including source and destination IP addresses and domains, approximate geolocation based on IP lookup, network traffic flows, communications metadata, machine names, and unique device identifiers)
- Systems data (including hardware, software inventory, users and groups, patches, processes, services, jobs, network connections, network devices configurations, registry data, software configuration files, etc)
- Active Directory data (including users, groups, machines, policies and associated metadata such as email address, first name, last name, organization, organizational units, SID, manager, department, phone, etc.)
- User and endpoint behaviour (including user account activity & metadata, applications executed on endpoints, and accessed URLs)

- Application logs (including firewall logs, DHCP/DNS logs, intrusion detection logs, malware logs, cloud service logs, proxy logs, file access logs)
- Other relevant machine data which the data exporter elects to send to the data importer for processing.

**Special categories of data** (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

The data importer does not intentionally collect or process any special categories of data. However, the data exporter may submit special categories of data to the data importer through Services, as applicable, the extent of which is determined and controlled by the data exporter in its sole discretion.

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):  
Aggregation and processing by CODA products and services for use by the data exporter in its normal business activities.

## **Appendix 2**

Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

Data importer will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data uploaded to the Services, as applicable, as described in the Security, Privacy and Architecture Reference applicable to the specific Services, as applicable, purchased by data exporter, and available upon request or otherwise made reasonably available by data importer. Data importer will not materially decrease the overall security of the Services, as applicable during a license, services, or subscription term.



### **Appendix 3**

#### **Additional clauses**

The parties agree that the audits described in Clause 5(f), Clause 11 and Clause 12(2) of the Model Clauses shall be carried out in accordance with the Section 11 of this DPA.

The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Model Clauses shall be provided by the data importer to the data exporter only upon data exporter's request.

The parties agree that data exporter's consent for sub-processing as set forth in Section 6 of this DPA shall be deemed consent for the purposes of the Model Clauses.

## **Appendix 4**

### **Model Clauses**

For the purposes of this Appendix 4, references to the "data exporter" and "data importer" shall be to Customer and CODA respectively (each a "party"; together "the parties").

#### **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;
- (b) 'the data exporter' means the controller who transfers the personal data;
- (c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) 'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### **Clause 2**

##### **Details of the transfer**

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

## Clause 3

### Third-party beneficiary clause

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

## Clause 4

### Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

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

## Clause 5

### Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

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

## Clause 6

### Liability

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

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

entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

#### Clause 7

##### Mediation and jurisdiction

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

#### Clause 8

##### Cooperation with supervisory authorities

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

#### Clause 9

##### Governing Law

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

#### Clause 10

##### Variation of the contract

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

## Clause 11

### Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## Clause 12

### Obligation after the termination of personal data processing services

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