DATA PROCESSING ADDENDUM

EXPONEA DATA PROCESSING ADDENDUM

Version: 2.0, Effective data: 20th April 2018

This Data Processing Addendum ("**Addendum**") forms part of the general terms and conditions – Exponea platform available at https://exponea.com/terms-of-service/general_terms_and_conditions.pdf ("**GTC**"), agreement on provision of services, cooperation agreement, reseller agreement, order form or any other agreement (GTC or any such other agreement hereinafter referred to also as the "**Agreement**") concluded between **Exponea s.r.o.**, company established and existing under Slovak law, Business ID No. 50017560, with its registered office at Twin City B, Mlynske Nivy 12, 821 09 Bratislava - Stare Mesto, Slovakia, registered in Commercial Register maintained by County Court in Bratislava I, Section Sro, File 107011/B or its Affiliate ("**Exponea**") and you ("**Customer**"). This Addendum supplements the terms of the Agreement concluded between Exponea and Customer; whereas in case of any conflicting terms between the Agreement and this Addendum, this Addendum shall prevail.

1. **DEFINITIONS**

For the purposes of this Addendum, capitalized terms shall have the following meanings. Capitalized terms not otherwise defined shall have the meaning given to them in the Agreement or GTC.

"**Affiliate**" means entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity, whereas control means the ability of one person to determine that the affairs of another person are conducted in accordance with the wishes of the first by way of (i) the holding of shares; and/or (ii) the possession of voting rights (in each case whether directly or indirectly);

"**Authorised User**" means a person authorised by Customer to have access to Exponea's Services and to provide instructions to and receive communication from Exponea, notwithstanding whether via Exponea Services interface, via e-mail of otherwise;

"**Controller**" means a person or entity that determines the purposes and means of the Processing of Personal Data;

"**Customer Data**" means what is defined in the Agreement as "Customer Data" or "Your Data" and which passes from one party to this Addendum to the other pursuant to the terms of the Agreement;

"**Data Protection Legislation**" means Directive, GDPR, and any other applicable data privacy legislation adopted in Slovakia;

"**Data Subject**" means the identified or identifiable person to whom Personal Data relates;

"**Directive**" means 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;

"**GDPR**" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

"**Order Form**" means an order form or purchase order agreed between the parties as part of their entry into the Agreement;

"**Personal Data**" means any information relating to (i) an identified or identifiable natural person and/or, (ii) an identified or identifiable legal entity (where such information is protected by Data Protection Legislation similarly to data which identifies a living individual), where for each (i) or (ii), such data is Customer Data; which, for the purpose of this Addendum, shall include personal data of persons visiting Customer's websites using Exponea's Services, ie. tracking data with respect to a specific product, tracking and other contained in the contact forms, information about the preferences of contacting and Customer's services and limited location data (city);

"**Processing**" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; for the avoidance of doubts, the processing of other information than Personal Data (e.g. anonymised data) does not fall under the scope of this Addendum and may be processed within the limitations set out in GTC;

"**Processor" or "Sub-processor**" means a person or entity that Processes Personal Data on behalf of a Controller and/or Processor, as applicable.

"**Services**" means the services provided by Exponea to the Customer pursuant to the Agreement;

"**Standard Contractual Clauses**" means the standard contractual clauses (processors) for the transfer of personal data set out in the EU Commission Decision of 5 February 2010 (2010/87/EC), as set out in Schedule No. 1 hereof;

2. DATA PROCESSING

2.1 **Processing of Customer's Data.** Exponea and Customer acknowledge that Customer is the Controller or primary Processor with regard to the Processing of relevant Personal Data. Exponea shall Process Personal Data only as a Processor or Sub-processor (as applicable to Customer's use of the Services) on Customer's behalf and only to the extent and in such a manner as is necessary for the purposes specified by and in accordance with this Addendum, the Agreement or as otherwise instructed by the Customer from time to time. Where Exponea reasonably believes that a Customer instruction is contrary to: (i) applicable law and regulations or (ii) the provisions of the Agreement or Addendum, Exponea will undertake all reasonable endeavors to inform the Customer and is authorized to defer the performance of the relevant instruction until it has been amended by Customer to the extent required by Exponea to satisfy it that such instruction is lawful, or is mutually agreed by both Customer and Exponea to be lawful.

3. EXPONEA'S PROCESSING

3.1 **Exponea's Processing of Personal Data.** Exponea shall treat Personal Data as confidential Information and shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Authorised Users in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement. Exponea shall keep a log of the actually performed Processing operations.

3.2 **Technical and Organizational Measures.** Exponea shall maintain and implement reasonable and appropriate technical and organizational measures in relation to the security of Personal Data and the platforms used to provide the Services as described in the Data Processing Legislation. In implementing such measures Exponea shall be entitled to take into account the current 'state of

the art' in determining what is reasonable, as well as the proportionality of the cost of putting such measures in place when weighed against the potential harm to relevant data subjects that the putting into place of those measures is designed to protect against.

3.3 **Personnel.** Exponea shall ensure that its Personnel engaged in the Processing of Personal Data are informed about its obligation and responsibilities hereunder. The "**Personnel**" means those employees and/or agents, consultants, subcontractors or other third parties: (i) who are engaged by Exponea so that it may fulfill its obligations to Customer under the Agreement or Addendum, and (ii) who are subject to confidentiality obligations in substantially the same extent as set out in Agreement and Addendum.

3.4 **Notifications.** Exponea shall notify the Customer as soon as commercially reasonable in writing:

3.4.1 of any communication received from an individual relating to (i) an individual's rights to access, modify, correct, delete or block his or her Personal Data; (ii) after effectiveness of GDPR, an individual's right to rectify, restrict or erase his or her Personal Data, to data portability, object to the Processing and not to be subject to automated decision-making; and (ii) any complaint about Customer's Processing of Personal Data;

3.4.2 to the extent not prohibited by law, of any subpoena or other judicial or administrative order or proceeding seeking access to, or disclosure of, Personal Data;

3.4.3 to the extent not prohibited by law, of any complaint, notice or other communication that relates to Customer's compliance with data protection and privacy law and the Processing of Personal Data. Exponea shall provide the Customer with commercially reasonable cooperation and assistance (at Customer's expense) in relation to such complaint, notice or communication; and

3.4.4 of a material breach of security of the Services which results in unauthorized access to Customer Data of which we become aware, in accordance with applicable law ("**Security Breach**").

3.5 **No acknowledgement.** The Customer agrees that Exponea's obligation to notify the Security Breach is not and will not be construed as an acknowledgment by Exponea of any fault or liability of Exponea with respect to such Security Breach.

3.6 **Data Returns and Deletion.** Subject to limitations set out in applicable laws, Exponea shall return to Customer all persistent Customers Data (if not already deleted) following standardised procedures and within commercially reasonable deadlines.

3.7 **Exponea Compliance**. Exponea shall comply with the Data Protection Legislation applicable to its own operations and provision of the Services under the Agreement and its obligations under this Addendum.

4. **CUSTOMER'S PROCESSING**

4.1 **Customer's Processing of Personal Data.** Customer shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Customer warrants that its instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations and that it shall not make any instruction or order which directs Exponea to take any action or course of action which is unlawful or otherwise not in compliance with Data Protection Legislation. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

4.2 **Customer's Compliance**. In addition to Customer's obligations stated in the Agreement, Customer is responsible for (i) integrity, security, maintenance and appropriate protection of Personal Data, and (ii) ensuring its compliance with any applicable privacy, data protection and security law and regulation relative to: (a) its Processing of the Personal Data; (b) its use of the Services; and (c) any and all data Processing registration or notification requirements to which Customer is subject under the applicable law.

4.3 **Notifications**. Customer agrees to make any required notifications to, and obtain required consents and rights from, individuals in relation to Exponea's provision of any Services to Customer. Where Exponea receives a communication described at Sub-section 3.4.1 or 3.4.3 and notifies Customer of such communication, it is Customer's responsibility to respond to and take all other appropriate action with regard to the communication. Customer agrees to immediately notify Exponea of any unauthorized use of Services or Customer's account or of any other breach of security involving the Services.

4.4 **Technical and organizational measures.** Customer is solely responsible for implementing and maintaining security measures and other technical and organizational measures appropriate to the nature and volume of Personal Data that Customer stores or otherwise Processes using the Services. Customer is also responsible for the use of the Services by any of its employees, any person Customer authorizes to access or use the Services, and any person who gains access to its Personal Data or the Services as a result of its failure to use reasonable security precautions, even if such use was not authorized by Customer.

5. COOPERATION

5.1 **Customer and Exponea cooperation**. Customer and Exponea agree to cooperate in a commercially reasonable fashion as reasonably required to protect the Personal Data. Customer must cooperate with Exponea's reasonable investigation of Service outages, security problems, and any suspected security breach.

5.2 **Exponea's assistance with Customer's Compliance requirements**. During the term of Customer's Agreement with Exponea, Customer may request that Exponea assist Customer's efforts to comply with Customer's obligations under applicable data protection or privacy law and regulations provided (i) such requested assistance is relevant to Services that support the Processing of Personal Data, (ii) such requested assistance is commercially reasonable and proportionate to the objective of the exercise with which Exponea is requested to assist, and (iii) if Exponea agrees to so assist, that all of its associated costs and expenses (including the cost of its staff's time)it shall be borne by the Customer and reimbursed to Exponea on demand.

6. SUB-PROCESSING

6.1 In relation to third parties or sub-contracting the Processing of Personal Data, Exponea may only authorise a third party (sub-processor) to Process the Personal Data with the prior consent of the Customer and provided that provisions relating to data processing and data protection in the sub-processor's contract with respect to the Personal Data is on terms which are substantially the same as those set out in this Addendum provided that the sub-processor's contract with respect to the Personal Data terminates automatically on termination of the Agreement for any reason. For the purpose hereof, (i) sub-processors listed in Schedule No. 2 hereof and (ii) Exponea's Affiliates are approved by the Customer by signing this Addendum and (iii) any sub-processor authorised by Customer via Authorised person by authorizing an integration with Exponea Services via Customer's account or otherwise. Exponea may during the Term involve new sub-processors in Processing, provided that such sub-processor only accesses and uses Personal Data to the extent required to perform obligations subcontracted to it and the substantially same obligation as set out herein are imposed to such sub-processor. In such a case, the Customer may require additional

information about new sub-processor, his need to be involved in the Processing and the manner of ensuring the protection of Personal Data by such sub-contractor within 30 days from receipt of notification by Exponea. Based on the provided information, the Customer may request Exponea that such sub-processor is not used for further Processing and specify the deficiencies. Exponea will then effort to add additional safeguards (covering the specified deficiencies) or change the sub-processor (vis-a-vis the sub-processor), which shall represent the sole and exclusive remedy of the Customer in connection with introduction of new sub-processor. Customer agrees and consents that Exponea may give those sub-contractor (including but not limited to Exponea's Affiliates) access to the Services strictly for Exponea's legitimate business purposes.

6.2 **Objection Right for New Sub-processors**. Exponea shall notify Customer about any new sub-processor in accordance with clause 6.1**Error! Reference source not found.** hereof. The Customer may object to Exponea's use of a new sub-processor by notifying Exponea promptly in writing within ten (10) business days after receipt of Exponea's notice. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Exponea will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening Customer. If Exponea is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Exponea without the use of the objected-to new Sub-processor by providing written notice to Exponea. Exponea will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

6.3 **Liability**. Exponea shall be liable for the acts and omissions of its sub-processors to the same extent Exponea would be liable if performing the services of each Sub-processor directly under the terms of this Addendum except as otherwise set forth in the Agreement.

7. DATA TRANSFER

7.1 **Data Transfer.** In case of any transfer of Personal Data under this Addendum from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Legislation of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations, the Standard Contractual Clauses as set out in Schedule No. 1 hereof shall apply.

7.2 Where clause 7.1 applies Exponea shall exercise its best endeavours to ensure that an agreement with the relevant recipient of Personal Data is signed which substantially mirrors the terms set out in the Standard Contractual Clauses.

8. COMMUNICATION

8.1 Customer agrees that any Authorised Person of Customer may be contacted and shall be entitled to receive any communication in relation to this Addendum.

9. FINAL PROVISIONS

9.1 **Third Party Beneficiaries.** Data Subjects are the sole third party beneficiaries to the Standard Contractual Clauses, and there are no other third party beneficiaries to the Agreement and this Addendum. Notwithstanding the foregoing, the Agreement and the terms of this Addendum apply only to the parties and do not confer any rights to any Customer's affiliate, Customer's end user or any third-party Data Subjects.

9.2 **Governing Law.** To the extent the Standard Contractual Clauses are applicable and to the extent a Data Subject brings a claim pursuant to clause 3.2 of the Standard Contractual Clauses in relation to the processing by Exponea of Personal Data, the Clauses are to be governed by and construed in accordance with the Clause 9 (Governing Law) of the Standard Contractual Clauses. Nothing in this Addendum amends the Governing Law section of the Agreement, which shall, for the avoidance of doubt, govern all claims brought under the Agreement and this Addendum.

9.3 **Limitation of Liability.** Customer's remedies, including those of its Affiliates, and Exponea's liability, arising out of or related to this Addendum and the Standard Contractual Clauses will be subject to those limitations of liability and disclaimers as set forth under the Agreement or if there are no limitations of liability stipulated in the Agreement, the Parties agree and declare that the total damage which may arise out of the breach of this Addendum and / or the Standard Contractual Clauses shall not exceed ten thousand euro.

9.4 **Term.** This Addendum is concluded for the period equal to the term of the Agreement. This Addendum will terminate contemporaneously and automatically with the termination of the Agreement.

9.5 **Termination.** Exponea may terminate this Addendum if Exponea offers alternative mechanisms to Customer that comply with the obligations of the applicable data privacy laws.

9.6 **Counterparts.** This Addendum may be signed in multiple counterparts, which taken together will be considered one original.

Schedule No. 1 Standard Contractual Clauses (processors)

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

The Customer entity that is a party to the Addendum to which these Standard Contractual Clauses are attached.

Name of the data exporting organisation: Exponea s.r.o

Address: Twin City B, Mlynské Nivy 12, 821 09 Bratislava - Staré Mesto, Slovakia

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** or data subprocessor (as applicable))

each a "party"; together "the parties",

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

Clause 1

Definitions

For the purposes of the Clauses:

(a)   *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1];

(b)   '*the data exporter*' means the controller who transfers the personal data;

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[1] Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

(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 of 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[2]. 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.

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[2] This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision.

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.

On behalf of data exporter:

Name (written out in full):

Position:
Address:

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

Signature……………………………………….

(stamp of organisation)

On behalf of 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)

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

DATA EXPORTER

The data exporter is Exponea s.r.o, a provider of Exponea Services or its Affiliate (if applicable).

DATA IMPORTER

The data importer is the non-Exponea entity (a sub-processor) that receives Personal Data outside the EEA and uses provides certain services to Exponea in connection with Exponea's Services to Customer.

DATA SUBJECTS

The personal data transferred may concern individuals about whom personal data is transmitted or stored by data exporter via the Exponea hosted system and/or services, which typically include individuals (customers or prospects) visiting Customer's website.

CATEGORIES OF DATA

The personal data transferred concerns the following categories of data: email, documents and other data in electronic form that is transferred to data importer in the context of Exponea's Services (provided by the relevant sub-processor/importer)

PROCESSING OPERATIONS

The personal data transferred will be subject to the following basic processing activities:

Under the Agreement, Exponea provides certain services to the data exporter or data importer, as applicable. Exponea may therefore process personal data. Such processing activities to include but are not be limited to (a) providing the Services; (b) the detection, prevention and resolution of security and technical issues; and (c) responding to Customer's support requests.

Customer must use reasonable security precautions in connection with its use of the services, including appropriately encrypting any personal data stored on or transmitted by the hosted system.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

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

Data importer shall implement security measures equivalent to those required under the Agreement, the Addendum and any ancillary documents entered into pursuant to the Agreement.

Schedule No. 2 Approved Sub-processors

The list of approved sub-processors and sub-contractors of Exponea is available at

https://exponea.com/terms-of-service/list_of_sub-processors_and_sub-contractors.pdf