



STANDARD TERMS AND CONDITIONS OF BUSINESS AND LICENCE TO USE SOFTWARE

Selectapension provides services to professional financial advisers and persons acting under the delegated authority of them. Services are operated by Selectapension Limited whose registered office is at:

Selectapension House,
Eridge Road,
Crowborough,
East Sussex,
TN6 2SL

By subscribing to the Selectapension service you agree to be legally bound by these terms and conditions

1. Definitions

'**Business Day**' means any of Monday to Friday, from 9 am to 5 pm inclusive, but excluding bank and other public holidays in England and Wales.

'**Commencement Date**' means the date upon which we authorise you and your named users to access and use Selectapension by releasing the password link to you.

'**Contract**' means the arrangement between buyer and seller, comprising the written or verbal purchase order or online order form, these terms and any other documents specified in the purchase order.

'**Client**' means your customer or client for whose benefit you are using the Selectapension service.

'**Customer**' means the person or firm who purchases the Services from Selectapension.

'**Customer Data**' means the data input by the Customer, for the purpose of using the Services.

'Data Protection Legislation' means

- a) Up until 25th May 2018, the Data Protection Act 1998
- b) On and from 25th May 2018, unless and until no longer directly applicable in the UK, the General Data Protection Regulation (EU) 2016/679 (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK and then
- c) Any successor legislation to the GDPR or the Data Protection Act.

'Data Subject' means an identifiable natural person who can be identified, directly or indirectly as defined in GDPR Article 4.

'GDPR' means General Data Protection Regulation (EU) 2016/679 (GDPR).

'Intellectual Property Rights' means all intellectual property and related rights of any nature whatsoever throughout the world for the full duration of the same including, without limitation: (i) all patents, registered or unregistered designs or unregistered trade marks, service marks, copyrights, designs, utility models, design rights and any and all applications for registration of any of the same where ever made; (ii) computer software and database rights of any nature, semi-conductor topographies and know-how; and (iii) any right or interest in any of the foregoing together with any applications or any similar or equivalent rights arising or subsisting throughout the world.

'Personal Data' means any information relating to an identified or identifiable natural person ('Data Subject') as defined in the GDPR Article 4.

'Privacy Policy' means the privacy policy for Selectapension, as amended from time to time.

'Selectapension Limited' is company number 05075441, incorporated in England and Wales. whose registered office is at Selectapension House, Eridge Road, Crowborough, East Sussex, TN6 2SL.

'Services' means the subscription services provided by Selectapension to the Customer under these terms and conditions via www.selectapension.com, app.selectapension.com or any other website notified to the Customer by Selectapension from time to time.

'Subscription' has the meaning given in clauses 3.2 and 4.1.

'Supplier' means a provider of information to Selectapension.

'Terms' means these terms and conditions as amended from time to time.

'User' means a person or entity authorised by Selectapension Limited to access all or part of the Selectapension software.

'**Website, site**' means the internet based platform services operated by Selectapension Limited under the name "Selectapension" at app.selectapension.com and www.selectapension.com.

'**We, us, our, ourselves, seller**' means Selectapension Limited.

'**You, your, buyer**' means you, your company, partnership or other business entity entering into a contract with us to use Selectapension software.

2. Parties

"Selectapension, our, us or we" means Selectapension Limited and its agents and employees and any person to which the rights and/or obligations of Selectapension are transferred or assigned.

"You, your or yourself" means you, the person specified as the user in the registration form.

"Sponsor" means a product provider of financial services products or strategic partner within the community.

3. Service

3.1 Selectapension is an internet based platform service provided to professional financial advisers and persons acting under their delegated authority. It is operated by Selectapension Limited.

3.2 Subject to the payment of the applicable fees, we grant to you from the commencement date a non-exclusive, non-transferable licence (without rights to sub-licence) to have access to and use of Selectapension software.

3.3 We may grant a temporary licence without fee to allow you to take a trial of Selectapension.

3.4 The user licence permits use of the service by the named user only and cannot be used in conjunction with any third-party advisers without prior and express consent from Selectapension. Shared use of a licence is prohibited.

3.5 A standard Selectapension licence does not permit usage for the purpose of a 'Pension Transfer Bureau' or 'Pension Transfer Service'.

3.6 The licence cannot be used to directly or indirectly compete with Selectapension Limited or the Selectapension group of companies, without the prior written consent of Selectapension.

3.7 'Fair use' applies to all licences to ensure the service remains available to all users. Whilst for a 'standard' licence (without bulk upload facility) there is no cap on usage, Selectapension monitors usage on a monthly basis and reserves the right to either suspend or re-negotiate licence costs, should it be deemed that usage exceeds that expected from standard use of a licence.

3.8 For a licence with bulk upload facility, such as Rapid Reviewer, there is an annual cap on usage which if exceeded requires the purchase of additional report packs. Selectapension reserves the right to suspend usage of Rapid Reviewer until such additional packs have been purchased.

3.9 A Service Provider or Life Office Licence permits use of the service for strict internal use and you will not provide any financial advice to clients based on it.

4. Duration and Termination

4.1 Selectapension is supplied in return for either monthly or annual payments in accordance with our price list.

4.1.1 If you pay annually or monthly for a standard licence, you enter an initial 12 month contract, which you may terminate at any time after the first 12 month period by giving one months' notice in writing by hand or post; or by email confirmed as having been received. The notice period is not deemed to have begun until we have received the written notice.

4.1.2 If you pay annually or monthly for a licence with bulk upload facility, you enter a 12 month contract which includes an agreed maximum number of reports. Additional packs may be purchased for use to the end of the contracted term. Each licence with bulk upload facility will be for a period of 12 months unless specifically agreed in writing, Early termination is not permitted.

4.2 Selectapension Limited reserves the right selectively to suspend user access to the website at any time during the investigation of a suspected breach of our terms and conditions.

4.3 Without prejudice to any right or remedy Selectapension Limited may terminate a user's access to the website forthwith in the event of material breach by the user of any of these terms.

4.4 In any event, Selectapension Limited may terminate a user's access to the website at any time upon one month's notice to you.

4.5 On the termination of access to the website howsoever arising, you the user must immediately cease using any copies of any Selectapension Limited software applicable to the website in your possession or control.

4.6 Termination by either party howsoever arising shall be without prejudice to all rights and obligations accrued prior to termination.

5. Price

5.1 Payments must be in pounds sterling unless agreed otherwise.

5.2 If paying by Direct Debit, please note that Selectapension Limited has appointed the BACS Approved Direct Debit Bureau, Eazy Collect Services Limited (www.eazycollect.co.uk), to collect your payments and **Selectapension** will be shown on your bank statement along with your personal reference number.

6. You and Your Named Users' Obligations

6.1 You must provide and maintain at your own expense all telecommunication and other equipment necessary to access the website.

6.2 You are responsible for keeping secure all passwords in connection with your use of the website.

6.3 You shall not use the website to send or receive any message or communication which is offensive, defamatory, abusive, indecent, obscene or menacing or to cause annoyance, inconvenience or needless anxiety or for any illegal or any improper purpose.

6.4 The internet is not a totally reliable medium of communication and is subject to failure of software and hardware outside the control of Selectapension Limited, which may lead to delays in or total failure of communication of data messages or other material. It is your responsibility to ensure that any electronic communication has reached its destination.

6.5 You will use your best endeavour not to allow the introduction into the website of any virus, worm,

trojan horse, cancelbot or other destructive or contaminating program. You will not advise any other party how to do so. You will use an up to date market standard virus scanning program on all material downloaded from the internet.

6.6 You shall be responsible for and hereby agree to indemnify Selectapension Limited and keep Selectapension Limited indemnified against all direct liabilities, costs and expenses which Selectapension Limited may suffer or incur as a result of use by you or any other person using the user's password (without permission) for the website other than in accordance with the Selectapension terms and conditions.

6.7 You warrant that you hold all necessary licences and consents for the purpose of conducting any business in connection with the use of the website (including without limitation the appropriate authorisation under financial services legislation or any other relevant regulatory authority), and undertake to indemnify Selectapension Limited on an indemnity basis for any or all costs, claims, demands, expenses or liabilities arising out of or in connection with carrying out an authorised business.

6.8 You are responsible for ensuring compliance with any relevant legal and regulatory requirements arising from authorisation by The Financial Conduct Authority including, but not limited to:

- (a) responsibility for advice given to members of the public;
- (b) identification of clients to meet the requirements of anti money-laundering legislation.

6.9 The website is available to users worldwide. In the event that you access the website from a country outside the United Kingdom, you will have full and sole responsibility for ensuring that such use or access complies with all appropriate laws, rules and regulations of that country, and you will indemnify Selectapension Limited against all direct liabilities, costs, claims and expenses which may arise.

6.10 All information and documentation capable of being printed or extracted from the website must be printed and retained thereafter in its complete screen form. You shall not, nor shall you permit any person to, modify, change, amend or manipulate in whole or in part any information, documentation, template or form listed on or accessed from the website.

6.11 Use of and access to the website is restricted solely for the purposes of accessing information and the processing of legitimate business on behalf of your clients or clients of named users.

6.12 You shall not modify, translate, reverse engineer, decompile, disassemble, reformat, adapt, modify or

edit the Selectapension website or software or create derivative works based on it; nor shall you alter or remove any copyright, trademark, Intellectual Property Rights and other protective notices contained in the Selectapension website and software.

7. Availability

7.1 We will use reasonable care in providing the website to you but we cannot guarantee that the operation of the website will be uninterrupted.

7.2 We will provide reasonable helpdesk support during the BusinessDay.

8. Intellectual Property Rights

8.1 You acknowledge the intellectual property rights of Selectapension Limited, its suppliers and any other relevant third parties in their databases, documents, program code, information, names, logos, trademarks and graphics and any intellectual property rights created, developed, subsisting or used in or in connection with the website. You agree not to use, copy or reproduce them in whole or in part save in accordance with these terms.

8.2 Copyright in the Selectapension pages is vested in Selectapension Limited or the supplier of the content of the same and you will not make any copies of the pages (except for Financial Services Legislation purposes) without the express written consent of Selectapension Limited or such supplier (as the case may be).

9. Data Protection

This clause should be read in conjunction with our Privacy Policy and our Data Processing & Information Security document, which are published at www.selectapension.com/tcs. In providing the Service we are acting as a data processor only.

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 9 is in addition to and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 Selectapension is registered under the General Data Protection Regulation (EU) 2016/679 (GDPR). All personal information you supply to us will be treated in accordance with that Regulation. We will collect

and use your personal information in order to operate, enhance and provide you with the information services you request.

9.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Selectapension is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the GDPR legislation).

9.4 The nature of the Personal Data processed by Selectapension in order to produce an analysis report includes: Title, Name, Date of Birth, Gender, Marital Status, Basic Health Status, Spouse's Date of Birth, and Spouse's Gender.

9.5 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

9.6 Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data (as defined in the Data Protection Legislation) to Selectapension for the purposes of the Subscription term.

9.7 Without prejudice to the generality of clause 9.1, Selectapension shall, in relation to any Personal Data processed in connection with the performance by Selectapension of its obligations under the Contract:

- (a) process that Personal Data only on the written or verbal instructions of the Customer unless Selectapension is required by the laws of any member of the European Union or by the laws of the European Union applicable to Selectapension to process Personal Data (Applicable Data Processing Laws). Where Selectapension is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Selectapension shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit Selectapension from notifying the Customer:
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and service, ensuring that

availability and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted;

- (c) take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the personal data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant personal data, as strictly necessary to deliver the Services. All such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
- (d) not transfer any Personal Data outside of the UK or European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - i. the Customer or Selectapension has provided appropriate safeguards in relation to the transfer;
 - ii. the Data Subject (as defined in the GDPR legislation) has enforceable rights and effective legal remedies;
 - iii. Selectapension complies with its obligations under the GDPR legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. Selectapension complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - v. Where the Customer is legally constituted in the European Union, the Customer and Selectapension shall enter into "Standard contractual clauses for the transfer of personal data from the European Community to third countries (controller to processor transfers)", as published by the European Commission ("SCCs") and attached hereto. The SCCs shall be used until such time as the Commission approves new SCCs.
- (e) assist the Customer, at the Customer's cost, in responding to any reasonable request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, Selectapension shall supply copies or erase any personal data in accordance with the requirements of Data Protection Legislation, where not prohibited by regulatory

authorities; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.

9.8 Selectapension may, at any time on not less than 30 days' notice, revise this Clause 9 by replacing it with any applicable controller or processor standard clauses or similar terms forming part of an approved certification scheme (which shall apply when replaced by attachment to this agreement).

9.9 Selectapension shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of Customer Data available as may be notified to the Customer from time to time, as such a document may be amended from time to time by Selectapension in its sole discretion.

9.10 The Customer acknowledges that Selectapension is reliant on the Customer for direction as to when and to what extent Selectapension is entitled to access and process Customer Data in order to carry out the Customers instructions or fulfil Selectapension's obligations. Consequently Selectapension will not be liable for any claim brought by a Data Subject arising from any action or omission by Selectapension to the extent that such action or omission resulted directly from the Customer's instructions.

9.11 The Customer shall provide Selectapension with at least one valid company email address in order to access the Selectapension platform and for administration of the account, and in order to provide information about any contractual or technical changes to the Services,

9.12 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and research products and services from third parties via third party websites and that it does so solely at it's own risk. Selectapension makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third party website is between the Customer and the relevant third party, and not Selectapension. Selectapension recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third party website. Selectapension does not endorse or approve any third party website or the content of any third party website made available via the Services.

9.13 You acknowledge that Selectapension may pass limited Customer Data to partners, providers of content to the Services and third party service providers for administrative and statistical research purposes, for

example monitoring website usage or issuing emails. Third parties are not permitted to use such data for their own purposes. Selectapension acknowledges that it has or will enter into a written agreement with such third parties incorporating terms in relation to data protection which are substantially similar to those set out in this clause 9.

9.14 The Customer consents to the use of cookies. We use the information we obtain to provide you with an improved service and to improve our understanding of your usage of our Services. The information that we gather is non-personal statistical information about the pages you visit. We warrant that we will not release this information to other companies. Please see Privacy Policy for further details.

10. Sources of Information

The information on the website is based on data extracted from sources provided by suppliers and is believed by Selectapension Limited to be reliable and accurate at the date of publication. Each supplier is responsible for the information, products and services it makes available through the website.

Selectapension Limited makes no representation or warranty, whether express or implied, as to its accuracy, or completeness, timeliness or fitness for any purpose. No independent verification, monitoring or screening has been undertaken in respect of the information contained on, or the products or services accessed via, Selectapension: you will be solely responsible for verifying its accuracy and suitability.

Selectapension Limited does not endorse or accept responsibility for any recommendations, views, opinions or advice expressed on Selectapension and all information should be independently verified.

11. Liability and Indemnity

11.1 Subject to clause 11.2 below, and to the extent permitted by law, Selectapension Limited shall not be liable (whether incurred by you or any third party) for:

- (a) indirect, economic, special or consequential loss or damage whether in contract (given by indemnity or otherwise), tort or otherwise;
- (b) loss of profit, loss of data, loss of use of equipment or process, loss of anticipated savings, or wasted management time each one howsoever arising and whether or not we have been informed of the potential loss or damage arising and whether incurred directly, indirectly or consequentially.

11.2 Selectapension Limited does not exclude or restrict liability:

11.2.1 for fraud and for death or personal injury to the extent that the same arises as a result of the negligence of Selectapension Limited, its employees, agents or authorised representatives or for fraudulent

misrepresentation.

11.2.2 to the extent that such liability cannot be excluded or restricted by any financial services legislation and the rules and regulations made thereunder and all other applicable laws and regulations.

11.3 Subject to clause 11.1 and 11.2 above, and to the extent permitted by law, Selectapension Limited's liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising under or in connection with these Terms shall not exceed the current year's fees regardless of the number of events giving rise to liability.

11.4 We will use reasonable care in providing the website to you otherwise all conditions and warranties express or implied by statute or otherwise including (without limit) any concerning the quality reliability and merchantability or fitness for purpose of the Selectapension site are to the maximum extent permitted by law hereby excluded. Selectapension Limited gives no warranty that the functions contained in the website will meet your requirements or that the operation of the website will be uninterrupted or error free or that the defects in the same will be corrected. Selectapension Limited will not be liable for any unavailability of the website where it is caused by circumstances beyond its reasonable control, for example, technical or communications breakdown, industrial action or power failure. We will notify you of these circumstances as soon as reasonably practical.

11.5 Subject to clause 11.2 above Selectapension Limited accepts no liability in respect of any loss or damage which may arise due to matters beyond its reasonable control from the use of electronic mail, including without limitation, non-delivery of e-mail or any other electronic communication, incorrect or delayed delivery of e-mail or any other electronic communication or the interception and unauthorised reading of e-mail or any other electronic communication.

11.6 Subject to Clause 11.2, formal proceedings relating to any claim against us must be served on us within 12 months from the end of the month in which you become aware or should reasonably have become aware of the events giving rise to the claim.

11.7 If you have delegated named users, you shall procure their compliance with these terms. In the event that we incur any direct losses arising out of or in connection with the acts or omissions of your named users, you hereby agree to defend and indemnify us against such direct losses.

12. Disclaimer

12.1 Selectapension offer this service as an information tool only. The materials on this site do not constitute financial or other professional advice.

12.2 Any listing of other web sites on the Selectapension site is provided solely for the convenience of the users of Selectapension. The selection by you of such a web site will connect you to a site which is not under the control of Selectapension Limited. On connection to the site you may be bound by any terms and conditions and privacy policies applicable to that site. Selectapension Limited has no control over the content of such web sites or the services available through them and accordingly makes no representation concerning the content of those sites.

13. Force Majeure

Neither party shall be under any liability to the other party for any delay or failure to perform any obligation under these terms if the same is wholly or partly caused, whether directly or indirectly, by circumstances beyond its reasonable control.

14. Waiver

Failure or neglect by us to enforce any of the provisions in these terms and conditions shall not constitute a waiver of our rights hereunder nor in any way affect the validity of the whole or any part of these terms nor prejudice our rights to take subsequent action.

15. Invalidity and Severability

If any provision of these terms shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provisions shall not affect the other provisions of these terms which shall remain in full force and effect.

16. Notices

Both parties may send notices regarding the website by facsimile, hand or post; or by email confirmed as having been received.

17. Third Party Rights

Nothing in this agreement shall operate so as to confer any benefit upon any person or party not a party to it and the Contracts (Rights of Third Parties) Act 1999 shall be excluded in its entirety from applying to this agreement.

18. Assignment

Selectapension Limited may assign, sub-contract or delegate all or any of its rights or obligations under these terms without your prior consent.

19. Entire Agreement

These terms constitute the entire agreement between you and us in respect of access to the website. No representation or statement not expressly contained in these terms or incorporated in these terms by reference shall be binding upon us as a warranty or otherwise.

20. Jurisdiction

These terms of business shall be governed by the laws of England and all parties agree to submit to the non-exclusive jurisdiction of the English Courts as regards any claim or matter arising under these terms.

Standard contractual clauses for the transfer of personal data from the European Union to processors established in third countries (controller-to-processor transfers).

DATED

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

Name of the data exporting organisation:
address:
tel:
fax:
e-mail:
Other information needed to identify the organisation

(the data exporter)

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 Annex **ANNEX A**.

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;
- (c) **the data importer** means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its 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 sub-processor** means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor 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 its 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.

2. Details of the transfer

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

3. Third-party beneficiary clause

The data subject can enforce against the data exporter this clause 3, [clause 4\(b\)](#) to [clause 4\(i\)](#), [clause 5\(a\)](#) to [clause 5\(e\)](#) and [clause 5\(g\)](#) to [clause 5\(j\)](#), clause 6.1 and clause 6.2, clause 7, clause 8.2 and clause 9 to clause 12 as third-party beneficiary.

The data subject can enforce against the data importer this [clause](#), [clause 5\(a\)](#) to [clause 5\(e\)](#) and [clause 5\(g\)](#), clause 6, clause 7, clause 8.2 and clause 9 to clause 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.

- 3.1 The data subject can enforce against the sub-processor this clause 3.1, [clause 5\(a\)](#) to [clause 5\(e\)](#) and [clause 5\(g\)](#), clause 6, clause 7, clause 8.2, and clause 9 to clause 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 sub-processor shall be limited to its own processing operations under the Clauses.

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.

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 Annex **ANNEX B** 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 sub-processor 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 Annex **ANNEX B** and a summary description of the security measures, as well as a copy of any contract for sub-processing 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 sub-processing, the processing activity is carried out in accordance with clause **11** by a sub-processor providing at least the same level

of protection for the personal data and the rights of data subjects as the data importer under the Clauses; and

- (j) that it will ensure compliance with [clause 4\(a\)](#) to [clause 4\(i\)](#).

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 Annex **ANNEX B** 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 sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial

information, with the exception of Annex ANNEX B 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 sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with clause 11; and
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

6. Liability

6.1 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 sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

6.2 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 its sub-processor 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 sub-processor of its obligations in order to avoid its own liabilities.

6.3 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 sub-processor 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 sub-processor agrees that the data subject may issue a claim against the data sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.

7. Mediation and jurisdiction

7.1 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.

7.2 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.

8. Cooperation with supervisory authorities

8.1 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.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, 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.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in [clause 5\(b\)](#).

9. Governing Law

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

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 Clauses.

11. Sub-processing

11.1 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 sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor 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 sub-processor's obligations under such agreement.

- 11.2 The prior written contract between the data importer and the sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.
- 11.3 The provisions relating to data protection aspects for sub-processing 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, namely
- 11.4 The data exporter shall keep a list of sub-processing 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.

12. Obligation after the termination of personal data processing services

- 12.1 The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor 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.
- 12.2 The data importer and the sub-processor 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 the 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 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)

ANNEX A [to the Standard Contractual Clauses]

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

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Annex ANNEX A.

Data exporter

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

Data importer

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

Data subjects

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

Categories of data

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

Special categories of data (if appropriate)

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

Processing operations

The personal data transferred will be subject
to the following basic processing activities
(please specify)

DATA EXPORTER

DATA IMPORTER

Name:.....

Name:.....

Authorised signature:.....

Authorised signature:.....

ANNEX B [to the Standard Contractual Clauses]

This Annex ANNEX B 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 [clause 4\(d\)](#) and [clause 5\(c\)](#) (or documents/legislation attached):

.....
.....
.....

ILLUSTRATIVE INDEMNIFICATION CLAUSE (OPTIONAL)

Liability

The parties agree that if one party is held liable for a violation of the clauses committed 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.

Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the