

# WHOOSHKAA GDPR DATA PROCESSING ADDENDUM

This Data Protection Addendum Policy ("Policy") sets out the policy of Whooshkaa Pty Ltd ("Whooshkaa") in relation to the processing of EU/UK individual personal data and compliance with Data Protection Laws by all of our customers, of which you are one. References to "Customer" below includes Whooshkaa customers with a Master Services Agreement and their relevant affiliates (unless otherwise stated).

This Policy applies to all of the Services that a Customer has acquires from us.

The protection of Personal Data is of critical importance to Whooshkaa and the following terms of this Policy set out the minimum requirements of Whooshkaa with respect to all of its customers.

We use a number of defined terms in this Policy which will have the meaning set out in Section 10 of this Policy. Capitalized terms not otherwise defined in this Policy will have the meaning given to them in your Agreement. Except where the context requires otherwise, references in this Policy to your Agreement are to your Agreement as amended by, and including, this Policy.

## 1. Processing of Customer Personal Data

1.1 Each Party will comply with its respective obligation under Data Protection Laws in the provision and receipt of the Services under the Agreement and this Policy.

1.2 In the provision of the Services, Customer is the data controller and Whooshkaa is a data processor (or subprocessor) acting on Customer's behalf. Accordingly, Whooshkaa will not Process Customer Personal Data other than on Customer's documented instructions, and for the purposes defined in writing by Customer, from time to time unless Processing is required by Applicable Laws to which Whooshkaa (or its Sub-processor) is subject.

1.3 Customer:

1.3.1 instructs Whooshkaa (and authorizes Whooshkaa to instruct each Sub-processor) to:

1.3.1.1 Process Customer Personal Data; and

1.3.1.2 in particular, transfer Company Personal Data to any country or territory,

1. as reasonably necessary for the provision of the Services and consistent with the Principal Agreement; and

1.3.2 warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 1.2 on behalf of each relevant Company Affiliate.

1.4 Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Company Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Company may make reasonable amendments to Annex 1 by written notice to Whooshkaa from time to time as Company reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this section 3.3) confers any right or imposes any obligation on any party to this Addendum.

## 2. **Whooshkaa Personnel**

2. Whooshkaa shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## 3. **Security**

3.1 Taking into account 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, Whooshkaa and each Whooshkaa Affiliate shall in relation to the Company Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

3.2 In assessing the appropriate level of security, Whooshkaa and each Whooshkaa Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

## 4. **Subprocessing**

4.1 Customer authorises Whooshkaa to appoint (and permit each Sub-processor appointed in accordance with this Section 3 to appoint) Sub-processors in accordance with this Section 3 and any restrictions in your Agreement.

4.2 Whooshkaa may continue to use those Sub-processors already engaged by Whooshkaa as at the date of this Addendum. .

4.3 Whooshkaa will provide to Customer prior written notice of the appointment of any new Subprocessor, including known details of the processing to be undertaken by the Subprocessor. If, within thirty (30) calendar days of receipt of that notice, Customer notifies Whooshkaa in writing of any objections (on reasonable grounds) to the proposed appointment:

4.3.1 Whooshkaa will not appoint (or disclose any Customer Personal Data to) that proposed Subprocessor until it has taken reasonable steps to address the objections raised by Customer and provided Customer with a written explanation of the steps taken.

- 4.4 With respect to each Subprocessor, Whooshkaa or the relevant Whooshkaa Affiliate shall:
- 4.4.1 before the Subprocessor first processes Customer Personal Data (or, where relevant, in accordance with Section 4.3 above), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by your Agreement;
  - 4.4.2 ensure that the arrangement between on the one hand (a) Whooshkaa, or (b) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which are not less protective of Customer Personal Data than those set out in this Policy; and
  - 4.4.3 if that arrangement involves a Restricted Transfer:
    - 4.4.3.1 ensure that the Standard Contractual Clauses are at all relevant times incorporated into your Agreement between, Whooshkaa (or first Subprocessor) and the Subprocessor; or
    - 4.4.3.2 before the Subprocessor first Processes Customer Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the Customer (or relevant Customer affiliate, as procured by the Customer).]

## 5. **Data Subject Rights**

- 5.1 Whooshkaa will:
- 5.1.1 promptly (and in any event within 14 days) notify Customer if it or any Subprocessor receives a request from a Data Subject under any Data Protection Law in respect of Customer Personal Data; and
  - 5.1.2 not (and use best endeavours to procure its Sub-Processor will not) respond to that request except on the documented instructions of Customer or as required by Applicable Laws, in which case Whooshkaa will to the extent permitted by Applicable Laws inform Customer of that legal requirement before responding to the request.
  - 5.1.3 not be responsible for non-delivery of notification, if the Customer has not kept their email contact details up to date.

## 6. **Personal Data Breach**

- 6.1 Whooshkaa shall notify Company without undue delay upon Whooshkaa or any Subprocessor becoming aware of a Personal Data Breach affecting Company Personal Data, providing Customer with sufficient information to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- 6.2 Whooshkaa shall co-operate with Customer and take such reasonable commercial steps as are directed by Company to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

7. **Data Protection Impact Assessment and Prior Consultation**

3. Whooshkaa and each Whooshkaa Affiliate shall provide reasonable assistance to each Company Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Company reasonably considers to be required of any Company Group Member by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Company Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

8. **Deletion or return of Company Personal Data**

- 8.1 Subject to sections 8.2 and 8.3 Whooshkaa and each Whooshkaa Affiliate shall promptly and in any event within 180 days of the date of cessation of any Services involving the Processing of Company Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Company Personal Data.
- 8.2 Subject to section 8.3, Company may in its absolute discretion by written notice to Whooshkaa within 180 days of the Cessation Date require Whooshkaa and each Whooshkaa Affiliate to (a) return a complete copy of all Company Personal Data to Company by secure file transfer in such format as is reasonably notified by Company to Whooshkaa; and (b) delete and procure the deletion of all other copies of Company Personal Data Processed by any Contracted Processor. Whooshkaa and each Whooshkaa Affiliate shall comply with any such written request within 180 days of the Cessation Date.
- 8.3 Each Contracted Processor may retain Company Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Whooshkaa and each Whooshkaa Affiliate shall ensure the confidentiality of all such Company Personal Data and shall ensure that such Company Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 8.4 Whooshkaa shall provide written certification to Company that it and each Whooshkaa Affiliate has fully complied with this section 8 within 180 days of the Cessation Date.

9. **Audit rights**

- 9.1 Subject to section 9.2, Whooshkaa and each Whooshkaa Affiliate shall make available to each Company Group Member on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Company Group Member or an auditor mandated by any Company Group Member in relation to the Processing of the Company Personal Data by the Contracted Processors.
- 9.2 Information and audit rights of the Company Group Members only arise under section 9.1 to the extent that the Principal Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

## 10. **Restricted Transfers**

- 10.1 Subject to section 10.3, each Company Group Member (as "data exporter") and each Contracted Processor, as appropriate, (as "data importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that Company Group Member to that Contracted Processor.
- 10.2 The Standard Contractual Clauses shall come into effect under section 10.1 on the later of:
- 10.2.1 the data exporter becoming a party to them;
  - 10.2.2 the data importer becoming a party to them; and
  - 10.2.3 commencement of the relevant Restricted Transfer.
- 10.3 Section 10.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

## 11. **General Terms**

### *Governing law and jurisdiction*

- 11.1 Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:
- 11.1.1 the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Principal Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and
  - 11.1.2 this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Principal Agreement.

### *Order of precedence*

- 11.2 In the event of any conflict or inconsistency between this Policy and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.
- 11.3 Subject to Section 11.2, with regard to the subject matter of this Policy, in the event of inconsistencies between the provisions of this Policy and any other agreements between the parties, including your Agreement, the provisions of this Policy will prevail.

### *Changes in Data Protection Laws, etc.*

- 11.4 This Policy may be varied and updated from time to time by Whooshkaa as a result of a change in Data Protection Laws, including any variation which is required to the Standard Contractual Clauses.

#### 4. *Severance*

- 11.5 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

## **12. Definitions**

- 12.1 In this Policy, the following terms will have the following meaning:

- 12.1.1 "Applicable Laws" means: (a) European Union or Member State laws with respect to any Customer Personal Data in respect of which Whooshkaa is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Customer Personal Data in respect of which Whooshkaa is subject to any other Data Protection Laws; together with all guidelines and other codes of practice issued by an applicable data protection regulator or supervisory authority;
- 12.1.2 "Whooshkaa and/or its subprocessor" means Whooshkaa or any of its Sub-processors;
- 12.1.3 "Customer affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Customer, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise
- 12.1.4 "Customer Group Member" means Customer or any Customer affiliate;
- 12.1.5 "Customer Personal Data" means any EU/UK individual Personal Data Processed by the Whooshkaa and/or its subprocessor, on behalf of and under the instructions of Customer in connection with the provision of the Services under your Agreement;
- 12.1.6 "Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 12.1.7 "EEA" means the European Economic Area;
- 12.1.8 "EU Data Protection Laws" means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR
- 12.1.9 "GDPR" means EU General Data Protection Regulation 2016/679;
- 12.1.10 "Restricted Transfer" means:
- 12.1.10.1 a transfer outside the EEA of Customer Personal Data from Whooshkaa and/or its subprocessor; or

12.1.10.2 an onward transfer of Customer Personal Data from Whooshkaa and/or its subprocessor to the Whooshkaa and/or its subprocessor (as applicable) (e.g. Whooshkaa to its Sub-Processor)

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under this Policy.

For the avoidance of doubt, where a transfer of Personal Data is of a type authorised by Data Protection Laws in the exporting country; for example in the case of transfers from within the European Union to the US under a scheme (such as the current US Privacy Shield) which is approved by the EU Commission as ensuring an adequate level of protection, or any other transfer which falls within a permitted derogation under EU Data Protection Laws, such transfer will not be a Restricted Transfer;

- 12.1.11 "Services" means the services and other activities to be supplied to or carried out by Whooshkaa on behalf of Customer under your Agreement;
  - 12.1.12 "Standard Contractual Clauses" means the EU model contractual clauses set out in Appendix 2, amended as indicated (in square brackets and italics) in that Appendix;
  - 12.1.13 "Subprocessor" means any person (including any third party, but excluding an employee of Whooshkaa or any of its sub-contractors) appointed by or on behalf of Whooshkaa to process Personal Data on behalf of Customer under your Agreement; and
  - 12.1.14 The terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" will have the same meaning as in the GDPR, and their cognate terms will be construed accordingly.
- 12.2 The word "include" will be construed to mean include without limitation, and terms will be construed accordingly.

## **ANNEX 1: DETAILS OF PROCESSING OF COMPANY PERSONAL DATA**

This Annex 1 includes certain details of the Processing of Company Personal Data as required by Article 28(3) GDPR.

### *Subject matter and duration of the Processing of Company Personal Data*

The subject matter and duration of the Processing of the Company Personal Data are set out in the Principal Agreement and this Addendum.

### *The nature and purpose of the Processing of Company Personal Data*

Collecting, recording, replicating and storing the data for the purposes of:

- Delivery of service;
- Account management;
- Customer support or maintenance;
- Information and database administration (the maintenance of information or databases as a reference tool or general resource);
- Marketing or customer engagement;
- Data analytics, or business intelligence;
- Market research;
- Sale or acquisition of a business;
- Risk management and quality control;
- Outsourcing of services; and
- Centralisation of data processing activities.

### *The types of Company Personal Data to be Processed*

Customer Data uploaded to the Services under Customer's Whooshkaa accounts.

### *The categories of Data Subject to whom the Company Personal Data relates*

The data subjects may include Customer's customers, employees, suppliers and end-users

### *The obligations and rights of Company and Company Affiliates*

The obligations and rights of Company and Company Affiliates are set out in the Principal Agreement and this Addendum.



## ANNEX 2: STANDARD CONTRACTUAL CLAUSES

*These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law (otherwise).*

*If these Clauses are not governed by the law of a Member State, the terms "Member State" and "State" are replaced, throughout, by the word "jurisdiction".*

### **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 [*This opening recital is deleted if these Clauses are not governed by the law of a member state of the EEA.*]

[*The gaps below are populated with details of the relevant Company Group Member:*]

Name of the data exporting organisation: Whooshkaa Pty Ltd

Name of the data importing organisation: the Customer who has entered into the DPA for the provision of Whooshkaa Services. (the data importer)

The data exporter and the data importer, 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.

### Background

The data exporter has entered into a data processing addendum (“DPA”) with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer’s execution of, and compliance with, the terms of these Clauses.

### 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; *[If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words "except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data" are added.]*

- (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; *[If these Clauses are not governed by the law of a Member State, the words "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" are deleted.]*
- (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; [*If these Clauses are not governed by the law of a Member State, the words "within the meaning of Directive 95/46/EC" are deleted.*]
- (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.

## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix 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 Appendix.

### **Data exporter**

The data exporter is the Customer or its end-users located in the EEA.

### **Data importer**

The data importer is:

Where the Customer directly transfers to Whooshkaa Pty Ltd any Customer Personal Data to which Data Protection Legislation applies, the term 'data importer' means Whooshkaa.

Where the Customer directly transfers to any Whooshkaa entity any Customer Personal Data to which Data Protection Legislation applies, the term 'data importer' means the relevant Whooshkaa entity.

Where a non-EEA Customer imports personal data on behalf of its end-users who are located in the EEA, the term 'data importer' means the Customer.

### **Data subjects**

The personal data transferred concern the following categories of data subjects:

Those individuals whose personal data is provided or made available to Whooshkaa Pty Ltd by or on behalf of the Customer or any end-user through the use or provision of the Services, including employees, contractors, partners of Customer or end-users, and any end users who are individuals.

### **Categories of data**

The personal data transferred concern the following categories of data:

- Full name (first, last and middle name, where applicable);
- Personal contact information (for example, phone number, email address, mailing address);
- Business contact information (for example, phone number, email address, fax number, mailing address);
- Technical ID data (such as IP addresses); and
- Financial / billing data (including bank account numbers).
- Usage data;
- and all other Personal Data provided or made available to Whooshkaa Pty Ltd by or on behalf of the Customer or any end user through the use or provision of the Services.

### **Processing operations**

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



The provision of Services by Whooshkaa to Customer.

## **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):**

The technical and organisational security measures implemented by the data importer are as described in the DPA.