

## **GDPR DATA PROCESSING ADDENDUM**

This GDPR Data Processing Addendum (this "**Addendum**"), is made and entered into by and between Customer, on the one hand, and VirBELA (also referred to as the "**Data Processor**" under this Addendum), on the other hand, effective as of the Effective Date (as such term is defined in the VirBELA Customer Order Form), and is supplemental to the VirBELA Terms of Service (the "**Terms of Service**"). This Addendum sets out the terms that apply when Personal Data (defined below) is Processed (defined below) by Data Processor under the Terms of Service. The purpose of this Addendum is to ensure such Processing is conducted in accordance with applicable laws, including EU Data Protection Laws (defined below) and the GDPR (defined below), and with due respect for the rights and freedoms of individuals whose Personal Data are Processed. Customer and Data Processor are hereinafter collectively referred to as the "**Parties**").

### **WHEREAS**

(A) Customer acts as a Controller and collects Personal Data from Data Subjects and transfers such Personal Data to Data Processor.

(B) Customer wishes to contract certain Processing (defined below) to the Data Processor which involves the Processing of Personal Data.

(C) The Parties enter into this Addendum to define their rights and obligations.

THE PARTIES AGREE AS FOLLOWS:

### **1. Definitions and Interpretation**

Except as expressly stated to the contrary in this Addendum, capitalized terms not defined in this Addendum shall have the meaning set forth in the Terms of Service. Capitalized terms and expressions used in this Addendum shall have the following meaning:

1.1 "**Addendum**" means this Data Processing Addendum and all attachments;

1.2 "**Customer Data**" means any data, information or material originated by Customer (and/or any of its End-Users), including Personal Data, that Customer (and/or any of its End-Users) submits to Data Processor or a Subprocessor (defined below) pursuant to or in connection with the Terms of Service.

1.3 "**Data Protection Losses**" means all liabilities, including all costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses, and damages (including relating to material or non-material damage) and, to the extent permitted by applicable law any administrative fines, penalties, sanctions, liabilities, or other remedies imposed by a Supervisory Authority, compensation which is ordered by a Supervisory Authority to be paid to a Data Subject, the reasonable costs of compliance with investigations by a Supervisory Authority.

1.4 "**Data Subject**" means an identified or identifiable natural person to whom Customer provides products or services and to whom Personal Data relates.

1.5 "**Data Transfer**" means:

1.5.1 a transfer of Customer Data from Customer to Data Processor; or

1.5.2 an onward transfer of Customer Data from Data Processor to a Subprocessor, or between two establishments of a Subprocessor;

1.6 "**EEA**" means the European Economic Area, which constitutes the member states of the European Union and Norway, Iceland, and Liechtenstein, as well as, for the purposes of this Addendum, the United Kingdom.

1.7 "**EU**" means the political and economic union of generally recognized twenty-seven (27) member states that are located primarily in Europe.

1.8 **"EU Data Protection Laws"** means the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, also known as the General Data Protection Regulation ("**GDPR**"), on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and, to the extent applicable, the data protection or privacy laws of any other EEA country.

1.9 **"Standard Contractual Clauses"** means the set of terms and conditions accepted by Customer and Data Processor and attached to this Addendum as Attachment 2 and incorporated herein, which govern the transfer of Personal Data outside of the EEA.

1.10 **"Subprocessor"** means any person or entity engaged by the Data Processor and who agrees to receive from the Data Processor or Customer Personal Data exclusively intended for the processing of Customer Data on behalf of the Customer in accordance with Customer's instructions and in connection with this Addendum.

1.11 The terms, "**Commission**", "**Controller**," "**Member State**," "**Personal Data**," "**Personal Data Breach**," "**Processing**" (including "Process") "**Special Categories**," and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

**2. Applicability; Effectiveness.** This Addendum shall apply only to the extent Customer is established within the EEA and/or to the extent that Data Processor Processes Personal Data of Data Subjects located in the EEA on behalf of Customer. This Addendum shall commence on the Effective Date and shall remain in effect coterminously with the Agreement.

### **3. Duties and Obligations**

3.1 Parties' Roles. Customer, as the Controller, hereby appoints Data Processor to Process the Customer Data on Customer's behalf. The Parties acknowledge that, in some circumstances, Customer shall be deemed to be the Processor, in which case Data Processor shall be appointed as the Subprocessor, and which shall not change the Parties' obligations under this Addendum.

3.2 Authorized Purpose. Data Processor shall only process Customer Data for the purposes set forth in the Agreement and this Addendum, and only in accordance with applicable law. All other uses of Customer Data are strictly prohibited.

3.3 Instructions. The Parties agree that this Addendum and the Agreement constitute the Customer's documented instructions regarding Data Processor's Processing of Customer Data. Data Processor shall Process Customer Data only in accordance with these documented instructions. Any additional instructions shall require the prior written agreement of the Parties. Customer shall ensure that the Processing of Customer Data will not cause Data Processor to violate any applicable law, rule, or regulation.

3.4 Records of Processing Activity. Data Processor, and any Subprocessor, if applicable, shall maintain a written record of all Processing activity carried out on behalf of Customer, including without limitation the categories of Processing, information on Data Transfers and third countries to where Customer Data was transferred, and a general description of the technical and organizational security measures utilized by Data Processor. Upon written request, Data Processor shall make its record available to the Supervisory Authority.

3.5 Compliance. Each Party shall comply with all EU Data Protection Laws and other applicable laws, rules, and regulations. Data Processor shall not be responsible for determining the requirements of laws applicable to the Customer's business or confirming that the Customer's collection of Customer Data complies with all EU Data Protection Laws.

### **4. Subprocessors; Data Processor Personnel**

4.1 Subject to the Standard Contractual Clauses, Customer agrees that Data Processor may engage Subprocessors to assist in providing the Processing. The list of Subprocessors currently used by Data Processor is attached to this Addendum as Attachment 1 and incorporated herein. Data Processor shall notify

the Customer in writing at least ten (10) days prior to the addition of any Subprocessors. Data Processor may immediately replace a Subprocessor without notice to Customer if the need for change is urgent and necessary. Data Processor shall be responsible for monitoring any Subprocessor's compliance with this Addendum and the EU Data Protection Laws or the EU-U.S. Privacy Shield Framework, as applicable.

4.2 The Data Processor shall take reasonable steps to ensure the reliability of any employee, agent, or contractor of Data Processor who may have access to the Customer Data, including without limitation providing appropriate training regarding the security and confidentiality of the Customer Data. Data Processor shall ensure that access is strictly limited to those individuals who need to know and/or access the relevant Customer Data, as strictly necessary for the purposes set forth in the Agreement and this Addendum, and to comply with applicable EU Data Protection Laws in the context of that individual's duties to the Data Processor or Subprocessor. Data Processor shall require all Subprocessors to enter into written agreements regarding the Processing of Customer Data with confidentiality and security obligations that provide at least the same level of protection for Customer Data as set forth in this Addendum or the Terms of Service. If Data Processor's engagement of any Subprocessor results in the transfer of Customer Data outside of the EEA, Data Processor shall ensure its agreement with such Subprocessor incorporates the Standard Contractual Clauses.

## **5. Data Subject Rights**

5.1 The Customer is solely responsible for: (i) providing the necessary notices to Data Subjects, (ii) complying with requests made by Data Subjects, and (iii) obtaining the required consent or authorizations from Data Subjects, all in accordance with the EU Data Protection Laws. If Data Processor reasonably believes the Customer has not obtained consent to Process Customer Data from all Data Subjects in accordance with the EU Data Protection Laws, or if Data Processor reasonably believes any documented instruction from the Customer violates the EU Data Protection Laws, Data Processor shall notify the Customer in writing and may suspend its performance of the Processing until the Parties can confirm compliance with the EU Data Protection Laws.

5.2 To the extent that responding to any Data Subject's inquiry, request, or communication to exercise its rights under the EU Data Protection Laws requires Data Processor's assistance, Customer shall provide written notification to Data Processor of the request or communication, and Data Processor shall provide commercially reasonable assistance to Customer in responding to the inquiry, request, or communication.

## **6. Personal Data Breach**

6.1 Data Processor shall notify Customer without undue delay but within seventy-two (72) hours, upon Data Processor becoming aware of a Personal Data Breach affecting Customer Data and shall provide Customer with sufficient information to allow the Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach as required by the EU Data Protection Laws, or other applicable law.

6.2 Data Processor shall cooperate with the Customer and take reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation, and remediation of each such Personal Data Breach.

6.3 Notice to Data Subjects of any Personal Data Breach as required by the EU Data Protection Laws, regardless of whether Data Processor's or Customer's servers were the subject of the breach, shall be the Customer's sole responsibility.

6.4 Data Processor's notification, cooperation, or assistance to Customer in the event of a Personal Data Breach shall not be construed as an acknowledgment or admission of any fault or liability with regard to the Personal Data Breach.

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

To the extent required by the EU Data Protection Laws, Data Processor shall provide reasonable assistance to the Customer in fulfilling Customer's obligation to carry out data protection impact assessments

and in the cooperation or prior consultation with Supervising Authorities or other competent data privacy authorities, in each case solely in relation to Processing of Customer Data by, and taking into account the nature of the Processing and information available to Data Processor.

## **8. Audit rights**

8.1 Subject to this Section 8, the Standard Contractual Clauses, and the confidentiality obligations in the Terms of Service, Data Processor shall make available to the Customer upon written request all information reasonably necessary to demonstrate compliance with this Addendum and the EU Data Protection Laws. To the extent the information provided by Data Processor does not demonstrate its compliance, Data Processor shall allow for and reasonably assist in an audit, no more than once per calendar year, by an independent auditor mandated by the Customer (at Customer's sole cost and expense), to confirm Data Processor's compliance with this Addendum and EU Data Protection Laws.

8.2 At least fifteen (15) business days prior to the commencement of any audit, Customer shall submit to Data Processor a proposed audit plan describing the scope, duration, and start date of the audit. Customer and Data Processor shall cooperate to develop the final audit plan. The results of the audit shall constitute Confidential Information of Data Processor and shall be protected by the confidentiality obligations set forth in the Terms of Service.

8.3 Information and audit rights of the Customer only arise under this Section 8 to the extent that this Addendum, the Agreement, or information provided to Customer by Data Processor pursuant to this Addendum, does not otherwise confirm Data Processor's compliance.

## **9. Data Transfer**

Data Processor may not engage in or authorize the Data Transfer of Customer Data to countries outside the EU and/or the EEA unless the Parties have a fully executed Customer Order Form incorporating this Addendum and the Standard Contractual Clauses set forth in Attachment 2.

## **10. Indemnification**

10.1 Customer shall indemnify and keep indemnified Data Processor and each of its Subprocessors, jointly, severally, and in any combination, in respect of all Data Protection Losses suffered or incurred by, awarded against, or agreed to be paid by, Data Processor and any Subprocessor, arising from or in connection with any of the following:

10.1.1 Non-compliance by Customer with applicable law, rule, or regulation;

10.1.2 Processing carried out by Data Processor or any Subprocessor pursuant to any processing instruction by Customer that violates any applicable law, rule, or regulation law; and

10.1.3 Breach by Customer of any of its obligations under this Addendum.

Customer will have the sole right to conduct the defense of any such claim or action and all negotiations for any settlement or compromise in connection with the foregoing, unless otherwise agreed to by the Parties, in writing, except that Customer will not enter into any settlement or compromise without the prior written consent of Data Processor unless Customer is liable for all Data Protection Losses pursuant to such settlement or compromise, and as a result of such settlement or compromise, no injunctive or other equitable relief would be imposed against Data Processor or any Subprocessor, and no admission of wrongdoing would be made on behalf of Data Processor or any Subprocessor.

10.2 If Customer receives a compensation claim from a Data Subject relating to Processing of Personal Data, Customer shall promptly provide Data Processor with notice and full details of such claim. Customer shall:

10.2.1 Make no admission of liability of Data Processor or any Subprocessor, nor agree to any settlement or compromise of the relevant claim without the prior written consent of Data Processor

(which shall not be unreasonably withheld or delayed), unless Customer is liable for all Losses pursuant to such settlement or compromise, and as a result of such settlement or compromise, no injunctive or other equitable relief would be imposed against Data Processor or any Subprocessor, and no admission of wrongdoing would be made on behalf of Data Processor or any Subprocessor.

10.2.2 Consult fully with Data Processor in relation to any such claim, but the terms of any settlement or compromise of the claim will be exclusively the decision of the Party that is deemed responsible for the injury asserted in the claim and paying the compensation due under such claim.

10.3 In relation to any compensation paid by Customer or compensation ordered by a Supervisory Authority to be paid by Customer, the Parties agree that Customer shall not be entitled to claim back from Data Processor any part of any compensation paid by Customer in respect of such damage to the extent that Customer is liable to indemnify Data Processor in accordance with this Section 10.

10.4 This Section 10 is intended to limit Data Processor's liability for data protection losses, including with respect to compensation to Data Subjects, except:

10.4.1 To the extent not permitted by applicable law (including data protection laws).

10.4.2 That it does not affect the liability of either Party to any Data Subject.

## 11. General Terms

**11.1 Confidentiality.** Each Party acknowledges that the terms of this Addendum constitute Confidential Information and must be kept secure in accordance with the Confidentiality provisions of the Terms of Service.

**11.2 Authority.** Customer represents, warrants, and covenants to Data Processor it has the legal authority to enter into this Addendum.

Any claims brought under this Addendum shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations set forth in the Terms of Service.

## 12. Entire Agreement; Binding

This Addendum (including its Attachments and Appendices) constitutes a part of the Agreement as between Customer (as "Customer"), and Data Processor (as "VirBELA"), and with the Agreement embodies the complete agreement and understanding among the Parties with respect to the subject matter hereof. The exchange of a fully executed Customer Order Form by fax or electronic signature service shall be sufficient to bind the Parties to this Addendum.

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**ATTACHMENT 1  
CURRENT LIST OF DATA PROCESSOR'S SUBPROCESSORS**

Stripe - credit card processing

Amazon Web Services - computing infrastructure and hosting services

Google Cloud - computing infrastructure and hosting services

Microsoft Azure - computing infrastructure and hosting services

Compose.com - database management

Zoho - customer relationship management (CRM); technical support; customer support

Salesforce - - customer relationship management (CRM); technical support; customer support

Google Analytics - data analytics and targeted marketing

Mailchimp - email marketing

Splunk - data analytics

OKTA - single sign-on security

Free Conference Call - screen sharing

MongoDB - Database

Zendesk - Support and knowledge base

## ATTACHMENT 2 STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

The Standard Contractual Clauses contained herein are agreed to in their entirety and are effective as of the Effective Date. The standard contractual clauses set out in this Attachment 2 are considered as offering adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights as required by Article 26(2) of Directive 95/46/EC.

### STANDARD CONTRACTUAL CLAUSES

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.

Customer (the “**Data Exporter**”) and Data Processor (the “**Data Importer**”),

HAVE AGREED on the following Standard 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, attached to these Clauses and incorporated herein.

#### **Clause 1 Definitions**

Capitalized terms not defined in Clauses shall have the meaning set forth in the Addendum or the Agreement. For the purposes of this the Clauses the following definitions shall apply:

- (a) ‘Data Exporter’ means Customer who is the Controller who transfers the Personal Data;
- (b) ‘Data Importer’ means Data Processor, the Processor established in a third country who agrees to receive from the Data Exporter Personal Data intended for Processing on the Data Exporter’s behalf after the transfer in accordance with his instructions and the terms of this Addendum 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;
- (c) ‘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 Controller in the Member State in which the Data Exporter is established;
- (d) ‘Technical and Organizational Security Measures’ means those measures aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized 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
- (e) ‘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.

#### **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 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 Organizational Security Measures specified in Appendix 2, attached to these Clauses;

(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, unauthorized 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 Personal Data, the Data Subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the Data Importer or any Subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection Supervisory Authority if the Data Exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the Data Subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for Subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;



(i) that, in the event of sub-processing, 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<sup>1</sup>**

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 Addendum;

(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 Addendum 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 Addendum;

(c) that it has implemented the Technical and Organizational 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 unauthorized access; and

(iii) any request received directly from the Data Subjects without responding to that request, unless it has been otherwise authorized 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 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 sub-processing, it has previously informed the Data Exporter and obtained its

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<sup>1</sup> Mandatory requirements of the national legislation applicable to the Data Importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defense, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the Data Subject or the rights and freedoms of others, are not in contradiction with the Standard Contractual Clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognized sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

prior written consent;

(i) that the Processing services by the sub-processor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any sub-processor 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 its 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 the Addendum 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, namely the United Kingdom.

### **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 Clauses.

### **Clause 11 Sub-processing**

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 sub-processing of the agreement referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Exporter is established, namely the United Kingdom.

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.

### **Clause 12 Obligation after the termination of personal data-processing services**

1. The Parties agree that on the termination of the provision of 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.

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## **Appendix 1 to the Standard Contractual Clauses**

This Appendix 1 forms part of the Clauses and are agreed to and accepted as of the Effective Date. The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data Exporter's activities relevant to the transfer are specified in the Customer Order Form.

Except as otherwise provided, herein the VirBELA Privacy Policy ("Privacy Policy") and VirBELA End-User License Agreement ("EULA") document and specify Data Importer's (a) activities relevant to the transfer; (b) the Personal Data transferred concerning the (i) categories of Data Subjects, (ii) categories of data, and (iii) Special Categories of data; and (c) the basic processing activities to which Personal Data transferred will be subject. Both the Privacy Policy and EULA are incorporated by this reference.

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## **Appendix 2 to the Standard Contractual Clauses**

This Appendix 2 forms part of the Clauses and are agreed to and accepted as of the Effective Date.

Description of the Technical and Organizational Security Measures implemented by the Data Importer in accordance with Clauses 4(c) and 5(c) shall be made available upon request.

*[END OF GDPR DATA PROCESSING ADDENDUM]*