

## Model Clauses Template

This Agreement is dated .....

### Between

- (1) **<CUSTOMER NAME>**, a company incorporated in England and Wales with registered number [ ], whose registered office is at [ ] ("**data exporter**") and;
- (2) **SPECIALIST COMPUTER CENTRES PLC** acting for and on behalf of **SPECIALIST COMPUTER CENTRES VIETNAM COMPANY LIMITED**, a company incorporated in Vietnam (with registered number 0314186002), whose registered office is at Unit 801, 8<sup>th</sup> Floor, the Commercial – Service – Entertainment South Saigon Center at Function Area No.2, South of Ho Chi Minh City New Urban Center, Tan Phang Ward, District 7, Ho Chi Minh City, Vietnam ("**data importer**")

### 1. Definitions

For the purposes of this Schedule and its Appendices 1 and 2 below ("the Clauses"):

- (a) '*personal data*', '*special categories of data*', '*process/processing*', '*controller*', '*processor*', '*data subject*' and '*supervisory authority*' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) '*the data exporter*' means the controller who transfers the personal data;
- (c) '*the data importer*' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) '*the 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 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.

### 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.

### 3. Third-party beneficiary clause

- 3.1 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.
- 3.2 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.

- 3.3 The data subject can enforce against the sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.
- 3.4 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.

#### **4. Obligations of the Data Exporter**

##### 4.1 The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any 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 Appendix 2, 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 subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### **5. Obligations of the Data Importer**

##### 5.1 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 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 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.

## **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 his 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. Co-operation 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 English law.

## **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.

## **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 English law.

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

11.1 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.

11.2 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:	

### 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:	

## Appendix 1

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

<b>Data Exporter</b>
The data exporter is: procuring Services which include or may include an out of hours IT service from SCC Vietnam and/or the provision of other sub-contracted support services from SCC Vietnam in connection with Services contracted between Specialist Computer Centres plc and the data exporter in the United Kingdom.
<b>Data Importer</b>
The data importer is: providing Services which include or may include an out of hours IT service from SCC Vietnam and/or the provision of other sub-contracted support services from SCC Vietnam in connection with Services contracted between Specialist Computer Centres plc and the data exporter in the United Kingdom.
<b>Data subjects</b>
The personal data transferred concern the following categories of data subjects (please specify):
Where the personal data is not specified the Personal Data which could be Processed by SCC in performing the Services could relate to any individual anywhere in the world with whom the Customer and its users are communicating, doing business, providing a service to, employing (either potentially or historically) and anyone related to such individuals or other individuals. No pre-determined operations are specifically proposed in respect of transferring personal data. It is possible that no personal data will be transferred in connection with these arrangements – although it is also possible that personal data could be visible to Data Importer employees in Vietnam in the course of their provision of IT services.
<b>Categories of data</b>
The personal data transferred concern the following categories of data (please specify):
Where not specified the Personal Data could be any type of personal data or special category of sensitive Personal Data that is Processed by SCC when providing the Services for the Customer all as determined by the Customer or the Customer's users.. As above, it is possible that no personal data will be transferred in connection with these arrangements – although it is possible that the following categories of personal data referenced below could be visible to Data Importer employees in Vietnam.
<b>Special categories of data (if appropriate)</b>
The personal data transferred concern the following special categories of data (please specify):
Where not specified the Personal Data could be any type of personal data or special category of sensitive Personal Data that is Processed by SCC when providing the Services for the Customer all as determined by the Customer or the Customer's users.
<b>Processing operations</b>
The personal data transferred will be subject to the following basic processing activities (please specify): No pre-determined operations are specifically proposed in respect of personal data itself. It is possible that no personal data will be transferred in connection with these arrangements – although it is also possible that the categories of data referenced above could be visible to Data Importer employees in Vietnam in the course of them providing IT services. The relevant background operations will therefore be IT support activities which involve employees having the required privileges to administer the customer infrastructure and supported users. These administration privileges would allow access to user data whereby it resides upon the customer infrastructure. Examples may include but not limited to: <ul style="list-style-type: none"><li>• Access to customer file servers where data may reside for the purpose of resolving customer Infrastructure and end user IT incidents</li><li>• File restore activities on behalf of customer requests and incidents</li><li>• Access to customer infrastructure where data may be communicated within and across the customer network and Infrastructure</li><li>• Access to customer Email infrastructure for the purpose of resolving customer infrastructure and end user Incidents.</li></ul>

## Appendix 2

**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):

Organisational Controls:

- A single Information Security Management System storing all our policies in line with ISO27001 and signed copies of our IT policy
- Mandatory annual Information Security Awareness Training
- Annual risks assessments covering both Physical locations and Information Assets
- External ISO27001 Independent Audit (Certificate for Vietnam attached)
- Information Security Governance including the Information Security Forum where all appropriate metrics are reviewed including on a periodic basis.

Technical Controls:

- CCTV and PAC Access to location
- Biometric access control to SCC building and office locations
- All Site to Site connectivity encrypted to AES 256 bit encryption
- Secure room with no mobile phones, no ability to print or store data locally on discs or other portable media
- UK Hosted desktop Solution DaaS for all Vietnam Employees provisioned from CV1 Datacentre
- No data transfer across core connectivity between UK and Vietnam – mouse and keyboard activity only
- Hosted DaaS desktop solution locked down through policy and configuration to prevent copy of **ANY** data/files/folders from UK to Vietnam Location with control, governance and administration provided by UK
- No Print screen / screen capture ability configured on Hosted DaaS solution