

Standard Contractual Clauses (SCCs) - processor

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.

	Data exporting organization (the data exporter)	Data importing organization (the data importer)
Name		
Address		
Business ID		
Tel.		
Fax		
E-mail		
Other information needed to identify the organization		
	each a 'party' ; together 'the parties'	

The parties have agreed on the following **Contractual Clauses (the Clauses)** in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in [Appendix 1](#).

Clause 1 - Definitions

For the purposes of the Clauses:

- a) **'personal data'**, **'special categories of data'**, **'process/processing'**, **'controller'**, **'processor'**, **'data subject'** and **'supervisory authority'** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾;
- b) **'the data exporter'** means the controller who transfers the personal data;
- 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; EN L 39/10 Official Journal of the European Union 12.2.2010
- 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

⁽¹⁾ Parties may reproduce definitions and meaning contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone

Example of Standard Contractual Clauses (SCCs) – processor

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 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.
- 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; EN 12.2.2010 Official Journal of the European Union L 39/11
- 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;

Example of Standard Contractual Clauses (SCCs) – processor

- 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).

Clause 5 - Obligations of the data importer⁽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; EN L 39/12 Official Journal of the European Union 12.2.2010
- 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

⁽¹⁾ 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, defence, 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 recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements

Example of Standard Contractual Clauses (SCCs) – processor

- 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.

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 sub-processor 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 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.

- 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;EN 12.2.2010 Official Journal of the European Union L 39/13.

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 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.

Example of Standard Contractual Clauses (SCCs) – processor

- 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).

Clause 9 - Governing law

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

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 - 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 sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses ⁽¹⁾. 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.
- 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.
- 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 please add.
- 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 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.
- 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.

⁽¹⁾ This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision

Example of Standard Contractual Clauses (SCCs) – processor

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)

(stamp of organization)

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)

(stamp of organization)

Signature

Personal data specified

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		Data importer	
(Please specify briefly your activities relevant to the transfer):		(Please specify briefly your activities relevant to the transfer):	
Data subjects	The personal data transferred concern the following categories of data subjects (please specify):		
	<input type="checkbox"/> Employees including volunteers, agents, temporary and casual workers	<input type="checkbox"/> Customer and clients	<input type="checkbox"/> Suppliers
	<input type="checkbox"/> Healthcare and welfare data subjects	<input type="checkbox"/> Personal data included, but types not specified due to the nature of the processing (such as capacity services).	
	<input type="checkbox"/> Other:		
Categories of data	The personal data transferred concern the following categories of data (please specify):		
	<input type="checkbox"/> Customer details such as name, title, home address, telephone and mobile numbers, email address, date of birth, sex, customer number, purchase and/or service use history and details.		
	<input type="checkbox"/> Corporate customer, partner and vendor details such as name, title, home address, telephone and mobile numbers, email address, date of birth, sex, service use history and details.		
	<input type="checkbox"/> Financial and transactional details such as income, salary, assets and investments, payments, items purchased, loans, benefits, grants, bank account number, payment transaction information, credit card number, insurance details and pension information		
	<input type="checkbox"/> Employment and human resources details such as name, addresses, contact details, age, sex, and date of birth, national identification number, details relating to the employment of the data subject, including career history, recruitment and termination details, employee assessments, training and security records.		
<input type="checkbox"/> IT management details such as details of equipment data related to the services provided including technical identifiers, user name, location, contact details, communication data and metadata and technical events related to the services provided including system and application logs.			

Appendix 1 to Standard Contractual Clauses (SCCs) - processor

	<input type="checkbox"/> Security details such as security log information, facility and system surveillance information and security incident information.		
	<input type="checkbox"/> Personal data included, but types not specified due to the nature of the processing (such as capacity services).		
	<input type="checkbox"/> Other <ul style="list-style-type: none"> • 		
<p>Special categories of personal data (if appropriate)</p>	The personal data transferred concern the following special categories of data (please specify):		
	<input type="checkbox"/> racial or ethnic origin	<input type="checkbox"/> political opinions	<input type="checkbox"/> religious or philosophical beliefs
	<input type="checkbox"/> trade union membership	<input type="checkbox"/> processing of genetic data, biometric data for the purpose of uniquely identifying a natural person	<input type="checkbox"/> data concerning health
	<input type="checkbox"/> data concerning a natural person's sex life or sexual orientation	<input type="checkbox"/> criminal convictions and offences or related security measures	
<p>Processing operations</p>	The personal data transferred will be subject to the following basic processing activities (please specify):		
	<input type="checkbox"/> Provision of IT -services to data exporter	<input type="checkbox"/> Provision of consultancy and development services	
	The provision of above services may result in processing of data exporter's personal data in at least the following manner (without limitation):		
	<input type="checkbox"/> Collection	<input type="checkbox"/> Storage	<input type="checkbox"/> Recoding
	<input type="checkbox"/> Making available	<input type="checkbox"/> Combining	<input type="checkbox"/> Erasure and deletion
	<input type="checkbox"/> Statistical use	<input type="checkbox"/> Other:	
	Data importer will not access, process, transfer or use in any way, directly or indirectly, any personal data under or in connection with the agreement, except (i) where required under the agreed service delivery model or for the performance of the services, as amended from time to time in accordance with the agreement, and (ii) as directed in good faith by data exporter, in any event subject to applicable law and the agreement. The details of the processing activities, the transfer and onward transfer of personal data are stipulated in the agreement and the services delivery model.		

Appendix 1 to Standard Contractual Clauses (SCCs) - processor

Data exporter

Name

Authorised
signature

Data importer

Name

Authorised
signature

Technical and organisational security measures

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

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

- As agreed between the data exporter and the data importer.