



Schedule A

To

Open Blend Order Form

Terms and Conditions

1. Definitions.

- 1.1. **“Adequacy Decision”** means any adequacy decision as described in Article 45 of the GDPR (or any similar or equivalent decision or regulation providing Appropriate Safeguards under UK Data Protection Laws), excluding the Privacy Shield (or any replacement scheme);
- 1.2. **“Appropriate Safeguards”** means such legally enforceable mechanism(s) for Transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
- 1.3. **“Attached Standard Contractual Clauses”** means the provisions set out in Annex 1 to Schedule D;
- 1.4. **“Authorised User”** means those employees of the Customer who are entitled to use the Software through the Hosting Services under this Agreement;
- 1.5. **“Customer Data”** means Customer’s data derived from Customer’s operations in the Territory. For the avoidance of doubt, Customer Data excludes aggregated data from other sources and data from Customer’s related entities. Notwithstanding the foregoing, Customer Data may include aggregated data, including aggregated data from Customer’s related entities, to the extent such data is used solely in support of Customers operations in the Territory;
- 1.6. **“Controller, Data Subject, International Organisation, International Recipient, Personal Data, Personal Data Breach, Processor and processing”** shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including process, processed and processes shall be construed accordingly);
- 1.7. **“Data Protection Laws”** means, as binding on either party or the Services:
 - the GDPR;
 - the Data Protection Act 2018;
 - any laws which implement any such laws; and
 - any laws that replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of this Agreement) (including where applicable, the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018 as modified by applicable domestic law from time to time);
- 1.8. **“GDPR”** means the General Data Protection Regulation, Regulation (EU) 2016/679;
- 1.9. **“International Recipient”** means the organisations, bodies, persons and other recipients to which Transfers of Protected Data are prohibited under clause 1.1 without the Customer’s prior written authorisation;
- 1.10. **“Onward Transfer”** means a Transfer from one International Recipient to another International Recipient;
- 1.11. **“Permitted Data”** means, collectively (a) Customer Data; (b) data purchased, licenced or leased from a third party by Customer; and (c) publicly available data (for example, national census data).
- 1.12. **“Protected Data”** means Personal Data received from or on behalf of the Customer in connection with the performance of OB’s obligations under this Agreement;
- 1.13. **“Sub-Processor”** means any agent, subcontractor or other third party (excluding its employees) engaged by OB for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
- 1.14. **“Transfer”** bears the same meaning as the word ‘transfer’ in Article 44 of the GDPR (or to the extent wider the definition of ‘transfer’ in equivalent provisions of UK Data Protection Laws). Without prejudice to the foregoing, this term also includes all Onward Transfers. Related expressions such as Transfers and Transferring shall be construed accordingly; and
- 1.15. **“UK Data Protection Laws”** means Data Protection Laws that form part of the law of England and Wales, Scotland and/or Northern Ireland from time to time.

2. **Services.** Upon Customer’s execution of the Agreement and payment of the first Annual Licence Fee, OB will provide the Software and perform the Services.

3. Terms Applicable to Services.

- 3.1. **Configuration Services.** OB shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement. OB shall perform the Configuration Services in accordance with Schedule B. OB shall use reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only, and time shall not be of the essence in this Agreement.
- 3.2. **Hosting Services, Maintenance and Support.** OB shall perform the Hosting Services and Maintenance and Support services as described in Schedule B. The Service Level Arrangements detailed in Schedule C shall apply with effect after the Configuration Services have been satisfactorily completed.

4. Authorised Users:

- 4.1. the Customer’s access to the Hosting Services shall be limited to the number of Authorised Users paid for in the First Annual Licence Period, being employees or contractors of the Customer. Any increase in the number of Authorised Users will be invoiced by OB quarterly in arrears, such invoice to be paid within 30 days of receipt;
- 4.2. the Customer shall maintain a written list of current Authorised Users of the Software, and the Customer shall provide such list to OB monthly when a change occurs, or as may be reasonably requested by OB from time to time;
- 4.3. the Customer shall ensure that each Authorised User keeps a secure password for his use of the Software and that each Authorised User keeps his password confidential;

- 4.4. OB may audit the Software regarding the name and password for each Authorised User. Such audit may be conducted no more than twice per year, at OB's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business; and
- 4.5. if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to OB's other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals.
- 5. Software.** The Customer shall not store, distribute or transmit any virus, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- 5.1. Except as expressly permitted under this Agreement or by law, the Customer shall not:
- use, copy, modify, adapt, correct errors, or create derivative works from, the Software;
 - decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software;
 - assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber the Software;
 - remove or modify any copyright or similar notices, or any of OB's or any other person's branding;
 - install or use the Software, or permit it to be installed or used, on behalf of any third party or otherwise than for the Customer Purpose; or
 - attempt to circumvent or interfere with any security features of the Software.
- 5.2. The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify OB promptly of any such unauthorised access or use.
- 6. OB Obligations.** Each of OB and Customer shall comply with their respective designated responsibilities specified in this Agreement. OB shall provide the Services:
- with all reasonable skill and care;
 - at the times and in the manner required in Schedule C or otherwise specified in this Agreement.
- 7. Customer Obligations.** Customer will assign appropriate resources to the Services and will ensure that such resources are available to participate in the Services as required to enable OB to perform the Services. Failure by Customer to respond to OB's questions in a timely manner may result in a delay in OB's provision of the Services. Customer is solely responsible for all Permitted Data preparation activities and for ensuring that all Permitted Data is of sufficient quality and format to enable OB to perform the Services.
- 8. Proprietary Rights.** The Customer acknowledges and agrees that OB and/or its licensors own all intellectual property rights in the Software and Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation. For the avoidance of doubt, the Customer holds all intellectual property rights in the Customer Data. OB confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, this Agreement.
- 9. Indemnity.**
- 9.1. OB shall defend, indemnify and hold harmless the Customer against any claims, actions, or proceedings, that the Software infringes any patent effective as of the Effective Date, copyright, or database right, and shall indemnify the Customer for any amounts finally awarded against the Customer in judgment or settlement of such claims, provided that:
- OB is given prompt notice of any such claim;
 - the Customer provides reasonable co-operation to OB in the defence and settlement of such claim, at OB's expense; and
 - OB is given sole authority to defend or settle the claim.
- 9.2. In the defence or settlement of the claim, OB may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement and refund any fees paid for the Software at issue. OB shall have no liability if the alleged infringement is based on:
- a modification of the Software by the Customer; or
 - the Customer's use of the Software in a manner contrary to the instructions given to the Customer by OB.
- 9.3. For any use by the Customer of the Software outside the intended use (as understood through the onboarding process), the Customer shall defend, indemnify and hold harmless OB against direct reasonable claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services, provided that:
- the Customer is given prompt notice of any such claim;
 - OB provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - the Customer is given sole authority to defend or settle the claim.

10. Processing of Personal Data

- 10.1. **Compliance with Data Protection Laws.** The parties agree that the Customer is a Controller and that OB is a Processor for the purposes of processing Protected Data pursuant to this Agreement. The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to OB in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws. OB shall process

Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement

10.2. OB shall only process the Protected Data in accordance with Schedule D and this Agreement, except to the extent:

- 10.2..1. that alternative processing instructions are agreed between the parties in writing; or
- 10.2..2. otherwise required by applicable law (and OB shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 10.2..3. if OB believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

10.3. Sub-Processors.

- 10.3..1. OB shall ensure that any person it engages to provide services on its behalf in connection with this Agreement does so only on the basis of a written contract which imposes on such person terms equivalent to those imposed on OB under this Clause ("**Relevant Terms**"). OB shall procure the performance by such person of the Relevant Terms and shall be directly liable to the Customer for any breach by such person of any of the Relevant Terms.
- 10.3..2. The parties agree that any sub-processors appointed as of the date of this Agreement together with any provisions in place to govern the Transfer of Protected Data with such sub-processor shall be deemed approved by the Customer. The parties agree that OB shall notify the Customer when it has assessed that a change to an appointed sub-processor shall have a direct impact on processing under this Agreement.
- 10.3..3. If the Customer has an objection to any new or replacement sub-processor, it shall notify OB of such objections in writing within ten (10) days of receipt of the notification and the parties will seek to resolve the matter in good faith. If OB requires to use the sub-processor and is unable to satisfy the Customer as to the suitability of the sub-processor or the documentation and protections in place between OB and the sub-processor within thirty five (35) days from the Customer's notification of objections, the Customer may terminate this agreement immediately on written notice to OB (only in relation to the Services to which the proposed new sub-processor's Processing of Protected Data relates or would relate unless the remaining Services are affected in which case, the Customer may terminate the remaining Services).

10.4. Assistance

OB shall (at the Customer's cost):

- assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to OB; and
- taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

10.5. International transfers.

10.5..1. OB shall not Transfer (nor permit any Onward Transfer of) any Protected Data:

- from any country to any other country; and/or
- to an organisation and/or its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries,

without the Customer's prior written authorisation

10.5..2. Further to Clause 10.5.1. the Customer hereby authorises OB to Transfer Protected Data for the purposes referred to in Schedule D from OB's [hosting site] in the United Kingdom to the Customer (wherever the Customer may be when such Protected Data is requested). For the avoidance of doubt, the parties agree that Protected Data can be Transferred between OB and sub-processors within the United Kingdom provided the provisions of clause 10.3 are complied with.

10.5..3. This Clause applies only to the Customer [if they are not situated in the United Kingdom ("Non-United Kingdom Customer"). In order to ensure the flow of Protected Data between OB and a Non-United Kingdom Customer following the United Kingdom's exit from the European Union, the parties hereby agree to the incorporation of the Standard Contractual Clauses attached at Schedule D (annex 1) into this Agreement and such Standard Contractual Clauses shall be deemed binding on both parties.

10.5..4. The Customer further authorises OB to Transfer Protected Data for the purposes referred to in Schedule D to any International Recipients (including sub-processors), provided all Transfers of Protected Data by OB to an International Recipient (including any Onward Transfer) shall be effected by way of Appropriate Safeguards, in accordance with Data Protection Laws and this Agreement.

10.6. **Audits and processing.** OB shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate OB's compliance with the obligations placed on it under this clause and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period).

10.7. **Deletion/return.** At the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, OB shall either return the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires OB to store such Protected Data. This clause shall survive termination or expiry of this Agreement.

10.8. **Technical and organisational security measures.** OB shall implement and maintain the following technical and organisational security measures to protect the Protected Data in accordance with the Data Protection Laws, taking into

account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, OB shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

- 10.9. **Use of Data.** The Customer grants OB a non-exclusive, royalty free, non-assignable, non-transferable licence to process Customer Data for the purposes of OB's research, provided that this does not include any data which can be used to identify any individual. Such research may be used by OB in articles, whitepapers, and other publications related to productivity, engagement and retention of talent generally, or related to OB's proprietary Open Blend Method in particular, and may be included in advertisements related to OB. Nothing in this clause grants OB a licence to make reference to the Customer itself in such research.
- 10.10. **Publicity.** The Customer acknowledges and recognises that OB (and any of OB's employees, agents, or representatives) may present at seminars, symposia and national, or regional professional meetings, The Customer hereby grants permission to OB to use its name, details of its brand and any pre-approved Customer quotes for the above mentioned purposes and for use on OB's website, blog-posts and in any testimonials used to promote the Software and Services.
- 10.11. **Mutual Indemnity.** Each party shall indemnify and keep indemnified the other party against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses and compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the other party of its obligations under this clause.

11. Invoicing and payment

- 11.1. The fee for the First Annual Licence Period shall be payable within 30 days of the date of this Agreement. Any subsequent Annual Licence Period fees shall be payable within 30 days of the anniversary of this Agreement, as applicable.
- 11.2. OB shall invoice Customer electronically to the email address notified by Customer in writing to OB for any further sums due under this Agreement (including for any increase in the number of Authorised Users) quarterly in arrears following supply of the Service to which the invoice relates.
- 11.3. Customer shall pay such sums in full within 30 days from the date of invoice.
- 11.4. Amounts payable to OB under this Agreement shall be paid into the following bank account by BACS or CHAPS or electronic funds transfer unless otherwise notified by OB to Customer in writing in accordance with this Agreement:
- | | |
|----------------------|---------------------------|
| Bank: | Santander |
| Account holder name: | Open Blend Method Limited |
| Sort code: | 09-01-28 |
| Account Number: | 74229982 |

12. **Interest.** Where sums due under this Agreement are not paid in full by the due date, OB may, without limiting its other rights, charge interest on such sums at 3 % a year above the base rate of the Bank of England from time to time in force. Interest will apply from the due date for payment until actual payment in full, whether before or after judgment.

13. **Ownership.** The Agreement does not transfer any ownership rights. Neither party will delete, obscure or modify the other party's proprietary rights notices.

14. Confidential Information.

- 14.1. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, products and other information held in confidence by the other party (individuality or collectively, "**Confidential Information**"). Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 14.2. Each party undertakes to:
- 14.2..1. disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including OB personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
 - 14.2..2. to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 14.3. Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 14.4. The provisions of this clause shall not apply to information which:
- 14.4..1. is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 14.4..2. is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 14.4..3. is independently developed by the recipient, without access to or use of such information; or
 - 14.4..4. is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 14.5. The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.
- 14.6. Each party (the '**Indemnifier**') shall indemnify and keep indemnified and hold harmless the other (the '**Indemnitee**') from and against any losses, damages, liability, costs (including legal fees) and expenses which the Indemnitee may incur or suffer as a result of or arising from any breach by the Indemnifier of its obligations under this clause.

15. Limitation of Liability

- 15.1. Subject to the following subclauses, in no event shall the aggregate liability of any party to the other (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under or in connection with this Agreement exceed the total amounts payable under this Agreement.
- 15.2. The limits on liability in clause 15.1 above shall not apply in respect of any indemnities provided by either party under this Agreement. In no event shall the aggregate liability of any party to the other in respect of any indemnity given in this Agreement exceed £500,000.
- 15.3. OB's liability to Customer in contract, tort (including negligence), for misrepresentation (whether innocent or negligent), for breach of statutory duty or otherwise arising out of or in connection with this Agreement shall not extend to any loss of profits, business opportunity, goodwill, data, anticipated savings or any special, indirect or consequential loss or damage whatsoever, even if foreseeable or if OB has been advised of the possibility of such damage.
- 15.4. The parties agree that the limitations on liability in this Agreement are fundamental to the Agreement and are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.
- 15.5. Except as expressly and specifically provided in this Agreement:
- the Customer assumes sole responsibility for results obtained from the use of the Software and for conclusions drawn from such use.; and
 - all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 15.6. The Service Level Arrangements state the Customer's full and exclusive right and remedy, and OB's only obligation and liability in respect of, the performance and/or availability of the Service, or their non-performance and non-availability.
- 15.7. Notwithstanding the above neither party excludes or limits any liability for:
- personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or
 - fraud or fraudulent misrepresentation; or
 - any other liability to the extent the same cannot be excluded or limited by law.
- 16. Insurance.** OB must for the duration of this Agreement maintain appropriate insurance cover with a reputable insurance company against all relevant liabilities and indemnities that may arise under this Agreement, and will provide to Customer upon request sufficient evidence of such insurance cover.
- 17. Termination.**
- 17.1. Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate the Agreement if the other:
- is in material or persistent breach of any of its obligations under the Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.
- 17.2. Customer may without prejudice to its other rights and remedies by notice in writing to OB immediately terminate this Agreement if OB ceases carrying on business in the United Kingdom.
- 17.3. In the event of termination of the Agreement for any reason, each party shall within seven days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information.
- 18. Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of OB or any other party), failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.
- 19. Governing Law.** The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 20. Jurisdiction:** The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 21. Notices.** Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 22. No Partnership or Agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 23. Severability.** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 24. Rights and Remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 25. No Waiver.** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 26. Non-Assignment.** Neither party shall not, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 27. Third Party Rights.** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 28. Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Schedule B
To
Open Blend Services Agreement
Services

Services. Upon Customer's execution of the Agreement and payment of the Fee, OB will perform the Services.

1. Configuration Services

The Configuration Services consist of the following phases:

Planning

- 1.1. Upon execution of the Agreement, OB shall prepare a project plan and engagement strategy in co-operation with the Customer, which will include an onboarding workshop to agree any configuration requirements of the Customer.
- 1.2. Configuration Services include any training workshops included in the Fees
- 1.3. OB and the Customer shall co-operate in implementing the Services in accordance with the implementation provisions of the project plan.

2. Hosting Services. Microsoft, on behalf of OB, shall perform the Hosting Services and Maintenance and Support services. The Service Level Arrangements detailed in Schedule C shall apply with effect after the Configuration Services have been satisfactorily completed.

- 2.1. **Set-up.** The set-up phase of the Hosting Services includes those services provided by Microsoft, on behalf of OB or its contracted third parties to design, install, configure and test the Hosting Services, as well as the hosting facility and internet connectivity.
- 2.2. **Installation and Configuration.** OB shall configure the hosting equipment provided by Microsoft to provide access to the Software. This includes as relevant, installation of system and database software components, configuration of clustering and cross-connects, installation of the Software, and loading of initial Customer Data.
- 2.3. **Facility.** The hosting equipment shall be stored inside a professional hosting facility, provided by Microsoft which is designed for such use. The facility shall be equipped with access security, climate control, fire suppression, and managed power supply with UPS and generator back-up.
- 2.4. **Internet Connectivity.** OB shall, where required, provide internet connectivity through an internet service provider at the hosting facility. The connectivity shall include multiple, diversely routed high-speed connections, a firewall for security and a load balancer for traffic management and speed optimisation. The Customer shall, and shall ensure that its Authorised Users shall, make their own arrangements for internet access in order to access the Software. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access.
- 2.5. **Continuing Hosting Services.** The continuing Hosting Services provided by OB or its contracted third parties, which allow for availability of the Software, include internet connectivity, load distribution management, security services, monitoring, back-up, release management and change control, and administration services.
- 2.6. **Load Distribution Management.** OB shall provide load-balancing services to distribute load and redundancy across application servers.
- 2.7. **Security Services.** OB shall provide security services as follows:
 - facility access shall be limited to the authorised supplier and contracted third-party personnel;
 - the facility shall be monitored 24 hours a day, seven days a week through closed circuit video surveillance and shall require identification for access; and
 - data access security shall be provided through managed firewall services with security on all web pages, a private network path for administration and SNMP monitoring, and fully hardened servers.
- 2.8. **Monitoring Services.** OB shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.
- 2.9. **Back-up, Archiving and Recovery Services** OB shall develop the back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, OB shall provide recovery services to try to restore the most recent back-up.
- 2.10. **Release Management and Change Control** OB shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by OB to maintain the Hosting Services.
- 2.11. **Administration Services.** These services include the installation and administration of additional hardware, operating system and other software, and other resources as necessary to maintain the Hosting Services, excluding the administration required for Authorised Users of the Software, which is a Customer dependency

Schedule C
To
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Service Levels

1. **Service Availability.** OB is committed to providing a highly available and secure network to support its Authorised Users. Providing the Authorised Users with consistent access to Hosting Services is a high priority for OB. The service availability metric is 99.6%, measured on a monthly basis.

2. **Term Definitions**

Available or Availability when the Authorised Users account is active and enabled has reasonable access to the Hosting Service, subject to the exclusions defined in Downtime Minutes below.

Total Monthly Minutes the number of days in the month multiplied by 1,440 minutes per day.

Maintenance Time the time period during which the Hosting Service may not be Available each month so that OB can perform routine maintenance to maximize performance, on an as needed basis.

Downtime the total number of minutes that the Authorised User cannot access the Hosting Service. The calculation of Downtime Minutes excludes time that the Authorised User is unable to access the Hosting Services due to any of the following:

- Maintenance Time;
- the Customer's own internet service provider;
- Force Majeure;
- any systemic internet failures;
- Enhanced Services;
- any failure in the user's own hardware, software or Network connection
- the Customer's bandwidth restrictions;
- the Customer's acts or omissions;
- anything outside the direct control of OB.

OB Network the network inside of OB's border routers.

Problem Response Time the time period after OB's confirmation of the Service event, from receipt of the information required from the Authorised Users for OB's Support Team to begin OB's Software and open a trouble ticket in OB's systems. Due to the wide diversity of problems that can occur, and the methods required to resolve them, problem response time IS NOT defined as the time between the receipt of a call and problem regarding OB's Software. After receiving a report of fault, OB shall use a reasonable method to provide Authorised User with a progress update.

3. **Multi Tenancy** OB's Hosting Service is provided in a multi tenant architecture where seats of a Customer's Authorised Users may be extended across numerous servers. Customers may obtain remedy only for affected seats experiencing Downtime exceeding the SLA.

4. **Maintenance Notices** OB will communicate the date and time that OB intends to make the Hosting Services un-available via the front page of the support web site at least forty-eight (48) hours in advance (or longer if practical). The Customer understands and agrees that there may be instances where OB needs to interrupt the Hosting Services without notice in order to protect the integrity of the Hosting Services due to security issues, virus attacks, spam issues or other unforeseen circumstances.

5. **Emergency Maintenance.** Change controls that happen immediately with little notification ahead of time. OB will endeavour to post the information to OB's website soon after, or during, the change.

6. **Preventative Maintenance.** Change controls where an item in the environment is detected that requires action, to avoid emergency change controls in the future. These change controls, if possible, will usually occur in low peak hours with peak being defined by OB's network metrics.

7. **Planned Maintenance.** Change control's being done to:

- Support on-going product and operational projects to ensure optimal performance
- Deploy non-critical service packs or patches.
- Periodic redundancy testing.

OB will endeavour to post planned maintenance 5-days prior to the planned maintenance commencing.

8. **Customer Responsibility**

8.1. Customer Minimum Requirements:

- Internet connection with adequate bandwidth;
- Internet Browser – Chrome, Safari, Microsoft InternetExplorer 11, Microsoft Edge
- Email Client e.g. MS Outlook

8.2. OB recommends utilising the latest Windows or Macintosh operating system, not in beta; and the latest Outlook version, not in beta. Comparable operating systems and mail clients to access Email via Full Access/POP3/IMAP/SMTP can be utilised, but may not be supported.

9. **OB Admin Panel.** The OB Admin Panel is provided to the Authorised User, provided it is enabled with Hosting Services at OB, therefore the Authorised User can manage their own account and services. The Authorised User should use discretion when granting administrative privileges to the OB Admin Panel. OB support team is not permitted to access nor perform tasks via the Authorised User OB Admin Panel and as such OB is not responsible in any way for those features and functionality managed by the Customer via the OB Admin Panel, which include but are not limited to: (i) Mailboxes, services enabled, and storage quota facilitated in the OB Admin Panel; and (2) downtime issues caused by non-use or misuse of the OB Admin Panel. An example is service unavailability caused by reaching quota limits set in the OB Admin Panel, or Hosted Services being disabled/deleted in error. In the case of downtime or Customer error causing loss of data, OB may be able to assist Customer in data recovery and restoration Service Levels. This Schedule shall only become applicable to the Hosting Services upon the later of (a) completion of the "stabilisation period," as such term is defined in the OB Proposal (if any), or (b) ninety (90) days from the Customer's acceptance of the Configuration Services and the first provisioning of Hosting Services.

10. **Measurement.** OB uses a proprietary system to measure whether the Hosting Services are Available and the Authorised Users agree that this system will be the sole basis for assessment of any dispute that may arise between the Authorised User and OB regarding this Agreement.

11. **Availability**

Availability is calculated based on the following formula: $A = (T - M - D) / (T - M) \times 100\%$ A = Availability T = Total Monthly

Minutes M = Maintenance Time D = Downtime

Availability Credit Amount of Monthly Fee for affected licences

> 97.9% but < 99.6%	3%
> 96.5% BUT < 97.9%	4%
< 96.5%	5%

12. Problem Response Time

Any issues found within the platform will be classified with the following levels of severity

Level of Severity	Description of Severity	Response Time
Severity A	Critical business impact Customer's business has significant loss or degradation of services, and requires immediate attention.	< 1 hr
Severity B	Moderate business impact Customer's business has moderate loss or degradation of services, but work can reasonably continue in an impaired manner.	< 4 hrs
Severity C	Minimum business impact Customer's business is functioning with minor impediments of services.	< 8 hrs

OB's failure to meet the Service level metric for Problem Response Time for a month shall result in a Service Level Credit calculated per incident at a credit of 50% of the monthly invoice, up to a maximum Service Level Credit of £200, for the Hosting Service (not including setup, activation fees or other services provided by OB) per month. The response time per incident will vary upon the degrees defined below:

Remedy and Procedure

12.1. The Customer's remedy and the procedure for obtaining the Customer's remedy in the event that OB fails to meet the Service level targets set forth above are as follows:

12.2. To qualify for remedy:

- There must be a support ticket documenting the event within 24 hours of the service interruption
- The Customer must notify OB by using the 'Help desk' icon on their from OB Software or via the 'Can't log in' button on the login page. Both of which will link to helpdesk@openblend.com

12.3. OB will confirm receipt of a support ticket by return of email.

12.4. If in the event of OB breach the target response time the following applies; the Customer and OB agree to refer the matter to executives at each company for review. If OB confirms that OB is out of compliance with this Agreement, the Customer will receive the amount of Service Level Credits set forth above for the affected Service level metric and the affected Seats for the affected month. The SLA credit will be reflected in OB invoice to the Customer in the month following OB's confirmation of the Downtime Minutes and only applied against future fees due. .

13. Mail Delivery Time. The time between an email sent from the Customer's email interface (containing valid internet connection, header, and address information at our server) to a valid email address inside or outside of the Customer's domain. OB is not responsible for undelivered mail that has departed OB's network, however routed improperly due to recipient policies or configurations.

14. Mobile Devices. Accessing the OB server via such devices are reliant upon the device hardware, device operating system, and wireless carrier. OB will make commercially reasonable efforts to ensure Availability and support in configuration but cannot guarantee accessibility due to the many factors out of OB's control.

Schedule D
To
Open Blend Services Agreement
Data Processing

For the purposes of the Data Processing clause, the parties set out below a description of the Personal Data being Processed under the terms of the Agreement and further details required pursuant to the GDPR.

1. TYPES OF PERSONAL DATA:.

- Employee full name and title
- Employee email address
- Employee gender
- Employee age bracket (generation)
- Employee manager or supervisor name
- Employee duration of employment
- Employee contracted and actual hours worked
- Employee salary bracket
- Employee type/length of commute
- Employee office location
- Employee job title
- Employee career stage
- External factors employees consider relevant to their working life including:
 - if have children and child care
 - Interests
 - General wellbeing
- Goals and objectives
- Performance against goals and objectives
- Calendar appointments for discussion sessions managers/supervisors
- Points arising from discussion sessions with managers/supervisors
- Agreed actions and objectives
- Employees belief of how well the manager knows what drives them
- Feedback
- Employees perceived engagement, productivity and their likelihood to leave

2. DURATION OF PROCESSING:

Until the earliest of (i) expiry/termination of this Agreement or (ii) the date upon which processing is no longer necessary for the purposes of either party performing its obligations under this Agreement (to the extent applicable).

3. NATURE OF PROCESSING:

Shall include collection, analysis, storage, duplication, deletion and disclosure, where necessary.

4. PURPOSE OF PROCESSING:

Necessary for the performance of the Parties obligations under this Agreement.

5. CATEGORIES OF DATA SUBJECT:

Employees, Members, Managers and Supervisors , Account Team Members and contacts at the Customer.

Schedule D

Annex 1

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: []

Address: [insert]

with company number [insert] (the data exporter)

And

Name of the data importing organisation: Open Blend Method Limited

Address: 90a High St, Berkhamsted, HP4 2BW

with company number 09283272 (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.

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;

(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

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.

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;

(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 Clauses 4 (a) to (i).

5 Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in 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

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.

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.

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.

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 [insert details].

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

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.
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 [insert details].
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

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.

On behalf of the data exporter:

Name (written out in full): [insert]

Position: [insert]

Address: [insert]

Other information necessary in order for the contract to be binding (if any): [insert]

(stamp) Signature.....

(stamp of organisation)

On behalf of the data importer:

Name (written out in full): [insert]

Position: [insert]

Address: [insert]

Other information necessary in order for the contract to be binding (if any): [insert]

(stamp) Signature.....

(stamp of organisation)

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 (please specify briefly your activities relevant to the transfer): [insert]

Data importer

The data importer is (please specify briefly activities relevant to the transfer): [insert]

Data subjects

The personal data transferred concern the following categories of data subjects (please specify): [insert]

Categories of data

The personal data transferred concern the following categories of data (please specify): [insert]

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify): [insert]

Processing operations

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

DATA EXPORTER

Name: [insert]

Authorised Signature:.....

DATA IMPORTER

Name: [insert]

Authorised Signature:.....

APPENDIX 2

TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix 2 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): [insert]

APPENDIX 3

ILLUSTRATIVE CLAUSES (OPTIONAL)

Illustrative indemnification clause (optional)

Liability

The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

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