Data Protection Addendum

Addressing GDPR Article 28 and Incorporating Standard Contractual Clauses for Controller to Processor Transfers of Personal Data from the EEA to a Third Country and Sub-Processing carried out in terms of Article 24(4).

Last updated on 20 August 2018

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This Agreement was updated on 20 August 2018. For previous versions click here.

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This Data Protection Addendum (DPA or "Addendum") applies to the processing of Personal Data governed by the EU General Data Protection Regulation 2016/679 and, where so applicable, shall form part of the BulkSMS Standard Terms and Conditions (the "Standard Terms and Conditions") to be entered into between BulkSMS and its clients (the "Client") acting on its own behalf and as agent for each Client Affiliate, with effect from the date set out above or 25 May 2018, whichever is the latest.

The terms used in this Addendum shall have the meanings set forth below. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Standard Terms and Conditions. Except as modified below, the terms of the Standard Terms and Conditions shall remain in full force and effect.

In consideration of the mutual obligations set out herein, BulkSMS and the Client hereby agree that the terms and conditions set out below shall be added as an Addendum to the Standard Terms and Conditions. Except where the context requires otherwise, references in this Addendum to the Standard Terms and Conditions are to the Standard Terms and Conditions as amended by, and including, this Addendum.

1.   **Interpretation**

1.1.   In this Addendum, the terms, "Commission", "Data Subject", "Member State", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meanings as given to those terms in the GDPR and the following terms shall have the meanings set out below:

1.1.1.   "Applicable Laws" means (a) European Union or Member State laws with respect to any Personal Data in respect of which any Client Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Personal Data in respect of which any Client Group Member is subject to any other Data Protection Laws;

1.1.2.   "Client Affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Client, where control is

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Processor on behalf of a Client Group Member pursuant to or in connection with the Standard Terms and Conditions;

1.1.5. "Contracted Processor" means BulkSMS or a Subprocessor;

1.1.6. "Controller" means a controller as defined in Article 4 of the GDPR;

1.1.7. "Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

1.1.8. "EEA" means the European Economic Area;

1.1.9. "EU Data Protection Laws" means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.10. "GDPR" means EU General Data Protection Regulation 2016/679;

1.1.11. "Personal Data" means Personal Data as defined in Article 4 of the GDPR that is processed by a Contracted Processor on behalf of a Client Group Member pursuant to or in connection with the Standard Terms and Conditions;

1.1.12. "Restricted Transfer" means:

1.1.12.1. a transfer of Personal Data from any Client Group Member to a Contracted Processor; or

1.1.12.2. an onward transfer of Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under section 6.4.3 or 12 below, as the case may be;

1.1.13. "Services" means short messaging services and other service activities to be supplied to or carried out by or on behalf of BulkSMS for Client Group Members pursuant to the Standard Terms and Conditions;

1.1.14. "Standard Contractual Clauses" means the contractual clauses set out in Annexure 2, amended as indicated (in square brackets and italics) in that Annexure and under section 13.4;

1.1.15. "Subprocessor" means any person (including any third party and any BulkSMS Affiliate, but excluding an employee of BulkSMS or any of its sub-contractors) appointed by or on behalf of BulkSMS or any BulkSMS Affiliate to Process Personal Data on behalf of any Client Group Member in connection with the Standard Terms and Conditions; and

1.1.16. "BulkSMS Affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with BulkSMS, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.2. The word "include" shall be construed to mean include without limitation, and related words shall be construed accordingly.

2. **Authority**

3.1. BulkSMS and each BulkSMS Affiliate shall:

3.1.1. comply with all applicable Data Protection Laws in the Processing of Personal Data; and

3.1.2. not Process Personal Data other than as requested by Client Group Member unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case BulkSMS or the relevant BulkSMS Affiliate shall to the extent permitted by Applicable Laws inform the relevant Client Group Member of that legal requirement before the relevant Processing of that Personal Data.

3.2. Each Client Group Member:

3.2.1. instructs BulkSMS and each BulkSMS Affiliate (and authorises BulkSMS and each BulkSMS Affiliate to instruct each Subprocessor) to:

3.2.1.1. Process Personal Data; and

3.2.1.2. in particular, transfer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services with due regard for, inter alia, the nature of global messaging services and telecommunications networks and consistent with the Standard Terms and Conditions; and

3.2.2. warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 3.2.1 on behalf of each relevant Client Affiliate.

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

4. BulkSMS and BulkSMS Affiliate Personnel

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

5. Security

5.1. Taking into account relevant developments in technology including telecommunications and messaging services, technical limitations associated with different messaging and telecommunications protocols, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, BulkSMS and each BulkSMS Affiliate shall in relation to the Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

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

6.1.1. the Client Group Member warrants its full authority and lawful entitlement to so engage BulkSMS or to provide BulkSMS with access to the Personal Data; and

6.1.2. all of BulkSMS's guarantees, obligations and undertakings contained in this Addendum shall apply equally to the processing of any such data.

6.2. Without limiting BulkSMS's rights in terms of section 6.7, BulkSMS and each BulkSMS Affiliate may continue to use those Subprocessors already engaged by BulkSMS or any BulkSMS Affiliate as at the date of this Addendum, subject to BulkSMS and each BulkSMS Affiliate in each case as soon as practicable meeting the obligations set out in section6.5.

6.3. Subject to section 6.6, BulkSMS shall give Client prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor and the date on which such appointment is anticipated to commence. If, following receipt of that notice, Client notifies BulkSMS in writing of any objections (on reasonable grounds) to the proposed appointment neither BulkSMS nor any BulkSMS Affiliate shall appoint (or disclose any Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address the objections raised by any Client Group Member and Client has been provided with a reasonable written explanation of the steps taken.

6.4. With respect to each Subprocessor, BulkSMS or the relevant BulkSMS Affiliate shall:

6.4.1. before the Subprocessor first Processes Personal Data (or, where relevant, in accordance with section 6.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Personal Data required by the Standard Terms and Conditions;

6.4.2. ensure that the arrangement between on the one hand (a) BulkSMS, or (b) the relevant BulkSMS Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;

6.4.3. if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) BulkSMS, or (b) the relevant BulkSMS Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, or before the Subprocessor first Processes Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the relevant Client Group Member(s) (and Client shall procure that each Client Affiliate party to any such Standard Contractual Clauses co-operates with their population and execution); and

6.4.4. provide to Client for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Client may request from time to time.

6.5. BulkSMS and each BulkSMS Affiliate shall ensure that each Subprocessor performs the obligations under sections 3.1, 4, 5, 7.1, 8.2, 9 and 11.1, as they apply to Processing of Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of BulkSMS.

6.6. Each Client Group Member acknowledges and agrees that, with regard to the transmission of short messaging services in particular, such services may involve the near instantaneous transmission of Personal Data across multiple networks from the

7.   Data Subject Rights

7.1.   Taking into account the nature of the Processing, BulkSMS and each BulkSMS Affiliate shall assist each Client Group Member by implementing appropriate technical and organisational measures, insofar as this is reasonably and commercially possible, for the fulfilment of the Client Group Members' obligations, as reasonably understood by Client, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

7.2.   BulkSMS shall:

7.2.1.   promptly notify Client if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Personal Data; and

7.2.2.   ensure that the Contracted Processor does not respond to that request except on the documented instructions of Client or the relevant Client Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case BulkSMS shall to the extent permitted by Applicable Laws inform Client of that legal requirement before the Contracted Processor responds to the request.

8.   **Personal Data Breach**

8.1.   BulkSMS shall notify Client without undue delay upon BulkSMS or any Subprocessor becoming aware of a Personal Data Breach affecting Personal Data, providing Client with sufficient information to allow each Client Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

8.2.   BulkSMS shall co-operate with Client and each Client Group Member and take such reasonable commercial steps as are directed by Client to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

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

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

10.   **Deletion or return of Personal Data**

10.1.   Subject to sections 10.2 and 10.3 BulkSMS and each BulkSMS Affiliate shall promptly on request of the Client or within 180 days of the date of cessation of any Services involving the Processing of Personal Data (the **"Cessation Date"**), delete and procure the deletion of all copies of those Personal Data.

10.2.   Subject to section 10.3, Client may in its absolute discretion by written notice to BulkSMS within 7 days of the Cessation Date require BulkSMS and each BulkSMS Affiliate to (a) return a complete copy of all Personal Data to Client by such method and in such format as is reasonably determined by BulkSMS; and (b) delete and procure the deletion of all other copies of Personal Data Processed by any Contracted Processor. BulkSMS and each BulkSMS Affiliate shall comply with any such written request within 30 days of receipt thereof.

10.3.   Each Contracted Processor may retain Personal Data to the extent required by Applicable Laws and Industry Codes to which BulkSMS is subject to and only to the extent and for such period as required by Applicable Laws and Industry Codes and always provided that BulkSMS and each BulkSMS Affiliate shall ensure the confidentiality of all such Personal Data and shall ensure that such Personal Data is only Processed as

11.   Audit rights

11.1.   Subject to sections 11.2 to 11.4, BulkSMS and each BulkSMS Affiliate shall make available to each Client Group Member on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Client Group Member or an auditor mandated by any Client Group Member in relation to the Processing of the Personal Data by the Contracted Processors.

11.2.   Information and audit rights of the Client Group Members only arise under section 11.1 to the extent that the Standard Terms and Conditions does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

11.3.   A Client Group Member may only mandate an auditor for the purposes of section 11.1 if the auditor is identified in the list set out in Annexure 3 to this Addendum, as that list is amended by agreement between the parties in writing from time to time. BulkSMS shall not unreasonably withhold or delay agreement to the addition of a new auditor to that list.

11.4.   Client or the relevant Client Affiliate undertaking an audit shall give BulkSMS or the relevant BulkSMS Affiliate reasonable notice of any audit or inspection to be conducted under section 11.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

11.4.1.   to any individual unless he or she produces reasonable evidence of identity and authority;

11.4.2.   outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Client or the relevant Client Affiilate undertaking an audit has given notice to BulkSMS or the relevant BulkSMS Affiliate that this is the case before attendance outside those hours begins; or

11.4.3.   for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any calendar year, except for any additional audits or inspections which:

11.4.3.1.   Client or the relevant Client Affiliate undertaking an audit reasonably considers necessary because of genuine concerns as to BulkSMS's or the relevant BulkSMS Affiliate's compliance with this Addendum; or

11.4.3.2.   A Client Group Member is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

where Client or the relevant Client Affiliate undertaking an audit has identified its concerns or the relevant requirement or request in its notice to BulkSMS or the relevant BulkSMS Affiliate of the audit or inspection.

12.   Restricted Transfers

12.1.   Subject to section 12.3, each Client Group Member (as "data exporter") and each Contracted Processor, as appropriate, (as "data importer") hereby enter into the

12.2.2.   the data importer becoming a party to them; and

12.2.3.   commencement of the relevant Restricted Transfer.

12.3.   Section 12.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

12.4.   BulkSMS warrants and represents that, before the commencement of any Restricted Transfer to a Subprocessor which is not a BulkSMS Affiliate, BulkSMS's or the relevant BulkSMS Affiliate's entry into the Standard Contractual Clauses under section 12.1, and agreement to variations to those Standard Contractual Clauses made under section 13.4.1, as agent for and on behalf of that Subprocessor will have been duly and effectively authorised (or subsequently ratified) by that Subprocessor.

13.   **General Terms**

Governing law and jurisdiction

13.1.   Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:

13.1.1.   the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Standard Terms and Conditions with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

13.1.2.   this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Standard Terms and Conditions.

Order of precedence

13.2.   Nothing in this Addendum reduces BulkSMS's or any BulkSMS Affiliate's obligations under the Standard Terms and Conditions in relation to the protection of Personal Data or permits BulkSMS or any BulkSMS Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Standard Terms and Conditions. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

13.3.   Subject to section 13.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Standard Terms and Conditions and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

Changes in Data Protection Laws, etc.

13.4.   Client may:

13.4.1.   by at least 30 (thirty) calendar days' written notice to BulkSMS from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under section 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are necessary, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and

that any affected Subprocessors promptly co-operate) to ensure that equivalent variations are made to any agreement put in place under section 6.4.3; and

13.5.2. Client shall not unreasonably withhold or delay agreement to any consequential variations to this Addendum proposed by BulkSMS to protect the Contracted Processors against additional risks associated with the variations made under section 13.4.1 and/or 13.5.1.

13.6. If Client gives notice under section 13.4.2, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Client's notice as soon as is reasonably practicable but without prejudice to BulkSMS's right to decline to accept any variations which BulkSMS does not consider to be necessary to address the requirements of any Data Protection Law.

13.7. Neither Client nor BulkSMS shall require the consent or approval of any Client Affiliate or BulkSMS Affiliate to amend this Addendum pursuant to this section 13.5 or otherwise.

Severance

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

ANNEXURE 1: DETAILS OF PROCESSING OF COMPANY PERSONAL DATA

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

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of the Personal Data are set out in the Standard Terms and Conditions and this Addendum.

The nature and purpose of the Processing of Personal Data

The provision and support of Application-to-Person (A2P) SMS messaging services.

The types of Personal Data to be Processed

· Contact information (email, telephone number, mobile phone number, address, company)
· First and last name

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The categories of Data Subject to whom the Personal Data relates

· Client

· Message Recipients

The obligations and rights of Client and Client Affiliates

The obligations and rights of Client and Client Affiliates are set out in the Standard Terms and Conditions and this Addendum.

ANNEXURE 2: STANDARD CONTRACTUAL CLAUSES

The Data Exporter (the Client), as the data exporting organisation, has entered into a Data Protection Addendum ("DPA") with the Data Importer (BulkSMS as the data processor), as the data importing organisation, 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.

Background

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

Clause 1 - Definitions

For the purposes of the Clauses:

1. '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;

2. 'the data exporter' means the person who transfers the personal data irrespective of whether that person is the controller or another person

4.   'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

5.   '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;

6.   'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2 - Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3 - Third-party beneficiary clause

1.   The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2.   The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3.   The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4.   The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4 - Obligations of the data exporter

The data exporter agrees and warrants:

provisions of that state;

2.   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;

3.   that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

4.   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;

5.   that it will ensure compliance with the security measures;

6.   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;

7.   to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

8.   to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

9.   that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

10.   that it will ensure compliance with Clause 4(a) to (i).

Clause 5 - Obligations of the data importer

The data importer agrees and warrants:

1.   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;

2.   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

measures specified in Appendix 2 before processing the personal data transferred;

4. that it will promptly notify the data exporter about:

    4.1. 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,

    4.2. any accidental or unauthorised access, and

    4.3. any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

5. 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;

6. 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;

7. to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

8. that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

9. that the processing services by the subprocessor will be carried out in accordance with Clause 11;

10. to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6 - Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of

3.   If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7 - Mediation and jurisdiction

1.   The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

   1.1.   to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

   1.2.   to refer the dispute to the courts in the Member State in which the data exporter is established.

2.   The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8 - Cooperation with supervisory authorities

1.   The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2.   The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3.   The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9 - Governing Law

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

Clause 10 - Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11 - Subprocessing

subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

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

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

Appendix 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and is agreed to by the parties.
The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter
The data exporter is: the "Client" as set out in Data Protection Addendum, also referred to as the "User" of the services, as defined in the BulkSMS Terms and Conditions.

Data importer
The data importer is: Celerity Systems (Pty) Ltd trading as BulkSMS.com.

Categories of data

The personal data transferred concern the following categories of data:

5.   Contact information (email, telephone number, mobile phone number, address, company)

6.   First and last name

7.   Title

8.   Account information (user id, username, password)

9.   Connection data (IP address)

10.   Message data (message recipient personal data processed on behalf of the client, identified by mobile phone number, and including recipient contact information in the message body)

Special categories of data (if appropriate)

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

11.   Not applicable.

Processing operations

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

12.   Delivery of messages

13.   Technical service support

14.   Connectivity service support

Appendix 2 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and is agreed to 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):

1.   We undertake an analysis of the risks presented by our processing, and use this to assess the appropriate level of security we need to put in place.

2.   When deciding what measures to implement, we take account of the state of the art and costs of implementation.

3.   We have an information security policy and take steps to make sure the policy is implemented. We also have additional policies and ensure that controls are in place to enforce them.

4.   We make sure that we regularly review our information security policies and measures and, where necessary, improve them.

5.   We have put in place basic technical controls such as those specified by established frameworks.

6.   We understand that we may also need to put other technical measures in place depending on our circumstances and the type of personal data we process.

of any incidents, such as by establishing an appropriate backup process.

10. We conduct regular testing and reviews of our measures to ensure they remain effective, and act on the results of those tests where they highlight areas for improvement.s

11. Where appropriate, we implement measures that adhere to an approved industry code of conduct.

12. We ensure that any data processor we use also implements appropriate technical and organisational measures.

ANNEXURE 3: LIST OF MANDATED AUDITORS

The Client may provide BulkSMS with a list of mandated auditors or the name of a mandated auditor at the time of agreeing to these terms, or at a subsequent date.

These details are to be sent to privacy@bulksms.com.

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