

**Standard contractual clauses for the transfer of personal data from the Community to  
third countries  
(controller to processor transfers).**

Between

CLIENT

*(as described in the letter of engagement)*

(hereinafter **the data exporter**)

and

CLEARY GOTTlieb STEEN AND  
HAMILTON LLP

*(including each of the data processors listed  
in Schedule I)*

(hereinafter **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 Annex A.

**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 its behalf after the transfer in accordance with its 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 its 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 Annex A which forms an integral part of the Clauses.

## 3. **THIRD-PARTY BENEFICIARY CLAUSE**

- 3.1 The data subject can enforce against the data exporter this clause 3.1, clause 4(b) to clause 4(i), clause 5(a) to clause 5(e) and clause 5(g) to clause 5(j), clause 6.1 and clause 6.2, clause 7, clause 8.2 and clause 9 to clause 12 as third-party beneficiary.
- 3.2 The data subject can enforce against the data importer this clause 3.2, clause 5(a) to clause 5(e) and clause 5(g), clause 6, clause 7, clause 8.2 and clause 9 to clause 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
- 3.3 The data subject can enforce against the sub-processor this clause 3.3, clause 5(a) to clause 5(e) and clause 5(g), clause 6, clause 7, clause 8.2, and clause 9 to clause 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

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

#### **4. OBLIGATIONS OF THE DATA EXPORTER**

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 Annex B 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 Annex B 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 subjects as the data importer under the Clauses; and
- (j) that it will ensure compliance with clause 4(a) to clause 4(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 Annex B 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 Annex B 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; and
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## **6. LIABILITY**

- 6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in clause 3 or in clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in clause 3 or in clause 11 because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

- 6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in clause 3 or in clause 11 because both the data exporter and the data importer have factually

disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## **7. MEDIATION AND JURISDICTION**

- 7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
- 7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8. COOPERATION WITH SUPERVISORY AUTHORITIES**

- 8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
- 8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
- 8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in clause 5(b).

## **9. GOVERNING LAW**

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

## **10. VARIATION OF THE CONTRACT**

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

## **11. SUB-PROCESSING**

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

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

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

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

## **12. OBLIGATION AFTER THE TERMINATION OF PERSONAL DATA PROCESSING SERVICES**

12.1 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.

- 12.2 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.

**Executed on behalf of the data importer:**

Signature.....



## ANNEX A.

### DESCRIPTION OF THE TRANSFER

#### **Data exporter**

*The data exporter is (please specify briefly your activities relevant to the transfer):*  
A client of the data importer.

#### **Data importer**

*The data importer is (please specify briefly activities relevant to the transfer):*  
Cleary Gottlieb Steen and Hamilton LLP, a provider of legal services to the data exporter.

#### **Data subjects**

*The personal data transferred concern the following categories of data subjects:*

- Current, former or prospective employees, contractors, agents, temporary and casual workers and other representatives of the data exporter;
- Current or potential clients, investors or other business partners of the data exporter;
- Parties to disputes, litigations, arbitration, transactions, or other legal matters involving the data exporter
- Current, former or prospective service providers, advisors or consultants of the data exporter

#### **Purposes of the transfer(s)**

*The transfer is made for the following purposes:*

The provision of legal services by the data importer to the data exporter, pursuant to the data importer's terms of business and any engagement letter between the parties.

#### **Categories of data**

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

- Name and title (such as position, seniority, department and description of responsibilities/duties);
- Home and work contact information (such as address, email address, fax number and phone number and other electronic communication contact details);
- Personal information (such as photo, gender, date and place of birth, education, nationality, bar admissions and marital status);
- Governmental information (such as country of residency, country of citizenship, tax/national ID/passport number, work permits, visas, and citizenship information);
- Bank information (such as account details, IBAN, BIC code), credit card information when relevant for making/collecting payments or reimbursements and other financial information;

- Client communications and internal communications;
- Client preferences (such as mailing lists signed up to for marketing and events);
- Client matter information (including the clients’ case file(s) including of the services we have provided and are providing to a client, all related work product, records of calls, meetings and other communications);
- Records of interactions;
- “Know your client” information (such as passport details and other identifying documents);
- Other information such as billing information and details of paid invoices, signatures, evidential documents supplied by the client in the course the services, tax identifier or VAT number);
- Data included in emails sent from and received with corporate email, data included in files (including electronic files);
- Information captured through legitimate monitoring of system use;
- Technical information (such as username and passwords, IP address, domain, browser type, operating system, click-stream data and system logs).

**Special categories of data**

- Limited information related to racial or ethnic origin, political opinions, trade union membership, health or criminal records may be processed if provided by the data exporter.

**Recipients**

*The personal data transferred may be disclosed only to the following recipients or categories of recipients:*

- Any legal entities, branches and representative offices within the data importer’s corporate group
- The data importer’s third party service providers.

Contact points for data protection enquiries

**DATA EXPORTER**

*Client contact details set out in the engagement letter*

**DATA IMPORTER**

[dataprivacy@cgsh.com](mailto:dataprivacy@cgsh.com)

## ANNEX B.

### SECURITY MEASURES

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

The data importer implements, from time to time, taking into account the state of the art and the risks associated with the processing of personal data in question, commercially reasonable technical and organisation measures to ensure the integrity of the personal data transferred to it; including but not limited to:

- Appropriate governance structures and personnel
- Internal policies and documented procedures regarding the processing of personal data
- Regular, periodic reviews of systems and procedures
- Regular information back-ups
- Access controls
- Encryption
- Intrusion, anti-virus and anti-malware defences
- Secure disposal of IT equipment
- Network and systems authentication
- Asset and software management
- Physical security measures
- Information security incident (and data breach) management
- Confidentiality obligations and limited access
- Staff training and awareness
- Service provider due diligence

For more information on security measures, please contact: [dataprivacy@cgsh.com](mailto:dataprivacy@cgsh.com)

**SCHEDULE 1**  
**CGSH Data Importers**

#	CGSH entity	Address
1.	Cleary Gottlieb Steen & Hamilton LLP (US LLP), New York branch	One Liberty Plaza New York, NY 10006, United States of America
2.	Cleary Gottlieb Steen & Hamilton LLP (UK LLP), London branch	2 London Wall Place London EC2Y 5AU England
3.	Cleary Gottlieb Steen & Hamilton LLP (US LLP), Washington branch	2112 Pennsylvania Avenue, NW Washington, DC 20037, United States of America
4.	Cleary Gottlieb Steen & Hamilton Hong Kong (General Partnership)	Hysan Place, 37 <sup>th</sup> Floor 500 Hennessy Road Causeway Bay Hong Kong
5.	Cleary Gottlieb Steen & Hamilton LLP (US LLP), Beijing branch	45th Floor Fortune Financial Center 5 Dong San Huan Zhong Lu Chaoyang District Beijing 100020, the People's Republic of China
6.	Cleary Gottlieb Steen & Hamilton LLC, Moscow representative office	Paveletskaya Square 2/3 Moscow 115054, Russian Federation
7.	CGSH International Legal Services, LLP-Sucursal Argentina	Carlos Pellegrini 1427 – Floor 9 Argentina
8.	Cleary Gottlieb Steen & Hamilton Consultores em Direito Estrangeiro, São Paulo affiliate	Rua Professor Atilio Innocenti, 165, 14th Floor São Paulo, SO 04538-000, Brazil
9.	CGSH Servicos De Consultoria Empresarial Ltda	Rua Professor Atilio Innocenti, 165, 14th Floor São Paulo, SO 04538-000, Brazil
10.	Cleary Gottlieb Steen & Hamilton LLP (US LLP), Abu Dhabi branch	Al Sila Tower, 27th Floor Al Maryah Island, PO Box 29920 Abu Dhabi, United Arab Emirates
11.	Cleary Gottlieb Steen & Hamilton LLP (US LLP), Foreign Legal Consultant Office, Seoul branch	19F, Ferrum Tower 19, Eulji-ro 5-gil, Jung-gu Seoul 04539, the Republic of Korea