

Data Processing Addendum

(pursuant to Article 28 - GDPR)

This Data Processing Addendum ("**Addendum**") forms part of the Purchase Agreement ("**Principal Agreement**") between: (i) Gerber Technology LLC ("**GERBER**") acting on its own behalf and as agent for each GERBER Affiliate; and (ii) you "**CUSTOMER**." By entering into the **Principal Agreement**, the parties agree to the following terms and conditions, including all attachments, annexes, and schedules.

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

The parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement. Except where the context requires otherwise, references in this Addendum to the Principal Agreement are to the Principal Agreement as amended by, and including, this Addendum.

1. Definitions

1.1 In this Addendum, the following terms shall have the meanings set out below:

1.1.1 "**CUSTOMER Personal Data**" means any Personal Data of EEA and/or United Kingdom origin Processed by GERBER, a GERBER Affiliate or a Subprocessor, on behalf of CUSTOMER pursuant to or in connection with the Principal Agreement;

1.1.2 "**Controller**" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;

1.1.3 "**Data Subject**" means an identified or identifiable natural person to whom CUSTOMER Personal Data relates;

1.1.4 "**EEA**" means the European Economic Area;

"**EEA Data Protection Laws**" means GDPR and laws applicable in a Member State implementing or supplementing the GDPR. As applicable, the term also includes the United Kingdom General Data Protection Regulation (UK GDPR), tailored by the Data Protection Act 2018;

1.1.5 "**GDPR**" means the EU General Data Protection Regulation 2016/679. As applicable, the term also includes the United Kingdom General Data Protection Regulation (UK GDPR), tailored by the Data Protection Act 2018.

1.1.6 "**GERBER Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with GERBER, 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;

- 1.1.7 "**Member State**" means a member state of the EEA. As the context may require, the term also includes the United Kingdom;
- 1.1.8 "**Personal Data**" means any information relating to an identified or identifiable natural person in the EEA; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 1.1.9 "**Personal Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;
- 1.1.10 "**Processing**" means any operation or set of operations (i) which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, and (ii) to which any EEA Data Protection Laws apply;
- 1.1.11 "**Processor**" means a natural or legal person, public authority, agency or other body which Processes CUSTOMER Personal Data on behalf of the Controller;
- 1.1.12 "**Restricted Transfer**" means
 - 1.1.12.1 a transfer of CUSTOMER Personal Data from the EEA and/or the United Kingdom to a third country or an international organisation, or
 - 1.1.12.2 an onward transfer of CUSTOMER Personal Data personal data from the third country or international organisation to another third country or international organisation

in each case, where such transfer would be prohibited by EEA Data Protection Laws in the absence of Standard Contractual Clauses established in accordance with section 11 of this Agreement;
- 1.1.13 "**Services**" means the services and other activities to be supplied to or carried out by or on behalf of GERBER for CUSTOMER pursuant to the Principal Agreement;
- 1.1.14 "**Standard Contractual Clauses**" means the EU's and/or the United Kingdom's standard contractual clauses for data transfers from Controllers to Processors set out in Annex 2;
- 1.1.15 "**Subprocessor**" means any person (including any third party and any GERBER Affiliate, but excluding an employee of GERBER or any of its sub-contractors) appointed by or on behalf of GERBER or any GERBER Affiliate to Process Personal Data on behalf of CUSTOMER in connection with the Principal Agreement;

- 1.1.16 "Supervisory Authority" means an independent public authority which is established by a Member State and/or the United Kingdom pursuant to Article 51 of the GDPR.
- 1.1.17 "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, as of the effective date of the United Kingdom's withdrawal from the EEA.
- 1.2 The word "include" shall be construed to mean include without limitation.
- 2. Processing of CUSTOMER Personal Data**
- 2.1 CUSTOMER, GERBER and each GERBER Affiliate acknowledge and agree that with regard to CUSTOMER Personal Data to be Processed pursuant to the Principal Agreement and this Agreement, CUSTOMER is the Controller and GERBER and/or the relevant GERBER Affiliate will act as a Processor of CUSTOMER Personal Data.
- 2.2 GERBER and each GERBER Affiliate shall:
- 2.2.1 comply with all applicable EEA Data Protection Laws in the Processing of CUSTOMER Personal Data;
- 2.2.2 not Process CUSTOMER Personal Data other than on CUSTOMER's documented instructions unless Processing is required by applicable law to which GERBER or GERBER Affiliate is subject, in which case GERBER or the relevant GERBER Affiliate shall, unless prohibited by such law, inform CUSTOMER of that legal requirement before Processing that CUSTOMER Personal Data; and
- 2.2.3 immediately notify CUSTOMER if, in its opinion, an instruction infringes EEA Data Protection Laws.
- 2.3 CUSTOMER:
- 2.3.1 instructs GERBER and each GERBER Affiliate to:
- 2.3.1.1 Process CUSTOMER Personal Data; and
- 2.3.1.2 in particular, transfer CUSTOMER Personal Data to any country or territory,
- as reasonably necessary for the provision of the Services and consistent with the Principal Agreement.
- 2.4 Annex 1 to this Addendum sets out certain information regarding GERBER, GERBER Affiliates and Subprocessors' Processing of the CUSTOMER Personal Data as required by article 28(3) of the GDPR and the Standard Contractual Clauses. CUSTOMER and GERBER may make reasonable amendments to Annex 1 from time to time as CUSTOMER or GERBER reasonably considers necessary to meet those requirements.
- 3. Confidentiality**
- 3.1 GERBER and each GERBER Affiliate shall treat CUSTOMER Personal Data as confidential.
- 3.2 GERBER and each GERBER Affiliate shall take reasonable steps to ensure the reliability of its employees, agents or contractors, and the employees, agents or contractors of any

Subprocessors, who may have access to the CUSTOMER Personal Data, and shall ensure, in each case, that access is limited to those individuals who need to know or access the relevant CUSTOMER Personal Data, and only as is necessary for the purposes of the Principal Agreement. GERBER and GERBER Affiliates shall comply with applicable laws in the context of those individuals' duties to the relevant entity, and shall ensure that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

- 4.1 GERBER and each GERBER Affiliate shall, in relation to CUSTOMER Personal Data, implement appropriate technical and organizational measures to ensure an appropriate level of security, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 4.2 In assessing the appropriate level of security, GERBER and each GERBER Affiliate shall take into account the risks that arise from Processing CUSTOMER Personal Data, including the risks arising from a Personal Data Breach.

5. Subprocessing

- 5.1 CUSTOMER authorizes GERBER and each GERBER Affiliate to appoint (and permit each Subprocessor appointed in accordance with this section 5 to appoint) Subprocessors in accordance with this section 5, subject to any restrictions in the Principal Agreement, to conduct Processing described in clause 2.3.
- 5.2 GERBER and each GERBER Affiliate may use for the Processing of CUSTOMER Personal Data the Subprocessors which have been already engaged by GERBER or any GERBER Affiliate as of the date of this Addendum.
- 5.3 GERBER shall give CUSTOMER prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within 10 days of receipt of that notice, CUSTOMER notifies GERBER in writing of any objections (on reasonable grounds) to the proposed appointment, neither GERBER nor any GERBER Affiliate shall appoint (nor disclose nor transfer any CUSTOMER Personal Data to) the proposed Subprocessor except with the prior written consent of CUSTOMER. If CUSTOMER objects to the appointment of a proposed Subprocessor then GERBER shall be entitled to either propose another Subprocessor or terminate the respective Service by written notice to the CUSTOMER.
- 5.4 With respect to each Subprocessor, GERBER or the relevant GERBER Affiliate shall:
 - 5.4.1 before the Subprocessor first Processes CUSTOMER Personal Data carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for CUSTOMER Personal Data required by the Principal Agreement and this Addendum;
 - 5.4.2 ensure that the arrangement between on the one hand (a) GERBER, or (b) the relevant GERBER Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms that offer at least the same level of protection for CUSTOMER Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR; and

5.4.3 if that arrangement involves a Restricted Transfer, (a) ensure that Standard Contractual Clauses are at all relevant times properly incorporated into the agreement between GERBER or the relevant GERBER Affiliate and the Subprocessor, or (b) before the Subprocessor first Processes CUSTOMER Personal Data, require the Subprocessor to enter into an agreement with CUSTOMER that incorporates the Standard Contractual Clauses.

6. Data Subject Rights

6.1 Taking into account the nature of the Processing, GERBER and each GERBER Affiliate shall, at the costs of CUSTOMER, assist CUSTOMER by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of CUSTOMER's obligations, as reasonably understood by CUSTOMER, to respond to requests to exercise Data Subject rights under the EEA Data Protection Laws.

6.2 GERBER shall:

6.2.1 promptly notify CUSTOMER if it receives a request from a Data Subject under any EEA Data Protection Law in respect of CUSTOMER Personal Data; and

6.2.2 ensure that it, any GERBER Affiliates and any Subprocessors do not respond to that request except on the documented instructions of CUSTOMER.

7. Personal Data Breach

7.1 GERBER shall notify CUSTOMER without undue delay upon GERBER, Services Provider Affiliate or any Subprocessor becoming aware of a Personal Data Breach affecting CUSTOMER Personal Data, and GERBER shall provide CUSTOMER with sufficient information in an appropriate format to (a) meet any obligations to report the Personal Data Breach to the data protection authorities under the EEA Data Protection Laws, or (b) inform Data Subjects of the Personal Data Breach under the EEA Data Protection Laws. Such notification shall as a minimum:

7.1.1 describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

7.1.2 communicate the name and contact details of GERBER's data protection officer or other relevant contact from whom more information may be obtained;

7.1.3 describe the likely consequences of the Personal Data Breach; and

7.1.4 describe the measures taken or proposed to be taken to address the Personal Data Breach, including any measures to mitigate its possible adverse effects.

7.2 GERBER shall co-operate with CUSTOMER and take such reasonable steps as are directed by CUSTOMER to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation

GERBER and each GERBER Affiliate shall, at CUSTOMER's costs, provide reasonable assistance to CUSTOMER regarding any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which

CUSTOMER reasonably considers to be required of it by article 35 or 36 of the GDPR or equivalent provisions of any other EEA Data Protection Law. Such assistance should be solely in relation to Processing of CUSTOMER Personal Data by GERBER and each GERBER Affiliate and shall take into account the nature of the Processing and information available to them.

9. Deletion or return of CUSTOMER Personal Data

- 9.1 Subject to section 9.2 and unless otherwise instructed by CUSTOMER, GERBER and each GERBER Affiliate shall within 90 days of the date of cessation of any Services involving the Processing of CUSTOMER Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those CUSTOMER Personal Data unless storage is required applicable law. "Delete" means to remove or destroy Personal Data so that it cannot reasonably be recovered or reconstructed.
- 9.2 Each GERBER, GERBER Affiliate and Subprocessor may retain CUSTOMER Personal Data to the extent required by applicable law and only to the extent and for such period as required by such law, provided that GERBER and each GERBER Affiliate shall ensure (i) the confidentiality of all such CUSTOMER Personal Data and, (ii) that such CUSTOMER Personal Data is only Processed as necessary for the purpose(s) specified in the law requiring its retention.

10. Audit rights

- 10.1 Subject to sections 10.2 and 10.3, GERBER and each GERBER Affiliate shall make available to CUSTOMER, on request, all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by CUSTOMER or an auditor mandated by CUSTOMER in relation to the Processing of CUSTOMER Personal Data.
- 10.2 Information and audit rights of CUSTOMER only arise under section 10.1 to the extent that the Principal Agreement does not otherwise give them information and audit rights meeting the relevant requirements of EEA Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).
- 10.3 When undertaking an audit, CUSTOMER shall give GERBER or the relevant GERBER Affiliate reasonable notice of any audit or inspection to be conducted under section 10.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimize) any damage, injury or disruption to GERBER, GERBER Affiliate or Subprocessors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. GERBER, a GERBER Affiliate and a Subprocessor need not give access to its premises for the purposes of such an audit or inspection:
- 10.3.1 to any individual unless he or she produces reasonable evidence of identity and authority;
- 10.3.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and CUSTOMER undertaking an audit has given notice to GERBER or the relevant GERBER Affiliate that this is the case before attendance outside those hours begins; or

10.3.3 for the purposes of more than one audit or inspection, in respect of each GERBER, GERBER Affiliate or Subprocessor, in any calendar year, except for any additional audits or inspections which CUSTOMER:

10.3.3.1 considers necessary because of genuine concerns as to GERBER's or the relevant GERBER Affiliate's compliance with this Addendum; or

10.3.3.2 is required or requested to carry out by EEA 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 CUSTOMER has identified its concerns or the relevant requirement or request in its notice to GERBER or the relevant GERBER Affiliate of the audit or inspection.

11. Restricted Transfer

CUSTOMER as data exporter and each GERBER and GERBER Affiliate as data importer hereby enter into the Standard Contractual Clauses attached hereto as Annex 2 in respect of any Restricted Transfer of CUSTOMER Personal Data. Any reference in the Standard Contractual Clauses to the repealed EU Directive 95/46/EC shall be construed as reference to GDPR.

12. General Terms

Governing law and jurisdiction

12.1 The parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Principal Agreement 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

12.2 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 Principal Agreement.

Order of precedence

12.3 In the event of any conflict or inconsistency between this Addendum and any Standard Contractual Clauses entered into between CUSTOMER, GERBER and/or Services Provider Affiliates, the Standard Contractual Clauses shall prevail as between those entities.

12.4 Subject to section 12.3, 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 Principal Agreement 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.

Severance

12.5 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force.

Third Party Rights

12.6 This Addendum does not give rise to any rights to any entity that is not a party to this Addendum to enforce any term of this Addendum.

ANNEX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

Data subjects

The data subjects are licensed users of Gerber's software product referenced in the Order Form (the "Software").

Purposes of the transfer(s)

The transfer is made for the purposes of enabling licensed users to register for and use the Software.

Categories of data

The personal data transferred concern the following categories of data: The Software requires licensed users' names and business contact details such as e-mail address in order to establish user identification to access the Software. The Company may collect other information as set forth in its privacy policies available at: <https://www.gerbertechnology.com/about/data-privacy/> and <https://www.gerbertechnology.com/privacy-policy/>.

Recipients

The personal data transferred may be disclosed only to the data exporter's and data importer's employees and contractors using and supporting the Software, as required to enable Gerber to meet its contractual and licensing obligations to the Customer and its authorized licensed users, and as otherwise may be required by law or for legitimate business purposes.

Sensitive data (if appropriate)

No sensitive personal data is collected.

Data protection registration information of data exporter (where applicable): NOT APPLICABLE.

Additional useful information (storage limits and other relevant information): Refer to the Privacy Policy described above for additional details.

Contact points for data protection enquiries: For data importer, contact

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(t) +351 226197878
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Gerber Scientific International, Sistemas Computorizados Lda.

Rua 28 de Janeiro, 350- W01 -4400-335 Vila Nova de Gaia, Porto- Portugal

For the data exporter, contact to be provided by Customer to Gerber.

ANNEX 2: STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

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

As used herein, CUSTOMER is the Controller and data exporter.

As used herein, GERBER is the Processor and 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.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (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 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;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect

to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

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

Clause 2

Details of the transfer

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

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the 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:

- (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 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;
- (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 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;
- (i) 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
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 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 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;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

The parties agree that any liability of either party to a 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, shall be governed as described in the Principal Agreement.

Clause 7

Mediation and jurisdiction

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

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any 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

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 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. 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 CUSTOMER. The activities relevant to the transfer are set out in the Principal Agreement and the Addendum.

Data importer

The data importer is GERBER or a GERBER Affiliate. The activities relevant to the transfer are set out in the Principal Agreement and the Addendum.

Data subjects

The personal data transferred concern the categories of data subjects set out in Annex 1.

Categories of data

The personal data transferred include the categories of personal data set out in Annex 1.

Special categories of data (if appropriate)

The personal data transferred concern the special categories of data set out in Annex 1.

Processing operations

The personal data transferred will be subject to the processing activities set out in the Principal Agreement and the Addendum.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

Description of the technical and organisational security measures implemented by the data importer:

The technical and organizational measures to be implemented by the data importer before transfer of CUSTOMER Personal Data to the data importer are set out in the Data Security Standards referred to in Schedule 1 to the Principal Agreement.