

# Data Processing Agreement

This Data Processing Agreement (“**DPA**”) is between

- a. The company and its Affiliates (collectively the “**Customer**”) identified in the signature block, and
- b. ToolsPlus Sdn. Bhd. (1275352-W) a company incorporated under the laws of Malaysia and its Affiliates (collectively “**ToolsPlus**”).

Together the “**Parties**” and each a “**Party**”.

This DPA supplements the terms of the End User License Agreement (“**EULA**”) (the “**Service Agreement**”), under which ToolsPlus provides certain services (“**Services**”).

This DPA will be effective as of the date ToolsPlus receives a complete and executed DPA from the Customer indicated in the signature block below in accordance with the instructions under Sections I and II below (the “**Effective Date**”). This DPA shall apply to personal data processed by ToolsPlus on behalf of the Customer in the course of providing the Services.

## I. Instructions

This DPA has been pre-signed on behalf of ToolsPlus. To enter into this DPA, you must:

- a. be a customer of the Service(s);
- b. complete the signature block below by signing and providing all items; and
- c. submit the completed and signed DPA to ToolsPlus as instructed.

## II. Effectiveness

- a. This DPA will only be effective (as of the Effective Date) if executed and submitted to ToolsPlus accurately and in full accordance with paragraph I above and this paragraph II. If you make any deletions or other revisions to this DPA, then this DPA will be null and void.
- b. Customer signatory represents to ToolsPlus that he or she has the legal authority to bind the Customer and is lawfully able to enter into contracts (e.g. is not a minor).
- c. This DPA will terminate automatically upon termination of the Service or as earlier terminated pursuant to the terms of this DPA.

### III. Data Processing Terms

The Parties agree as follows:

#### 1. Definitions

Unless otherwise defined in this DPA or in the Service Agreement, all capitalised terms used in this DPA shall have the following meanings:

- 1.1. “**Affiliate**” means, with respect to a party, any person which directly or indirectly Controls, is Controlled by or is under common Control with such party.
- 1.2. “**Applicable Law**” means any laws, statutes, regulations, regulatory constraints, obligations or rules (including binding codes of conduct and binding statements of principle incorporated and contained in such rules) in any jurisdiction applicable to the existence or operation of the Service Agreement and the Parties to the Service Agreement, including any amending, consolidating or successor legislation or case law which takes effect from time to time in the relevant jurisdiction.
- 1.3. “**Applicable Privacy Law**” means an Applicable Law on data protection or data privacy, including the GDPR.
- 1.4. “**Control**” shall mean the power to direct the management or policies of a person, whether through the ownership of more than 50% (fifty percent) of the voting power of such person or, through the power to appoint more than half of the members of the board of directors or similar governing body of such person, through contractual arrangements or otherwise.
- 1.5. “**EEA**” means the European Economic Area.
- 1.6. “**GDPR**” means General Data Protection Regulation (EU) 2016/679.
- 1.7. “**Services**” means the services to be provided by ToolsPlus (directly or indirectly) to the Customer, in accordance with the Service Agreement.
- 1.8. “**Standard Contractual Clauses**” means the standard contractual clauses for Processors approved pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 in the form set out in Exhibit 4; as amended, superseded or replaced from time to time in accordance with this Agreement. The terms “**controller**“, “**data subject**“, “**personal data**“, “**personal data breach**“, “**processing**” and “**processor**” have the meanings given to them in article 4 of the GDPR (and their cognates are to be interpreted accordingly), except that references to “**personal data**” include references to data relating to legal as well as natural persons to the extent that the processing of the relevant data is regulated by an Applicable Privacy Law which applies to the processing of such data.

## 2. Roles of the Parties

Where ToolsPlus, its Affiliates or a Sub-Processor (“**Processor**”) processes personal data (“**Processed Personal Data**”) in the course of providing the Services to, or otherwise performing its obligations under the Service Agreement for, the Customer, the parties acknowledge that, to the extent relevant under the Applicable Privacy Laws, the Customer will act as the controller, and the Processor will act as a processor on behalf of the Customer, in relation to the Processed Personal Data.

## 3. Processing Instructions

- 3.1. Subject to the other provisions of this DPA, the Customer
  - a. instructs ToolsPlus to take such steps in the processing of Processed Personal Data on its behalf as are reasonably necessary to the provision of the Services or otherwise to the performance of ToolsPlus’ obligations under the Service Agreement; and
  - b. irrevocably authorises ToolsPlus to provide equivalent instructions to Sub-Processors on its behalf.
- 3.2. The description of the processing as required by Article 28(3) of the GDPR is set out in Exhibit 2.

## 4. Compliance with Applicable Privacy Law

- 4.1. ToolsPlus shall comply and ensure that each of its Affiliates and Sub-Processors complies, with Applicable Privacy Law in relation to its processing of personal data in connection with the Service Agreement.
- 4.2. The Customer shall ensure that, before any Processed Personal Data is disclosed by the Customer to the Processor, the Customer has taken any steps necessary to ensure that the disclosure does not breach any Applicable Privacy Law. Without limiting the foregoing, the Customer shall be responsible:
  - a. at all times for the integrity, quality and legality of the Processed Personal Data provided by the Customer to ToolsPlus. ToolsPlus is under no duty to investigate the completeness, accuracy or sufficiency of the Processed Personal Data provided to it by the Customer;
  - b. for informing the data subject that their Processed Personal Data will be transferred to and processed by ToolsPlus, and to direct them to ToolsPlus’ Privacy Policy available on the ToolsPlus website; and
  - c. to the extent required by Applicable Privacy Law, to obtain the consent of the data subjects for their Processed Personal Data to be transferred to and processed by the Processor, and where the data subject is below the applicable age of consent under Applicable Privacy Law, to obtain the consent of the data subject’s parents and/or guardians.

## 5. Confidentiality

Without prejudice to any existing contractual arrangements between the Parties, ToolsPlus shall treat all Processed Personal Data with confidentiality and shall inform all its employees, agents and/or approved sub-processors engaged in processing the Processed Personal Data of its confidential nature. ToolsPlus shall ensure that all such persons or parties are under an appropriate obligation of confidentiality.

## 6. Security

- 6.1. Taking into account the state of the art, 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, without prejudice to any other security standards agreed upon by the Parties, ToolsPlus shall implement appropriate technical and organisational measures (“**Appropriate**”) in accordance with Exhibit 3 to ensure a level of security of the processing of Processed Personal Data appropriate to the risk.
- 6.2. In assessing the appropriate level of security, ToolsPlus shall take into account the particular risks that are presented by processing, for example, from accidental or unlawful destruction, loss, alteration, unauthorized or unlawful storage, processing, or access or disclosure of Processed Personal Data (i.e. Data Security Incident).

## 7. Sub-Processing

- 7.1. Customer authorises the engagement of sub-processors.
- 7.2. Customer agrees that ToolsPlus may continue to use those sub-processors already engaged by ToolsPlus as of the date of this DPA. Information about sub-processors, including their functions and locations, is available at <https://toolspl.us/subprocessors>.
- 7.3. Requirements for subprocessor engagement with respect to each subprocessor, ToolsPlus shall:
  - a. Before the sub-processor first processes any Processed Personal Data, carry out adequate due diligence to ensure that the sub-processor is capable of providing the level of protection for Processed Personal Data required by the Service Agreement;
  - b. Ensure that the arrangement is governed by a written contract including terms that offer at least the same level of protection for Processed Personal Data as those set out in this DPA;
  - c. Remain fully liable for all obligations subcontracted to, and all acts and omissions of the sub-processor.

## **8. International Data Transfers**

- 8.1. The Standard Contractual Clauses apply to transfers of personal data from the EEA, to any country or recipient: (i) not recognised by the European Commission as providing an adequate level of protection for personal data (as described in the GDPR and any successor legislation thereto), and (ii) not covered by a suitable framework recognised by relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to the EU-U.S. Privacy Shield Framework.
- 8.2. The Standard Contractual Clauses shall apply to the transfer of Processed Personal Data to ToolsPlus from the EEA.
- 8.3. In the event of inconsistencies between the provisions of the Standard Contractual Clauses and this DPA, the Service Agreement or other agreements between the parties as regards the Services, the Standard Contractual Clauses shall take precedence.
- 8.4. In the event that the Standard Contractual Clauses are amended, replaced or repealed by the European Commission or under Applicable Laws, the parties shall work together in good faith to enter into any updated version of the Standard Contractual Clauses or negotiate in good faith a solution to enable a transfer of Processed Personal Data to be conducted in compliance with Applicable Laws.

## **9. Data Subject Rights**

- 9.1. ToolsPlus shall use reasonable endeavours to assist the Customer in responding to their Data Subject requests. ToolsPlus shall have at least 20 days, from the time the Customer asks for assistance, to respond to the Customer's request. The performance and cost of such requests shall be in accordance with the EULA and ToolsPlus' standard applicable rate at any given time.
- 9.2. ToolsPlus must not disclose the Personal Data to any Data Subject or to a third party and responsibility for responding to requests from Data Subjects shall remain with the Customer.

## **10. Cooperation**

- 10.1. If requested, ToolsPlus will provide reasonable assistance to the Customer to comply with its obligations under Applicable Privacy Laws, taking into account the nature of processing and the information available to ToolsPlus.
- 10.2. ToolsPlus shall make available to Customer upon request any reasonable information to demonstrate compliance with ToolsPlus' obligations under this DPA.
- 10.3. ToolsPlus shall reply to any requests for information under this Section within 60 days of receiving the request.

- 10.4. ToolsPlus permits and contributes to all reasonable audits, including inspections, conducted by the Customer (or auditors appointed by either of them), as reasonably necessary to demonstrate ToolsPlus' compliance with this DPA, provided that the Customer shall:
- a. ensure that such audits take place during ToolsPlus' business hours and on reasonable notice;
  - b. ensure that appropriate confidentiality provisions, or other contractual, professional or statutory obligations of confidentiality, are agreed with any third party involved in audit or inspection; and
  - c. take (and ensure that auditors take) reasonable endeavours to avoid causing any damage, injury or disruption to ToolsPlus;
- 10.5. ToolsPlus may charge the Customer on a time and materials basis, at ToolsPlus' standard applicable rates at any given time, for time spent in providing assistance under this Section.

## **11. Incident Management**

- 11.1. ToolsPlus shall notify Customer without undue delay upon ToolsPlus (or any subprocessor) becoming aware of a personal data breach affecting Processed Personal Data, and provide the Customer with sufficient information to allow each to meet any obligations to report or inform data subjects of the personal data breach (a **"Data Security Incident"**).
- 11.2. ToolsPlus takes all reasonable steps to identify and correct the underlying cause of the Data Security Incident so as to eliminate or minimise the risk of its repetition and the occurrence of similar Data Security Incidents.
- 11.3. ToolsPlus shall cooperate with the Customer to assist in the investigation, mitigation and remediation of each such Data Security Incident.
- 11.4. Any notifications made to the Customer pursuant to this Section shall be addressed to the employee of the Customer whose contact details are provided in Exhibit 1 of this Data Processing Agreement, and shall contain:
- a. a description of the nature of the incident, including where possible the categories and approximate number of data subjects concerned and the categories and approximate number of Processed Personal Data records concerned;
  - b. the name and contact details of ToolsPlus' data protection officer or another contact point where more information can be obtained;
  - c. a description of the likely consequences of the incident; and
  - d. a description of the measures taken or proposed to be taken by ToolsPlus to address the incident including, where appropriate, measures to mitigate its possible adverse effects.

## **12. Return or Destruction of Processed Personal Data**

- 12.1. Upon termination of this DPA, upon the Customer's written request, or upon fulfillment of all purposes agreed in the context of the Services whereby no further processing is required, ToolsPlus shall, at the discretion of Customer and within reasonable business efforts, either delete, or destroy the Customer's data.
- 12.2. Generally, ToolsPlus and its sub-processors retain minimal Processed Personal Data to only the extent required by a legal obligation and for such period as required by the legal obligation.

## **13. Loss or Damage to Processed Personal Data**

ToolsPlus shall not be responsible for any loss, damages, destruction, alteration or disclosure of Processed Personal Data caused by any third party.

## **14. Termination**

This DPA will remain in effect until the later of: (a) the termination or expiry of the Service Agreement, and (b) ToolsPlus ceasing to process the Processed Personal Data.

## Signatures

### Signed for and on behalf of the Customer

Signature

Name

Title

Date

---

---

---

---

### Data Processor

Signature

Name

Title

Date



Chia Huei Tan

Director

March 02, 2021



**Exhibit 1**

Contact information for the Data Protection Officer/compliance officer of ToolsPlus.

Data Protection Officer  
ToolsPlus Sdn. Bhd.  
43A, Casaman, Jalan Intisari  
Desa Parkcity  
52200 Kuala Lumpur, Malaysia

[legal@toolsplus.io](mailto:legal@toolsplus.io)

Contact information for the Data Protection Officer/compliance officer of Customer.

---

---

---

---

---

---

---

## Exhibit 2

Information according to Article 28(3) of the GDPR.

|   |   |
|---|---|
| Subject matter of processing  | The performance of the Services in accordance with the Service Agreement.   |
| Duration of processing  | The period of the Customer's subscription under the Service Agreement, or such other period set out in the Service Agreement.   |
| Nature and purpose of the processing  | ToolsPlus will process Processed Personal Data submitted to, stored on, or sent via the Services for the purpose of providing the Services and related technical support.   |
| Categories of data subjects   | Customer's authorised representatives<br>Contacts, agents and users of Customer   |
| Type of personal data (including special categories of personal data per category of data subjects) | <p>Direct identifying information, e.g.:</p> <ul style="list-style-type: none"> <li>• first and last names</li> <li>• email address, phone number</li> </ul> <p>Indirect identifying information, e.g.:</p> <ul style="list-style-type: none"> <li>• website usage, device and location</li> <li>• high level information in relation to the Customer's business may be also be collected and may include details of the Customer's industry</li> </ul> <p>Device identification data, e.g.:</p> <ul style="list-style-type: none"> <li>• details of the computer and user installing and using the Services, which may include internet protocol addresses and hardware identification</li> </ul> <p>Any personal data supplied by users of the Service.</p> |
| Data transfers  | Data transfers to ToolsPlus' employees and affiliates and Sub-Processors who may be based outside the EEA.  |

## Exhibit 3

### Security Measures

#### 1. Access control

##### a. Preventing unauthorized physical access

Our Service is hosted on outsourced cloud infrastructure providers. We rely on contractual agreements, privacy policies, and vendor compliance programs in order to protect data processed or stored by these vendors.

The outsourced infrastructure providers' physical and environmental security controls are audited for SOC 2 Type II and ISO 27001 compliance, among other certifications.

##### b. Preventing unauthorized access to systems

We take reasonable measures to prevent unauthorized access to IT systems, including authentication via strong passwords according to industry-standards, and when available two-factor authentication, restricted access to employees by role, and logging of access.

Security reviews of code stored in our source code repositories are performed using static code analysis, checking for coding best practices, and identifiable software flaws.

We implement a bug bounty program to discover vulnerabilities in applications and services and to improve the overall security posture.

##### c. Controlling access to data

We take reasonable measures to ensure personal data is accessible and manageable only by authorized staff, that access rights are differentiated according to duties, and, that personal data cannot be read, copied, modified, or removed without authorization in the course of processing.

#### 2. Transmission control

Data in-transit is protected by HTTPS encryption (SSL/TLS). Our HTTPS implementation uses industry-standard algorithms and certificates. When data is at-rest we take measures and follow industry-standard practices for security, such as to ensure that stored data is encrypted at rest.

#### 3. Availability control

##### a. Infrastructure availability

Our infrastructure providers use commercially reasonable efforts to ensure a minimum of 99.95% uptime.

b. Online replicas and backups

Production databases are designed to replicate data between no less than 1 primary and 1 secondary database. All databases are backed up and maintained using at least industry-standard methods.

c. Service availability

Our Services are designed to ensure redundancy and seamless failover. The infrastructure that supports the Services is architected with a goal to prevent single points of failure. This design assists our operations in maintaining and updating the applications while limiting downtime.

## Exhibit 4

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

#### *Data Transfer Agreement*

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

ToolsPlus (hereinafter the “**data importer**”)

and

Customer (hereinafter the “**data exporter**”)

each the “**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 sub-processor’ means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the

transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

- (e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### **Details of the transfer**

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

## Clause 3

### **Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### Clause 4

##### **Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses;  
and

- (j) that it will ensure compliance with 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 sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the



security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

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

## Clause 6

### **Liability**

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

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

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

## Clause 7

### **Mediation and jurisdiction**

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

## Clause 8

### **Cooperation with supervisory authorities**

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

## Clause 9

### **Governing law**

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

## Clause 10

### **Variation of the contract**

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

## Clause 11

### **Sub-processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## Clause 12

### **Obligation after the termination of personal data-processing services**

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

## **Appendix 1 to the Standard Contractual Clauses**

### **Data exporter**

Customer

### **Data importer**

ToolsPlus

### **Data subjects**

The personal data transferred concerns the categories of data subjects set out in Exhibit 2 of this DPA.

### **Categories of data**

The personal data transferred concerns the categories of Processed Personal Data set out in Exhibit 2 of this DPA.

### **Special categories of data**

ToolsPlus does not knowingly collect (and the Customer shall not submit or upload) any special categories of data (as defined under the Applicable Privacy Law).

### **Purpose of processing**

The personal data transferred concerns the purpose set out in Exhibit 2 of this DPA.

## **Appendix 2 to the Standard Contractual Clauses**

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

The technical and organizational security measures implemented by the data importer are as described in Exhibit 3 of the Data Processing Agreement.