

## CASEWARE Data Processing Agreement (DPA)

### 1. Introduction and Scope

1.1 This DPA forms part of the CASEWARE CLOUD SERVICES AGREEMENT between CaseWare Cloud Ltd. (collectively "**CWC**" or "**Processor**") and the subscriber and user of CASEWARE CLOUD SERVICES ("**Customer**" or "**Controller**"). Customer and CWC are separately referred to as "**Party**" and collectively as "**Parties**". This DPA is exclusively applicable to the processing of personal data within the scope of the European Union General Data Protection Regulation ("**GDPR**").

1.2 As the Processor may have access to personal data in providing software support services with respect to their software products, the Customer as Controller and CWC as Processor require a contractual agreement concerning the collection, processing and use of personal data on behalf of another. This Agreement governs the duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of Data Subjects and the rights and obligations of the Controller and of the Processor.

### 2. Definitions

Capitalized terms not defined in this DPA shall have the meaning given to them in the CASEWARE CLOUD SERVICES AGREEMENT or in the CASEWARE CLOUD PRIVACY POLICY.

2.1 **Data Protection Laws** shall mean the GDPR (EU Regulation 2016/679) and the data protection laws of the countries in which the Customer is established in the European Union ("**EU**") or the European Economic Area ("**EEA**") implementing GDPR.

2.2 **Data Subject** shall mean an identified or identifiable natural person related to the Personal Data.

2.3 **Personal Data** shall have the meaning set out in the GDPR, limited to data provided by or on behalf of the Customer from a country where the GDPR applies.

2.4 **Restricted Transfer** shall mean:

a transfer of Personal Data from Customer to CWC; or

an onward transfer of Personal Data from CWC to a Sub-processor, or between two establishments of CWC or a Sub-processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses

to be established under section 2.6.

2.5 **Services** shall mean software services as offered by CWC with respect to software provided by CWC as a service (including the CaseWare Cloud Services), or software licensed to the public, and shall include any software support services provided by CWC or its Affiliates.

2.6 **Standard Contractual Clauses** shall mean the standard contractual clauses 2010/87/: Commission Decision of 5 February 2010 as set out in Attachment 4, hereto.

2.7 **Sub-processor** shall mean any person appointed by or on behalf of CWC to process Personal Data on behalf of CWC in connection with the CASEWARE CLOUD SERVICES, and shall include any Sub-processor rightfully appointed by a Sub-processor (a Sub-sub-processor) to process Personal Data on behalf of CWC in connection with the CASEWARE CLOUD SERVICES, but shall not include any employee of CWC or a Sub-processor;

### 3. Details of the Processing

CWC collects, uses and discloses Personal Data only for the purposes of providing the Customer with Services and in improving its software and for such other ancillary purposes consented to by the Customers of the CaseWare Cloud Services, or as required by law.

As described in the [CASEWARE CLOUD PRIVACY POLICY](#), CWC collects, uses and discloses information (which can include Personal Data) for the following purposes:

- To verify the Customer's identity.
- To provide the Customer with the Services.
- To contact the Customer for the purposes of product information, service updates, notifications relating to the Services.
- To monitor and/or improve system usage, server and software performance.
- To assist the Customer with technical support issues.
- To comply with any laws, regulations, court orders, subpoenas or other legal process or investigation and to protect CWC, its Affiliates and other individuals from harm.
- To improve and enhance CWC Services and develop new services.

#### 3.1 Type of data

The following types/categories of Personal Data may be collected, processed and/or used:

- Personal master data (e.g. last name, first name, address and date of birth)

- Communication data (e.g. telephone number, email)
- Contract master data
- Contract billing and payment data
- IT usage data (e.g. user ID, passwords and roles)
- Bank data (e.g. bank account details and credit card number)
- Credit rating data (e.g. payment behavior and balance sheets)
- Any other category named in the CASEWARE CLOUD PRIVACY POLICY

### **3.2 Data subjects**

Data Subjects which may be affected by using their Personal Data include:

- The Customer's clients/service recipients
- The Customer's employees
- The Customer's suppliers/service providers

### **3.3 Place of data processing**

CWC uses third party data hosting providers (currently: Amazon Web Services) to host software as a service and to act as Sub-processors on servers located throughout the world. At present, CWC uses servers in the United States, Australia, Canada and Europe, and at the time of subscribing, Customer will be advised as to the geographic server that will host Personal Data, and will be given a further opportunity to consent thereto. CWC will reasonably attempt to allocate a server in a geographically proximate location to the Customer, or an alternate CWC server location chosen by the Customer. For subscribers to the CaseWare Cloud Services in the United States, CWC will attempt to allocate a server in the United States. For subscribers to the CaseWare Cloud Services in Europe, CWC will attempt to allocate a server in Europe.

## **4. Instructions**

4.1 CWC shall process Personal Data for the purposes of: (i) processing as required by Customers in their use of the Services; (ii) processing in accordance with the CASEWARE CLOUD SERVICES AGREEMENT, the CASEWARE CLOUD PRIVACY POLICY, this DPA and any other agreements between the Parties, (iii) processing to comply with other reasonable instructions provided by Customer where such instruction are consistent with the terms of the CASEWARE CLOUD SERVICES AGREEMENT, the CASEWARE CLOUD PRIVACY POLICY and this DPA.

4.2 CWC will inform Customer if, in CWC's opinion, the Customer's instructions or requests are contrary to Data Protection Laws, with reasons therefor by email.

## 5. Confidentiality commitment by personnel

CWC will ensure that all individuals which could potentially get in contact with or have access to the Personal Data are subject to confidentiality undertakings.

## 6. Technical and organizational measures

6.1 According to Art. 28 (3) sentence 2 c) GDPR, CWC must take the necessary technical and organizational measures ("TOMs") to meet the requirements set out in Art. 32 GDPR and must maintain these measures for the duration of the contract.

6.2 CWC has carried out the technical and organizational measures ("TOMs") specified in **Attachment 1** to this Agreement.

6.3 CWC instructs Cloud Service Providers (Sub-processors) to provide parts of the Services. The Technical and Organizational measures ("TOMs") therefore depend partially on these Sub-processors and are described also in **Attachment 1**. CWC shall decide on improvements of the TOMs and provide the Customer on request with an updated **Attachment 1**.

## 7. Data Protection officer and Sub-processors

7.1 CWC is not located in the EU, thus CWC has not appointed a data protection officer in accordance with Art. 37 GDPR. Instead, CWC has appointed a representative in the Union in accordance with Art. 27 GDPR, contact details are given in **Attachment 2**.

7.2 Customer acknowledges and agrees that CWC may engage Sub-processors in the provision of the Services, and that (i) a CWC affiliate may be retained as a Sub-processor; and (ii) CWC or a CWC affiliate may engage third-party Sub-processors. The Customer consents to CWC engaging Sub-processors to process Personal Data in accordance with applicable Data Protection Laws.

7.3 A list of CWC's current Sub-processors is available in **Attachment 3**.

7.4 At least 14 days before authorizing any new Sub-processor to access Personal Data, CWC will update the list of CWC's Sub-processors and provide Customer with a mechanism to obtain notice of that update.

7.5 Within ten (10) calendar days of an update to the list of Sub-processors, Customer shall inform CWC, in writing of objections to any new Sub-processors. If Customer objections are not unreasonable, CWC will use reasonable efforts to change the Services provided to Customer or recommend a commercially reasonable change to Customer's Services to avoid processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer.

7.6 If Customer does not approve of a new Sub-processor, even though the new Sub-processor is necessary for CWC and the Services, then Customer may terminate any subscription for the affected CaseWare Cloud Services without penalty by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.

7.7 If use of a Sub-Processor involves a Restricted Transfer, CWC shall ensure that the Standard Contractual Clauses are at all relevant times incorporated into an agreement between CWC and the Sub-processor; or between the Sub-processor and any Sub-sub-processor.

## **8. Data Subject Access Requests**

8.1 CWC shall reasonably support the Customer in the case of a data subject access request, insofar as Customer cannot fulfill such a request on its own, to the extent legally permitted and technically possible. Customer shall pay CWC costs for such support, to the extent legally permitted.

8.2 If a data subject access request is received by CWC that relates to Personal Data, CWC will notify Customer. CWC will not respond to such a request, but shall instead support Customer as provided in Section 8.1.

## **9. Data breach notification**

CWC shall inform Customer without undue delay after becoming aware of a breach of the Personal Data including a breach at a Sub-processor and shall provide the necessary information to allow Customer to inform authorities and data subjects. CWC shall take reasonable efforts to remediate the causes of such data breach.

## **10. Data Protection Impact Assessment (DPIA)**

Upon request by Customer, CWC shall provide reasonable assistance to Customer in conducting a DPIA, as required by Article 35 of the GDPR or equivalent provisions of other data protection legislation, solely in relation to CWC's processing of Customer's Personal Data, and taking in to account the nature of the processing and information available to CWC and Sub-processors.

## 11. Deletion or returning personal data

CWC shall, at the choice of Customer, irretrievably delete or return all personal data within 120 calendar days of termination or expiry of any CASEWARE CLOUD SERVICES AGREEMENT with Customer, unless storage of the data is required by law.

## 12. Information and audit rights

12.1 Customer may obtain information on existing CWC certifications at <https://www.caseware.com/cloud-security-compliance>. Upon Customer's request, CWC shall make available to Customer or a third-party auditor instructed by Customer information regarding CWC compliance with this DPA and Data Processing Law including on-site audits. Any on-site audit may be limited to take into account the involvement of Sub-processors. Before any information or audit is provided, the Parties shall mutually agree on the scope, timing, duration, persons obtaining access to the information, non-disclosure agreements and reimbursement rates.

12.2 Customer shall pay CWC and Sub-processors for any time expended at the then current professional service rates of CWC, which shall be made available to Customer upon request. Any charges by Sub-processors or other third parties shall be borne by Customer.

## 13. Restricted Transfers

13.1 In accordance with the Standard Contractual Clauses, Customer transferring Personal Data to CWC will be considered a "Data Exporter", and CWC will be considered a "Data Importer" (both terms as defined in the Standard Contractual Clauses).

13.2 Subject to section 13.4, Customer (as "data exporter") and CWC (as "data importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from Customer to CWC.

13.3 The Standard Contractual Clauses shall come into effect under section 13.1 on the later of:

- a. the data exporter becoming a party to them;
- b. the data importer becoming a party to them; and
- c. commencement of the relevant Restricted Transfer.

13.4 Section 13.2 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

## 14. Liability

14.1 The liability of the Parties shall be subject to the liability provisions of the CASEWARE CLOUD SERVICES AGREEMENT.

14.2 CWC's liability towards Customer regarding administrative fines and compensation claims by Data Subjects shall be limited to those set out in the GDPR and be further limited by applicable EU or EEA Member State law. CWC shall only be liable towards Customer in case of fault and negligence by CWC.

## 15. Term and termination

This DPA becomes effective upon last signature, shall be in force as long as CWC processes Personal Data and shall automatically end thereafter. Furthermore, the termination provisions of the CASEWARE CLOUD SERVICES AGREEMENT apply.

## 16. Miscellaneous

16.1 In case of a conflict, between this DPA or any other agreement between the parties and the Standard Contractual Clauses, the Standard Contractual Clauses shall take precedence. In case of a conflict, between the provisions of this DPA and any other agreement between the Parties, this DPA shall take precedence. Should individual provisions of this DPA be or become invalid, this shall not affect the validity of the remaining conditions of this DPA.

Without prejudice to Clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses, the Parties submit to the choice of jurisdiction and venue stipulated in the CASEWARE CLOUD SERVICES AGREEMENT.

**This Agreement is accepted by CaseWare Cloud Ltd., after being electronically signed by the Controller or Customer.**

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**Cal Bruner, CFO**

## Attachment 1: Technical and Organizational Measures (TOM)

Service/Action	CASEWARE Cloud Services
Description	
Is pseudonymizing used on the personal data?	CWC does employ tools to selectively anonymize sensitive data, which may include Personal Data. Pseudonymizing is not necessarily used on all personal data elements, as not all personal data is identifiable as such to CWC.
Is encryption used on the personal data?	Encryption is used for data at rest, and this encryption is provided by Amazon Web Services, an approved sub-contractor (see Attachment 2). Digital certificates are in place to manage encrypted communications to the Amazon web servers.
How is the ongoing confidentiality ensured?	<p>Employees must sign a confidentiality agreement and accept company policies and procedures upon hire.</p> <p>An information security incident procedure is in place, to deal with any data breaches, or potential data breaches.</p>
How is the ongoing integrity ensured?	<p>The service provides administrative controls for clients to control who can access files within their firm. CWC does not have these rights.</p> <p>CWC is ISO 27001 and SOC 2 certified and controls are in place to ensure that only those required to perform administrative operations have required access. An access control policy and procedures are in place to review access control lists.</p> <p>Potential risks and the mitigation of potential risks are reviewed on a regular basis.</p>
How is the ongoing availability ensured?	Monitoring is performed through an external health check and internally with capacity management monitoring solutions.

	Quality assurance processes are in place and under regular review, to mitigate against potential downtime.
How is the ongoing resilience of processing systems ensured?	CaseWare Cloud services are hosted on Amazon AWS services. The service is ISO 27001 and SOC 2 certified for security, confidentiality, integrity, privacy and availability.
How is the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident ensured?	A backup policy and procedures are in place, with daily automated backup reports. Reports are monitored by an operational team.
Describe in short words if and how a process for regular testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing is done.	Regular audits take place for purposes of both ISO 27001 and SOC 2 compliance. In addition, from time to time the company engages with a third party, for penetration testing services.
Do you adhere to an approved code of conduct (Art. 40 GDPR) or an approved certification mechanism (Art. 42 GDPR)?	ISO 27001 and SOC 2

Attachment 2: EU Representative for Article 27

**CaseWare Europe Limited**  
**Attn: CWI Chief Financial Officer - GDPR**  
**Level 1 Brockbourne House,**  
**77 Mount Ephraim, Tunbridge Wells, Kent,**  
**United Kingdom, TN4 8BS**

Attachment 3: List of approved sub-contractors

<b>Subcontractor (name of company, address,</b>	<b>Processing purpose of contract data processing by</b>
Amazon Web Services Inc. P.O.Box 81226 Seattle, WA 98108-1226	CaseWare Cloud Services and Subscriber data is processed with CWC licensed software, on Amazon Web Services Inc. infrastructure.

ATTACHMENT 4: STANDARD CONTRACTUAL CLAUSES

*[These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law (otherwise).] [If these Clauses are not governed by the law of a Member State, the terms "Member State" and "State" are replaced, throughout, by the word "jurisdiction".]*

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

Name of the data exporting organisation:

Address:.....

Tel. ....; fax .....; e-mail: .....

Other information needed to identify the organisation

.....

(the data exporter)

And

Name of the data importing organisation: CaseWare Cloud Ltd.

Address: .....

Tel. ....; fax .....; e-mail: .....

Other information needed to identify the organisation:

.....

(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 [\(1\)](#);
- (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 [\(2\)](#)

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 Clauses.

#### 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 (3). 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.

**On behalf of the data exporter:**

Name (written out in full): .....

Position: .....

Address: .....

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

Signature .....

**On behalf of the data importer:**

Name (written out in full): .....

Position: .....

Address: .....

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

Signature .....

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

This Appendix forms part of the Clauses.

Defined terms used in this Appendix 1 shall have the meaning given to them in the CaseWare Cloud Services Agreement (including the DPA).

### **Data exporter**

The data exporter is the legal entity specified as "Customer" in the DPA.

### **Data importer**

The data importer is CaseWare Cloud Inc.

### **Data subjects**

Please see the DPA, which describes the data subjects.

### **Categories of data**

Please see the DPA, which describes the categories of data.

### **Special categories of data (if appropriate)**

The parties do not anticipate the transfer of special categories of data.

### **Purposes of Processing**

Please see the DPA, which describes the purposes of processing.

### **Processing operations**

Please see Attachment 1 of the DPA, which describes the processing operations.

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

This Appendix forms part of the 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):

Attachment 1 of the DPA, which describes the technical and organisational security measures implemented by CWC.

### **Appendix 3 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses.

This Appendix sets out the parties' interpretation of their respective obligations under specific terms of the Clauses. Where a party complies with the interpretations set out in this Appendix, that party shall be deemed by the other party to have complied with commitments under the Clauses.

For the purposes of this Appendix, "DPA" means the Data Processing Agreement in place between Customer and CWC and to which these Clauses are incorporated and "Agreement" shall have the meaning given to it in the DPA.

#### **Clause 5(a): Suspension of data transfers and termination**

- a. The parties acknowledge that the data importer may process the personal data subject to the Clauses only on behalf of the data exporter and in compliance with its instructions as provided by the data exporter and the Clauses.
- b. The parties acknowledge that if the data importer cannot provide such compliance for whatever reason, 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.
- c. If the data exporter intends to suspend the transfer of personal data and/or terminate the Clauses, it shall endeavour to provide notice to the data importer and provide the data importer with a reasonable period of time to cure the non-compliance ("Cure Period").
- d. If after the Cure Period the data importer has not or cannot cure the non-compliance then the data exporter may suspend or terminate the transfer of personal data immediately. The data exporter shall not be required to provide such notice in instance where it considers there is a material risk of harm to data subjects or their personal data.

#### **Clause 5(f): Audit**

- a. Data exporter acknowledges and agrees that it exercises its audit right under clause 5(f) of the Clauses by instructing the data importer to comply with the audit measures of Section 12 of the DPA.

#### **Clause 5(j): Disclosure of subprocessor agreements**

- a. The parties acknowledge the obligation of the data importer to send promptly a copy of any onward subprocessor agreement it concludes under the Clauses to the data exporter.
- b. The parties further acknowledge that, pursuant to subprocessor confidentiality restrictions, the data importer may be restricted from disclosing onward subprocessor agreements to the data exporter. Notwithstanding this, the data importer shall use reasonable efforts to require

any subprocessor it appoints to permit it to disclose the subprocessor agreement to data exporter.

c. Even where the data importer cannot disclose a subprocessor agreement to the data exporter, the parties agree that, upon the request of the data exporter, data importer shall (on a confidential basis) provide all information it reasonably requires in connection with such subprocessing agreement to the data exporter.

#### **Clause 6: Liability**

a. Any claims brought under the Clauses shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations set forth in the Agreement. In no event shall any party limit its liability with respect to any data subject rights under these Clauses.

#### **Clause 11: Onward subprocessing**

a. The parties acknowledge that, pursuant to FAQ II.1 in Article 29 Working Party Paper WP 176 entitled "*FAQs in order to address some issues raised by the entry into force of the EU Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC*" the data exporter may provide a general consent to onward subprocessing by the data importer.

b. The data exporter provides a general consent to the data importer, pursuant to Clause 11 of the Clauses, to engage onward subprocessors. Such consent is conditional on the data importer's compliance with the requirements set out in Section 7 of the DPA.

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

a. The data importer agrees that the data exporter will fulfil its obligation to return or destroy all the personal data subject to the Clauses on the termination of the provision of data-processing services by complying with Section 11 of the DPA.