

**Product Fruits DATA PROCESSING  
ADDENDUM (Revision Dec 2022)**

This Data Processing Addendum ("**DPA**") forms part of the Terms of Service and Privacy Policy or other written or electronic agreement between Product Fruits and Customer for the purchase and/or use of online services (including associated Product Fruits mobile components) from Product Fruits (identified either as "Services" or otherwise in the applicable agreement, and hereinafter defined as "Services") (the "Agreement") to reflect the parties' agreement with regard to the Processing of Personal Data.

By concluding the Agreement, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of Customer's Authorized Affiliates, if and to the extent Product Fruits processes Personal Data for which such Authorized Affiliates qualify as the Controller. For the purposes of this DPA only, and except where indicated otherwise, the term "Customer" shall include Customer and Authorized Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

In the course of providing the Services to Customer pursuant to the Agreement, Product Fruits may Process Personal Data on behalf of Customer and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

This DPA shall replace any comparable or additional rights relating to Processing of Customer Data contained in Customer's Agreement (including any existing data processing addendum to the Agreement).

**DATA PROCESSING  
TERMS**

**1. DEFINITIONS**

**"Affiliate"** means (a) any entity on whose behalf Customer obtained the Product Fruits Services, and/or (b) any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Authorized Affiliate"** means any of Customer's Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (b) is permitted to use the Services pursuant to the Agreement between Customer and Product Fruits, but has not signed its own Agreement with Product Fruits and is not a "Customer" as defined under the Agreement.

**"Controller"** means the entity which determines the purposes and means of the Processing of Personal Data.

**"Customer Data"** means what is described in the Product Fruits Privacy Policy as "your data", "your info" or similar terms.

**"Data Protection Laws and Regulations"** means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

**"Data Subject"** means the identified or identifiable person to whom Personal Data relates.

**"GDPR"** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

**"Personal Data"** means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each (i) or (ii), such data is Customer Data.

**"Processing"** (including its various forms) means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**"Processor"** means the entity which Processes Personal Data on behalf of the Controller.

**"Security, Privacy and Architecture Documentation"** means Product Fruits's security overview and security whitepaper, as updated from time to time, and accessible via <https://productfruits.com/policies/privacy>

**"Product Fruits"** means the Product Fruits entity, which is a party to this DPA, as specified in the section "HOW THIS DPA APPLIES" above, being Product Fruits s.r.o., ID No.: 09552618, with its registered seat at Rozdělovská 1999/7, 169 00 Praha 6, Czech Republic.

**"Standard Contractual Clauses"** means the agreement executed by and between Customer and Product Fruits and attached hereto as Schedule 3, pursuant to the European Commission's decision (EU) 2021/914 of 4 June 2021 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

**"Sub-processor"** means any Processor engaged by Product Fruits.

**"Supervisory Authority"** means an independent public authority which is established by an EU Member State pursuant to the GDPR.

## 2. PROCESSING OF PERSONAL DATA

**2.1 Roles of the Parties.** The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Product Fruits is the Processor, and that Product Fruits will engage Sub-processors pursuant to the requirements set forth in Section 5 "Sub-processors" below.

**2.2 Customer's Processing of Personal Data. Customer shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations.** For the avoidance of doubt, Customer's instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

**2.3 Product Fruits's Processing of Personal Data.** Product Fruits shall treat Personal Data as confidential information and shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) Processing in accordance with the Agreement; (ii) Processing initiated by Customers and/or Authorized Affiliates in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

This DPA and the Agreement are Customer's complete and final documented instructions at the time of signature of the Agreement to Product Fruits for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of this DPA, the following is deemed an instruction by the Customer to process Personal Data: (a) Processing in accordance with the Agreement; (b) Processing initiated by Users in their use of the Services and (c) Processing to comply with other reasonable documented instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

**2.4. Details of the Processing.** The subject-matter of Processing of Personal Data by Product Fruits is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Schedule 2 (Details of the Processing) to this DPA.

### 3. DATA SUBJECT REQUESTS

**Product Fruits shall, to the extent legally permitted, promptly notify Customer if Product Fruits receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("Data Subject Request"). Taking into account the nature of the Processing, Product Fruits shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, Product Fruits shall upon Customer's request provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Product Fruits is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Customer shall be responsible for any costs arising from Product Fruits's provision of such assistance.**

### 4. PRODUCT FRUITS PERSONNEL

**4.1 Confidentiality.** Product Fruits shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. Product Fruits shall ensure that such confidentiality obligations survive the termination of the personnel engagement.

**4.2 Reliability.** Product Fruits shall take commercially reasonable steps to ensure the reliability of any Product Fruits personnel engaged in the Processing of Personal Data.

**4.3 Limitation of Access.** Product Fruits shall ensure that Product Fruits's access to Personal Data is limited to those personnel performing Services in accordance with the Agreement.

**4.4 Data Protection Officer.** Based on Product Fruits's processing activities, Product Fruits is not required to appoint a Data Protection Officer. Product Fruits reserves the right to voluntarily appoint a Data Protection Officer in the future. For questions about this DPA, GDPR compliance, data privacy, or any other privacy issues please send an email to [privacy@productfruits.com](mailto:privacy@productfruits.com).

### 5. SUB-PROCESSORS

**5.1 Appointment of Sub-processors.** Customer acknowledges and agrees that (a) Product Fruits's Affiliates may be retained as Sub-processors; and (b) Product Fruits and Product Fruits's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. Product Fruits or a Product Fruits Affiliate has entered into a written agreement with each Sub-

processor containing data protection obligations not less protective than those in this DPA with respect to the protection of Customer Data to the extent applicable to the nature of the Services provided by such Sub-processor.

#### **5.2 List of Current Sub-processors and Notification of New Sub-processors.**

Product Fruits shall make available to Customer the current list of Sub-processors for the Product Fruits Services. Such Sub-processor lists shall include the identities of those Sub-processors and their country of location ("**Sub-processor Documentation**"). Customer may find on Product Fruits's webpage at <https://productfruits.com/policies/subprocessors>

the Sub-processor Documentation. Product Fruits, through notification to the Customer shall provide notification of a new Sub-processor(s) before authorizing any new Sub-processor(s) to Process Personal Data in connection with the provision of the applicable Services.

**5.3 Objection Right for New Sub-processors.** Customer may object to Product Fruits's use of a new Sub-processor by notifying Product Fruits promptly in writing within ten (10) business days after receipt of Product Fruits's notice in accordance with the mechanism set out in Section 5.2. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Product Fruits will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected- to new Sub-processor without unreasonably burdening the Customer. If Product Fruits is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, Customer may terminate the applicable Agreement with respect only to those Services which cannot be provided by Product Fruits without the use of the objected-to new Sub-processor by providing written notice to Product Fruits. Product Fruits will refund Customer any prepaid fees covering the remainder of the term of such Agreement following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

**5.4 Liability.** Product Fruits shall be liable for the acts and omissions of its Sub-processors to the same extent Product Fruits would be liable if performing the services of each Sub-processor directly under the terms of this DPA, except as otherwise set forth in the Agreement.

## 6. SECURITY

**6.1 Controls for the Protection of Customer Data.** Product Fruits shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer Data), confidentiality and integrity of Customer Data, as set forth in the Security, Privacy and Architecture Documentation. Product Fruits regularly monitors compliance with these measures. Product Fruits will not materially decrease the overall security of the Services during a subscription term.

**6.2 Third-Party Certifications and Audits.** Product Fruits has obtained the third-party certifications and audits set forth in the Security, Privacy and Architecture Documentation. Upon Customer's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement, Product Fruits shall make available to Customer that is not a competitor of Product Fruits (or Customer's independent, third- party auditor that is not a competitor of Product Fruits) a copy of Product Fruits's then most recent third-party audits or certifications, as applicable. Customer may contact Product Fruits in accordance with the "Notices" Section of the Agreement to request an on-site audit of the procedures relevant to the protection of Personal Data. Customer shall reimburse Product Fruits for any time expended for any such on-site audit at the Product Fruits Group's then-current professional services rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Product Fruits shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Product Fruits. Customer shall promptly

notify Product Fruits with information regarding any non-compliance discovered during the course of an audit.

## 7. CUSTOMER DATA INCIDENT MANAGEMENT AND NOTIFICATION

Product Fruits maintains security incident management policies and procedures specified in the Security, Privacy and Architecture Documentation and the Agreement. Product Fruits shall, notify Customer without undue delay, and in compliance with applicable laws, after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data, including Personal Data, transmitted, stored or otherwise Processed by Product Fruits or its Sub-processors of which Product Fruits becomes aware (a "**Customer Data Incident**"). Product Fruits shall make reasonable efforts to identify the cause of such Customer Data Incident and take those steps as Product Fruits deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within Product Fruits' reasonable control. The obligations herein shall not apply to incidents that are caused by Customer or Customer's Authorized Affiliates.

## 8. RETURN AND DELETION OF CUSTOMER DATA

Product Fruits shall return Customer Data to Customer and, to the extent allowed by applicable law, delete Customer Data in accordance with the procedures and timeframes specified in the Security, Privacy and Architecture Documentation.

## 9. AUTHORIZED AFFILIATES

**9.1 Contractual Relationship.** The parties acknowledge and agree that, by executing the DPA, the Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates, thereby establishing a separate DPA between Product Fruits and each such Authorized Affiliate subject to the provisions of the Agreement and this Section 9 and Section 10. Each Authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. For the avoidance of doubt, by Customer entering into this DPA, an Authorized Affiliate is not and does not become a party to the Agreement and is only a party to the DPA. All access to and use of the Services and Content by Authorized Affiliates must comply with the terms and conditions of the Agreement and any violation of the terms and conditions of the Agreement by an Authorized Affiliate shall be deemed a violation by Customer.

**9.2 Communication.** The Customer that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Product Fruits under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.

**9.3 Rights of Authorized Affiliates.** Where an Authorized Affiliate becomes a party to the DPA with Product Fruits, it shall to the extent required under applicable Data Protection Laws and Regulations be entitled to exercise the rights and see remedies under this DPA, subject to the following:

**9.3.1** Except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or see any remedy under this DPA against Product Fruits directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement shall exercise any such right or see any such remedy on behalf of the Authorized Affiliate, and (ii) the Customer that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Authorized Affiliate individually but in a combined manner for all of its Authorized Affiliates together (as set forth, for example, in Section 9.3.2, below).

**9.3.2** The parties agree that the Customer that is the contracting party to the Agreement shall, when carrying out an on-site audit of the procedures relevant to the protection of Personal Data, take all reasonable measures to limit any impact on Product Fruits and its Sub-

processors by combining, to the extent reasonably possible, several audit requests carried out on behalf of different Authorized Affiliates in one single audit.

## 10. LIMITATION OF LIABILITY

Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Authorized Affiliates and Product Fruits, whether in contract, tort or under any other theory of liability, is subject to the limitations of liability set forth in the Agreement, and such limitations apply to the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together.

For the avoidance of doubt, Product Fruits' and its Affiliates' total liability for all claims from the Customer and all of its Authorized Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs

established under this Agreement, including by Customer and all Authorized Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any Authorized Affiliate that is a contractual party to any such DPA.

Also for the avoidance of doubt, each reference to the DPA in this DPA means this DPA including its Schedules and Appendices.

## 11. OTHER PROVISIONS

**11.1 Data Protection Impact Assessment.** Upon Customer's request, Product Fruits shall provide Customer with reasonable cooperation and assistance needed to fulfill Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Product Fruits. Product Fruits shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating to Section 11.2 of this DPA, to the extent required under the GDPR.

**11.2 Transfer mechanisms for data transfers.** Product Fruits makes available the transfer mechanisms which shall apply to any transfers of Personal Data under this DPA from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations:

1. The Standard Contractual Clauses set forth in Schedule 3 to this DPA apply to the Services listed in Annex I.B to the Standard Contractual Clauses (the "**SCC Services**"), subject to the additional terms in Section 2 of Schedule 1.

## 12. LEGAL EFFECT

This DPA shall become legally binding between Customer and Product Fruits together with the Agreement.

### List of Schedules

Schedule 1: Transfer Mechanisms for European Data Transfers

Schedule 2: Details of the Processing

Schedule 3: Standard Contractual Clauses

## SCHEDULE 1 TRANSFER MECHANISMS FOR EUROPEAN DATA TRANSFERS

### 1. ADDITIONAL TERMS FOR SCC SERVICES

**1.1 Customers covered by the Standard Contractual Clauses.** The Standard Contractual Clauses apply to (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and its Authorized Affiliates and (ii) all Affiliates, including, but not limited to, Authorized Affiliates of Customer established within the European Economic Area, Switzerland and the United Kingdom, which have concluded Agreement for the SCC Services. For the purpose of the Standard Contractual Clauses and this Section 2, the aforementioned entities shall be deemed "data exporters".

## SCHEDULE 2 DETAILS OF THE PROCESSING

**Nature and Purpose of Processing** Product Fruits will Process Personal Data as necessary to perform the Services pursuant to the Agreement, and as further instructed by Customer in its use of the Services.

**Duration of Processing** Subject to Section 8 of the DPA, Product Fruits will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

**Categories of Data Subjects** Customer may submit Personal Data to the Services (in particular Personal Data of its employees and customers), the categories, extent and detail of which is determined and controlled by Customer in its sole discretion.

**Type of Personal Data** Customer may submit Personal Data to the Services, the type, extent and detail of which is determined and controlled by Customer in its sole discretion.

## SCHEDULE 3 STANDARD CONTRACTUAL CLAUSES Standard Contractual Clauses (PROCESSOR TO CONTROLER)

For the purposes of Article 46 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Parties of DPA 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.

### SECTION I

#### 1. Clause - Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.

- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

## **2. Clause - Effect and invariability of the Clauses**

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

## **3. Clause - Third-party beneficiaries**

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
  - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause **Error! Reference source not found.**;
  - (ii) Clause 7, Clause (b) and Clause (b);
  - (iii) Clause 10
  - (iv) Clause (c), (d) and (e);
  - (v) Clause (e);
  - (vi) Clause 15.
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

## **4. Clause - Interpretation**

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

## **5. Clause - Hierarchy**

- (a) In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

## **6. Clause - Description of the transfer(s)**

- (a) The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

# **SECTION II – OBLIGATIONS OF THE PARTIES**

## **7. Clause - Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses

### **7.1. Instructions**

- (a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.
- (b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.
- (c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.
- (d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

### **7.2. Security of processing**

- (a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- (b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.
- (c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

### **7.3. Documentation and compliance**

- (a) The Parties shall be able to demonstrate compliance with these Clauses.
- (b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

### **8. Clause - Data Subject Rights**

- (a) The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

### **9. Clause - Redress**

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

### **10. Clause - Liability**

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- (c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

## **SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES**

### **11. Clause - Local laws and practices affecting compliance with the Clauses**

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
  - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;

- (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;
  - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
  - (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
  - (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
  - (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause (d) and (e) shall apply.

## **12. Clause - Obligations of the data importer in case of access by public authorities**

### **12.1. Notification**

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
  - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
  - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause (e) and Clause 13 to inform the data exporter promptly where it is unable to comply with these Clauses.

### **12.2. Review of legality and data minimization**

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a

request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause (e).

- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

#### **SECTION IV – FINAL PROVISIONS**

##### **13. Clause - Non-compliance with the Clauses and termination**

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause (f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
  - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
  - (ii) the data importer is in substantial or persistent breach of these Clauses; or
  - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

##### **14. Clause - Governing law**

- (a) These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of the Czech Republic.

##### **15. Clause - Choice of forum and jurisdiction**

- (a) Any dispute arising from these Clauses shall be resolved by the courts of the Czech Republic.

#### **ANNEX I**

##### **A. LIST OF PARTIES**

###### **DATA EXPORTER(S):**

Name: **Product Fruits s.r.o.**

Address: Rozdělovská 1999/7, Břevnov, 169 00 Prague 6

Contact person's name, position and contact details:

Miroslav Štěpánek, Security officer, +42075263815, [support@productfruits.com](mailto:support@productfruits.com)

Activities relevant to the data transferred under these Clauses: provision of services in accordance with the Agreement.

Role (controller/processor): processor

**DATA IMPORTER(S)**

Name: Customer and its affiliates as defined together with contact details above in the DPA and in the Agreement

Role (controller/processor): controller

**B. DESCRIPTION OF TRANSFER**

Product Fruits is a cloud-based software-as-a-service provider of project management software which can (if specifically, and in individual cases required by the Customer) processes personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

- (b) The personal data transferred concern the categories of data subjects as defined in the DPA, particularly by Schedule 2 of the DPA.
- (c) The personal data transferred do not concern special categories of data unless specifically agreed by the parties.
- (d) The personal data transferred will be subject to the following basic processing activities (please specify): The purpose of Processing of Personal Data by data importer is the performance of Product Fruits's Services pursuant to the Agreement.

**ANNEX II**

**TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

- (a) Data importer will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data uploaded to the SCC Services, as described in the DPA and in the Security, Privacy and Architecture Documentation applicable to the specific SCC Services purchased by data exporter. Data Importer will not materially decrease the overall security of the SCC Services during a subscription term.

**ANNEX III**

**LIST OF SUB-PROCESSORS**

- (a) The controller has authorised the use of the following sub-processors:  
As defined in the DPA