

# **Data Processing Agreement**

between

**THE CLIENT**

(as “Data Controller”)

**AND**

**Bigart Ecosystems, LLC  
doing business as “Wisetail”**

(as “Data Processor”)

**BETWEEN:**

- (1) THE CLIENT (the “Data Controller”); and
- (2) Bigart Ecosystems, LLC doing business as “Wisetail” (the “Data Processor”),  
  
(each a “Party”, and together the “Parties”).

**WHEREAS:**

- (A) The Data Processor is to provide Services to the Data Controller pursuant to this Agreement.
- (B) This Agreement is entered into to ensure adequate safeguards with respect to the protection of privacy and security of Personal Data passed from the Data Controller to the Data Processor for Processing or accessed by the Data Processor on the authority of the Data Controller for Processing or otherwise received by the Data Processor for Processing on the Data Controller’s behalf.
- (C) This Agreement further defines certain service levels to be applied to all Personal Data related Services (as defined below) provided by the Data Processor to the Data Controller.

**IT IS AGREED THAT:**

**1. DEFINITIONS**

- 1.1. In this Agreement, the following expressions shall have the following meanings unless the context otherwise requires:

“CCPA” shall mean the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq., and its implementing regulations;

“CPRA” shall mean the California Privacy Rights Act, Cal. Civ. Code § 1798.140 et seq., and its implementing regulations;

“Data Controller” shall mean the entity which determines the purposes and means of the Processing of Personal Data which for the purposes of this Agreement means the Parties acknowledge and agree that Data Controller is a “Business,” as defined in “CCPA” and “CPRA”;

<b>“Data Processor”</b>	shall mean the entity which Processes Personal Data on behalf of the Data Controller, including as applicable any “service provider” as that term is defined by the CCPA and the CPRA; and the Parties acknowledge and agree that Data Processor is a “Contractor” or “Service Provider,” as defined in CPRA;
<b>“Data Subject”</b>	shall mean an identified or identifiable natural person who is the subject of Personal Data, and includes a “Consumer,” as that term is defined in “CCPA” and “CCPR;”
<b>“Instruction”</b>	shall mean the written instruction, submitted by the Data Controller to the Data Processor, and directing the same to perform a specific action with regard to Personal Data (including depersonalizing, blocking, deleting, making available, etc.);
<b>“Personal Data”</b>	shall mean any information relating to an identified or identifiable natural person and shall include, without limitation, any and all “personal information” as that term is defined in the “CCPA” and “CPRA”; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to his or her physical, physiological, genetic, mental, economic, cultural or social identity and as defined under applicable Privacy Laws;
<b>“Personal Data Breach”</b>	shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;
<b>“Privacy Laws”</b>	means: in EU countries, the GDPR, and all local laws or regulations giving effect to the GDPR, and any binding guidance and/or codes of practice issued by any local regulatory authority responsible for administering data protection legislation within the EU; and in non-EU countries, any applicable privacy or data protection laws, regulations or rules relating to the safeguarding of information or data about individuals.
<b>“Process”/“Processing”</b>	shall mean any operation or set of operations which is performed upon the Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

<b>“Schedule”</b>	means the schedule annexed to and forming part of this Agreement;
<b>“Sell”</b>	means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a Consumer’s Personal Information by the Business to a Third Party for monetary or other valuable consideration (as those capitalized terms are defined in “CCPA” and “CPRA;”
<b>“Services”</b>	means Processing of the Personal Data by the Data Processor in connection with and for the purposes of the provision of the services to be provided by the Data Processor to the Data Controller relating to the contract between Wisetail and CLIENT, including as described in Schedule 1 to this Agreement;
<b>“Share”</b>	means sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a Consumer’s Personal Data by the Business to a Third Party for Cross-Context Behavioral Advertising, whether or not for monetary or other valuable consideration, including transactions between a Business and a Third Party for Cross-Context Behavioral Advertising for the benefit of a Business in which no money is exchanged (those capitalized terms not otherwise defined herein have the same meaning as those terms have in “CPRA;”
<b>“Standard Contractual Clauses”</b>	means the agreement executed by and between Data Controller and Data Processor, attached hereto as Schedule 3 pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 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;
<b>“Subprocessor”</b>	means any processor engaged by the Data Processor (or by any other Subprocessor of the Data Processor) who agrees to receive from the Data Processor (or from any other Subprocessor of the Data Processor) Personal Data exclusively intended for Processing such Personal Data on behalf of the Data Controller after the transfer in accordance with its Instructions and the terms of the written subcontract; the Parties agree that the term “Subprocessor” as used in this Agreement includes “Service Providers” or “Contractors” of the Data Processor, as those terms are defined in “CPRA”

**“Term”** means the Term of SOW as defined in the Statement of Work pursuant to the contract between Wisetail and CLIENT.

## **2. SCOPE AND APPLICATION OF THIS AGREEMENT**

- 2.1. The scope, manner and purpose as well as the categories of Personal Data and the Data Subjects affected are set out in Schedule 1 to this Agreement.
- 2.2. This Agreement shall apply, in relation to the Services, to:
  - 2.2.1. all Personal Data sent by or on behalf of the Data Controller to the Data Processor for Processing;
  - 2.2.2. all Personal Data accessed by the Data Processor on the authority of the Data Controller for Processing; and
  - 2.2.3. all Personal Data otherwise received by the Data Processor for Processing on the Data Controller’s behalf.

## **3. DATA PROCESSING**

The Data Processor agrees to Process the Personal Data to which this Agreement applies by reason of clause 2 in accordance with the terms and conditions set out in this Agreement, the applicable Privacy Laws and in particular the Data Processor agrees:

- 3.1. to Process the Personal Data only on behalf of the Data Controller and at all times in compliance with the Data Controller’s Instructions based on this Agreement, and all applicable data protection laws, including without limitation the CCPA and the CPRA, and solely for the purposes (connected with provision of the Services by the Data Processor) and in the manner specified from time to time by the Data Controller in writing and for no other purpose or in any manner except with the express prior written consent of the Data Controller. Data Processor shall not Process Personal Data for its own “commercial purposes,” as that term is defined in the CCPA and the CPRA. Instructions orally given shall be promptly confirmed in writing. If the Data Processor cannot provide such compliance for whatever reasons, it agrees to promptly notify the Data Controller of its inability to comply, in which case the Data Controller is entitled to suspend the transfer of Data and/or terminate this Agreement. Where the Data Processor believes that compliance with any instructions by the Data Controller would result in a violation of any applicable law on data protection, the Data Processor shall notify the Data Controller thereof in writing within a reasonable period of time;
- 3.2. that it has no reason to believe that any applicable law prevents it from fulfilling the Instructions received from the Data Controller and its obligations under this Agreement and that in the event of a change of any applicable law which is likely to have a substantial adverse effect on the obligations

provided under this Agreement, it will promptly notify the Data Controller of the change as soon as it is aware of such change, in which case the Data Controller is entitled to suspend the transfer of Personal Data and/or terminate this Agreement;

- 3.3. that within the Data Processor's area of responsibility, the Data Processor shall structure its internal corporate organization to ensure compliance with the specific requirements of the protection of Personal Data. The Data Processor shall ensure appropriate technical and organizational measures are implemented and maintained to protect the Data Controller's Personal Data against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. An overview of the technical and organizational measures has been attached as Schedule 2 (Description of Technical and Organizational Measures) to this Agreement. The Data Processor regularly monitors compliance with these measures;
- 3.4. to ensure that each of its employees, agents and Subprocessors are made aware of its obligations under this Agreement with regard to the security and protection of the Personal Data and shall require that they enter into binding obligations with the Data Processor in order to maintain the levels of security and protection provided for in this Agreement;
- 3.5. to ensure that any personnel entrusted with the Processing of the Data Controller's Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. The obligation to maintain data secrecy shall survive the termination of the respective employment relationship;
- 3.6. not to divulge the Personal Data whether directly or indirectly to any person, firm or company or otherwise, including without limitation in a manner that would constitute a "sale", Selling, or Sharing of Personal Data under the CCPA and CPRA, without the express prior written consent of the Data Controller except to those of its employees, agents and Subprocessors who are engaged in the Processing of the Personal Data and are subject to the binding obligations referred to in clause 3.4 or 3.5 or except as may be required by any law or regulation;
- 3.7. that it will promptly notify the Data Controller about:
  - 3.7.1. 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;
  - 3.7.2. any substantial disruption of the Services or serious interruptions of the operations, any infringements by the Data Processor or its employees, of applicable data protection laws or of this Agreement, or any material irregularity in relation to the Processing of the Personal Data belonging to the Data Controller;
  - 3.7.3. any Personal Data Breach of which it becomes aware. Such notification shall include, taking into account the nature of the Processing and the information available to the Data Processor, any information relevant to assist the Data Controller with its own notification obligations under applicable law;

- 3.7.4. any request received directly from the Data Subjects without responding to that request, unless it has been otherwise authorized to do so in writing by the Data Controller;
- 3.8. in the event of the exercise by Data Subjects of any of their rights under applicable law in relation to the Personal Data (including rights to access, rectification, erasure, blocking, objection, restriction, data portability, and the right not to be subject to a decision based solely on automated Processing, including profiling), to inform the Data Controller as soon as possible; the Data Processor agrees to assist the Data Controller with all Data Subject requests related to personal data where the identity of the Data Subject has been verified by the Data Controller; the Data Processor shall fulfill the obligations of the Data Subject requests at the direction of the Data Controller, or enable the Data Controller to fulfill the obligation;
- 3.9. taking into account the nature of the Processing, to assist the Data Controller by appropriate technical and organizational measures, insofar this is possible, for the fulfillment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights laid down by applicable law;
- 3.10. to deal promptly and properly with all inquiries from the Data Controller relating to its Processing of the Personal Data, including making available to the Data Controller all information necessary to demonstrate compliance with the obligations laid down in this Agreement or information necessary for the Data Controller to comply with applicable laws and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller;
- 3.11. that any Processing services carried out by a Subprocessor will be carried out in accordance with clause 6;
- 3.12. that the Data Processor has appointed a data protection officer to the extent this is required by applicable law. The Data Processor will provide the contact details of the appointed person;
- 3.13. to assist the Data Controller in ensuring compliance with applicable law, including the obligation to carry out data protection impact assessments and prior consultations with supervisory authorities, taking into account the nature of the Processing and the information available to the Data Processor;
- 3.14. the Data Processor will not combine the Personal Data which the Data Processor receives from or on behalf of the Data Controller, with Personal Data which it receives from or on behalf of another person or persons, or collects from its own interaction with the Consumer, provided that the Data Controller may combine Personal Data to perform any Business Purpose in accordance with applicable data privacy laws.

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

Within and restricted to the scope of this Agreement, the Data Controller agrees that it shall ensure that any disclosure of Personal Data made by it to the Data Processor is made with the Data Subject's consent or is otherwise lawful.

## **5. TERMINATION**

- 5.1. This Agreement shall terminate automatically upon the later of (a) termination or expiry of the Data Processor's obligations in relation to the Services and (b) at the choice of the Data Controller to terminate the Agreement. On termination of this Agreement, the Data Processor shall forthwith deliver physical copies of the data to the Data Controller or destroy, at the Data Controller's sole option, all the Data Controller's Personal Data in its possession or under its physical control. Upon the request of the Data Controller, the Data Processor shall confirm compliance with such obligations in writing, unless applicable law requires storage of the Personal Data.
- 5.2. The Data Controller shall be entitled to terminate this Agreement forthwith by notice in writing to the Data Processor if the Data Controller receives notice from the Data Processor in accordance with clause 3.1 or 3.2 of this Agreement.

## **6. APPOINTMENT OF SUBPROCESSORS**

- 6.1. The Data Processor may only authorize a Subprocessor to Process any Personal Data with Data Controller's prior written approval; after giving the Data Controller written notice of the engagement of the Subprocessor; this requirement also applies to a Subprocessor who engages another person to assist in Processing Personal Data, and Data Processor shall ensure its Subprocessors agree to this requirement, and also agree to include this requirement in their engagements of their own Subprocessors. In the case of a general written authorization, the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other Subprocessors, thereby giving the Data Controller the opportunity to object to such changes.
- 6.2. Any such Processing by a Subprocessor (or the Subprocessor's Subprocessors) shall be done pursuant to a signed agreement that is no less restrictive than this Agreement and consistent with the requirements set forth in this Agreement.
- 6.3. No Processing by a Subprocessor will release the Data Processor from its responsibility for its obligations under this Agreement, and the Data Processor will be fully liable for the work and activities of each of its Subprocessors.

## **7. STANDARD CONTRACTUAL CLAUSES**

- 7.1. In the course of the provision of Services by the Data Processor to the Data Controller, it may be necessary to transfer Personal Data of the Data Controller to the Data Processor located in the United States.
- 7.2. With regard to the data transfers referred to in clause 7.1, the Standard Contractual Clauses executed by the Data Controller as data exporter and the Data Processor as data importer as set out in Schedule 3.
- 7.3. Subprocessors shall be appointed pursuant to Clause 5(h) of the Standard Contractual Clauses as further specified in clause 6 of this Agreement.
- 7.4. In the event of any conflict between the body of this Agreement and any of its Schedules (not including the Standard Contractual Clauses) and the Stan-



dard Contractual Clauses in Schedule 3, the provision protecting the rights and freedoms of Data Subjects to a greater extent shall prevail.

## **8. MISCELLANEOUS PROVISIONS**

- 8.1. Amendments or additions to this Agreement must be made in writing to be effective. This shall also apply to amendments of this written form requirement. The written form requirement in this clause does not include faxes or any non-transitory form of visible reproduction of words (like emails).
- 8.2. Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining terms. The Parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in the Agreement.
- 8.3. Any Data Controller obligations arising from statutory provisions or according to a judicial or regulatory decision shall remain unaffected by this Agreement.
- 8.4. This Agreement shall be governed by the same law that is governing the Statement of Work pursuant to the contract between Wisetail and Client.
- 8.5. A reference in this Agreement to a statutory or regulatory section means the section as in effect or as amended, unless the context requires otherwise.

**AS WITNESS** the hands of the Parties:

**SIGNED** by

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duly authorised for and on behalf  
of

**SIGNED** by

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duly authorised for and on behalf  
of Bigart Ecosystems, LLC, doing business as Wisetail

## SCHEDULE 1

### DESCRIPTION OF THE PROCESSING

#### Subject-Matter

Wisetail provision of the Services as defined in Section 1.1 of the Data Processing Agreement.

#### Duration of the Processing

Data will not be kept for any longer than is necessary for achieving the purposes for which it was collected, processed or used, or as it is established in the applicable laws related to data retention periods.

The Term plus the period from the expiry of the Term until deletion of all Personal Data by Wisetail in accordance with the Terms, in accordance with Section 5.1 of the Data Processing Agreement.

#### Extent, Type and Purpose of the Processing

Wisetail will process Personal Data for the purposes of providing the Services.

#### Data Subjects

The Data Processor may process the Personal Data of the customers of the Data Controller's subsidiary, CLIENT. The Data Processor also may process the Personal Data provided by the end users of the Services, which may include the Personal Data of current employees, former employees, and end users.

#### Categories of Data

Data relating to individuals provided by the Data Controller via the Services, by (or at the direction of) Customer or by Customer End Users.

As the Data Processor, the following types of data are provided by the Data Controller:

- Contact data, such as first name, name, phone, email address, and birthday.
- Employment data, such as employee identification, department, job title, location, employment status, start date, and supervisor

The Data Controller will inform the Data Processor in writing in advance if any additional Personal Data is provided.

## Schedule 2

### Description of Technical and Organizational Measures

As from the Terms Effective Date, Wisetail will implement and maintain the Security Measures set out in this Schedule 2. Wisetail may update or modify such Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services.

<https://www.wisetail.com/wisetail-technical-and-organizational-measures>

### Personnel Security

Wisetail employee competence is a key element of the control environment. Wisetail is committed to training and developing its employees. This commitment to competence is expressed in the company's personnel policies and related human resource programs. At least annually, the Human Resources Team/Management performs a review of key talent by individual and role to ensure that critical talent is retained and to ensure that the organizational structure is aligned in a way that will support achievement of the company's objectives and strategies. Wisetail ensures that personnel have the knowledge and training needed to perform their duties. New employees go through initial Security training during the New Hire Process. Wisetail personnel are required to conduct themselves in a manner consistent with the company's guidelines regarding confidentiality, business ethics, appropriate usage, and professional standards. Wisetail conducts reasonable appropriate backgrounds checks to the extent legally permissible and in accordance with applicable local labor law and statutory regulations. Personnel are required to execute a confidentiality agreement and must acknowledge receipt of, and compliance with, Wisetail confidentiality and privacy policies. Personnel are provided with security training. Personnel handling Customer Data are required to complete additional requirements appropriate to their role (eg., certifications). Wisetail personnel will not process Customer Data without authorization.

### Subprocessor Security

Before onboarding Subprocessors, Wisetail conducts an audit of the security and privacy practices of Subprocessors to ensure Subprocessors provide a level of security and privacy appropriate to their access to data and the scope of the services they are engaged to provide. Once Wisetail has assessed the risks presented by the Subprocessor, then subject to the requirements of the Data Controller's Requirements for Subprocessor Engagement, the Subprocessor is required to enter into appropriate security, confidentiality and privacy contract terms, in accordance with Section 6 of the Data Processing Agreement.

## Schedule 3

### 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: CLIENT and the parties listed at Appendix 4 to the Standard Contractual clauses.

Other information needed to identify the organisation: n/a

(the data exporter)

And

Name of the data importing organisation:

Address:

Tel.:

; fax:

; e-mail:

Other information needed to identify the organisation: n/a

(the data importer)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

### *Clause 1*

#### *Definitions*

For the purposes of the Clauses:

- (a) *'personal data'*, *'special categories of data'*, *'process/processing'*, *'controller'*, *'processor'*, *'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses

and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

- (d) *'the Subprocessor'* means any processor engaged by the data importer or by any other *Subprocessor* of the data importer who agrees to receive from the data importer or from any other *Subprocessor* of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organizational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## *Clause 2*

### ***Details of the transfer***

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

## *Clause 3*

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

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

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

#### *Clause 4*

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

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organizational 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, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any Subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a Subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

## Clause 5

### *Obligations of the data importer*

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organizational 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 unauthorized access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the Subprocessor will be carried out in accordance with Clause 11;



- (j) to send promptly a copy of any Subprocessor agreement it concludes under the Clauses to the data exporter.

## *Clause 6*

### ***Liability***

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 Subprocessor 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 Subprocessor 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 Subprocessor 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 Subprocessor 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 Subprocessor agrees that the data subject may issue a claim against the data Subprocessor 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 Subprocessor 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 subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any Subprocessor preventing the conduct of an audit of the data importer, or any Subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

## *Clause 9*

### ***Governing Law***

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

## *Clause 10*

### ***Variation of the contract***

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

## *Clause 11*

### ***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the Subprocessor which imposes the same obligations on the Subprocessor as are imposed on the data importer under the Clauses. Where the Subprocessor fails to fulfill its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the Subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the Subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of

the Subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

#### *Clause 12*

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

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

**On behalf of the data exporter** and the parties listed at Appendix 4 to the Standard Contractual clauses.

Name (written out in full):

Position:

Address:

Signature \_\_\_\_\_

**On behalf of the data importer:**

Name (written out in full):

Position:

Address:

Signature \_\_\_\_\_

## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

For all parts to Appendix 1, see description contained in Schedule 1 of the Data Processing Agreement.

### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

- Client is the data exporter who is receiving Services under the Terms of Service.

### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

- Wisetail is a provider of enterprise cloud computing solutions which processes personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

- Prospective and existing customers or employees of the data exporter

### **Categories of data**

The personal data transferred concern the following categories of data (please specify):

- Data relating to individuals provided by Wisetail via the Services, by (or at the direction of) Customer or by Customer End Users, including:
  - Contact data, such as first name, last name, phone, and email address.
  - Employment status, such as department, job title, location, and supervisor.
- Customer will inform Wisetail in writing in advance if any additional Personal Data is provided.

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

The personal data transferred concern the following special categories of data (please specify):

- None

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

- Personal data is used for filtering training content and operational tasks as well as reporting around those elements.

**APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**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):**

See description contained in Schedule 2 of the Data Processing Agreement.

**APPENDIX 3 TO THE STANDARD CONTRACTUAL CLAUSES**

Wisetail may use the following Subprocessors to host Customer Data or provide other infrastructure that helps with delivery of our Services:

Entity Name	Subprocessing Activities	Entity Country
Amazon Web Services, Inc.	Platform Hosting	United States
Gensquared, Inc.	Data Warehouse	Canada

**APPENDIX 4 TO THE STANDARD CONTRACTUAL CLAUSES**

The Parties' authorized signatories have duly executed this Agreement on the dates set forth below. This Agreement may be entered into by the Parties in any number of counterparts. Each counterpart will, when executed and delivered, be regarded as an original, and all the counterparts will together constitute one and the same instrument.

Exporter Entity:  
Exporter Country:

Data Protection Contact Name:  
Data Protection Contact Phone:  
Data Protection Contact Email:

Signature \_\_\_\_\_

Name (Printed) \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_