

# Bitly Terms of Service

**Updated: May 2023**

Bitly, Inc. and its affiliates (collectively “Bitly,” “we” or “our”) provide URL shortening, custom-branded link, link management, link-in-bio, QR code and analytics products and services to our users (collectively, the “Bitly Services”). Please read these Terms of Service (the “Agreement”) carefully, as they govern your access to and use of the Bitly Services and constitute a binding legal agreement between you and Bitly. If you accept this Agreement or use the Bitly Services on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to the Agreement and, in such event, “you” “your” or “Customer” will refer and apply to that company or other legal entity. If you have been granted access to and use of the Bitly Services by and on behalf of the primary account holder, whether directly or through an administrator, you also agree to abide by this Agreement. In addition to this Agreement, your use of the Bitly Services is governed by the [Bitly Privacy Policy](#), the [Bitly Acceptable Use Policy](#) and [Bitly’s DMCA Copyright Policy](#).

**YOU ACKNOWLEDGE AND AGREE THAT, BY CREATING A BITLY ACCOUNT (“ACCOUNT”), PURCHASING A PAID ACCOUNT, OR ACCESSING OR USING THE BITLY SERVICES AND APPLICATION PROGRAM INTERFACES (“API”), YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS OF THIS**



**AGREEMENT AND THE BITLY ACCEPTABLE USE POLICY. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE BITLY SERVICES.**

**THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION AND CLASS ACTION WAIVER AS DESCRIBED IN SECTION 12.1 BELOW. YOU AGREE THAT DISPUTES BETWEEN US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.**

## **1. SCOPE & MODIFICATIONS**

### **1.1 Modifications**

Bitly reserves the right, in its sole discretion, to modify or replace this Agreement at any time. If we modify this Agreement, we will post the modification on our site and update the “Last Updated” date at the top of the Terms of Use or provide you with notice of the modification in the Bitly platform. Any change to this Agreement will be effective as of the Last Updated Date in at the top of this page. By continuing to access or use the Bitly Services after the Last Updated Date, you are indicating that you agree to be bound by the modified Agreement. You agree that it is your responsibility to check this Agreement periodically for changes and that your use of the Bitly Services following the posting of any changes to this Agreement constitutes acceptance of those changes. If the modified Agreement is not acceptable to you, your only recourse is to cease using the Bitly Services.

### **1.2 Service Changes**

Bitly may add, remove, suspend, discontinue, modify or update the Bitly Services at any time, at its discretion. After the effective date of such a change, Bitly shall bear no obligation to run, provide or support legacy versions of any affected Bitly Services.

### **1.3 Customer Support**



Bitly provides a help center for all users. More details about additional support services can be found in the help center which is accessible through the platform.

## 2. PAID ACCOUNTS

### 2.1 Fees

Bitly offers fee-based Bitly Services that provide additional features and functionality. If you sign up for a paid account, you agree to pay Bitly all applicable fees for the tier of Bitly Services according to your selection. Fees are non-refundable except as required by law or as otherwise specifically permitted in this Agreement.

### 2.2 Subscription Period

Paid account plans will be charged the rate stated at the time of initial purchase on a recurring basis corresponding to the term of your subscription until you cancel. Fees are subject to change and Bitly will notify you of any pricing change prior to processing your next recurring charge. You may cancel your paid account subscription at any time, however, unless required by law, no refunds or credits will be provided for any early termination or for any non-use of the Bitly Services. Bitly reserves the right to update, change, modify or terminate your subscription benefits at any time in its sole discretion.

### 2.3 Payment

You will pay Bitly on the payment interval selected. If not otherwise specified, payments will be due immediately. You authorize Bitly to charge you for all applicable fees on a recurring basis using your selected payment method through Bitly's online payments platform. By providing a saved payment method ("Payment Method") in your account, you expressly acknowledge and authorize Bitly (or our third party online payment processor) to charge you on a recurring basis corresponding to the term of your subscription unless you cancel your paid account subscription. You are responsible for any and all fees charged to your Payment Method. You will provide complete and accurate billing and contact information to Bitly. Bitly may make changes to the offered Payment Method from time to time. It is your responsibility to update your payment information if necessary due to such changes. Bitly may suspend, downgrade or



terminate the Services if Fees are past due. Unpaid Fees are subject to a finance charge of one percent (1.5%) per month (18% per annum), or the maximum permitted by law, whichever is lower. In addition, Bitly will be entitled to recover its expenses for collection, including reasonable attorneys' fees. Failure to pay Fees or Renewal Fees when due may lead to termination, cancellation or suspension of Services. **FOR THE AVOIDANCE OF DOUBT, BITLY MAY SUBMIT PERIODIC CHARGES CORRESPONDING TO THE TERM OF YOUR SELECTED SUBSCRIPTION WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU AFFIRMATIVELY CANCEL YOUR SUBSCRIPTION SERVICES OR NOTIFY BITLY THAT YOU WISH TO CHANGE YOUR PAYMENT METHOD INFORMATION.**

## 2.4 Taxes

Fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges (collectively, "Taxes"), and you are responsible for all Taxes resulting from this Agreement or your use of the Bitly Services. Bitly will invoice you for Taxes when required to do so by applicable law, and you agree to provide payment under the terms of the invoice. In the event you are required by law to deduct and withhold any Taxes on amounts payable under this Agreement, any amounts required to be withheld will be promptly deducted and timely remitted by you on behalf of Bitly to the appropriate taxation authority and you agree that you will provide Bitly with copies of all necessary documents (including but not limited to tax receipts received from the applicable tax authority) in order for Bitly to claim and receive a foreign tax credit in an amount corresponding to the amount withheld by you.

## 3. USE OF SERVICES

### 3.1 Use of Bitly Services

Subject to the terms and conditions of this Agreement and payment of all Fees due hereunder, Bitly grants you a non-exclusive, non-transferable, limited right to access and use the Bitly Services in accordance with our Acceptable Use Policy. For the avoidance of any doubt, you agree that you will not access the Bitly Services for competitive purposes or if you are a competitor of Bitly.

### 3.2 Access Credentials



Bitly shall provide you with non-transferable access credentials for the Bitly Services. You will not share access credentials or exceed the user limitations of the service tier you have purchased. You will not (i) misrepresent or mask identities when using the Bitly Services or seeking access credentials; (ii) select or use as a username or custom domain a name subject to any rights of a person or entity or any third party other than you without appropriate authorization; (iii) select or use, as your username or custom domain, a name that is otherwise offensive, vulgar or obscene or otherwise would violate our Acceptable Use Policy; or (iv) exceed any access permitted by Bitly. You will safeguard all access credentials provided by Bitly and shall ensure the confidentiality and security thereof. If you are a corporate entity rather than an individual (A) only your employees and authorized contractors (“Personnel”) may use the Bitly Services; (B) you will require your Personnel to comply with all Laws (as defined below) and the use restrictions (including user seat restrictions) set out in the Agreement; (C) you will not share access credentials or exceed the user limitations of your service tier; and (D) you acknowledge that you will be fully responsible for any acts or omissions of your Personnel, whether authorized or unauthorized. Bitly may update, refresh or change the manner of accessing the Bitly Services at its discretion.

### 3.3 Compliance Monitoring

Bitly may monitor your use of the Bitly Services for compliance with the Agreement, and to ensure compliance with our Acceptable Use Policy. If Bitly observes usage of the Bitly Services that it believes are not in compliance with the Agreement, Bitly may (i) remove or disable any linked, codes, or other Bitly Services that are suspected of violating our Acceptable Use Policy or this Agreement. Bitly reserves the right to suspend your use of the Bitly Services without notice in the event that we believe, in good faith, the security of your Bitly account has been compromised or your Bitly account is being used for an unlawful purpose or any purposes that violates our Acceptable Use policy. Bitly reserves the right to suspend your access to the Services or terminate this Agreement without notice for violation of the Agreement.

## 4. YOUR SERVICES AND CONTENT

### 4.1 Your Service



Bitly shall have no liability for any of your products, content or services (“Your Services”) accessed through or making use of the Bitly Services, or the use thereof by any end user or any of your or your affiliates’ customers, employees, officers, directors, agents, contractors, consultants, affiliates, or other representatives. You will not use the Bitly Services in any manner implying any partnership with, sponsorship by, or endorsement of Your Services by Bitly. You will not suggest or imply that Bitly is the author of or otherwise responsible for the views or content of Your Services. The Bitly Services shall not be used in connection with any Prohibited Content (defined in Section 5 below), or any activities where the use or failure of the Bitly Services could lead to death, personal injury or property or environmental damage or adversely impact or impose liability on Bitly in any manner.

## 4.2 Your Content

You hereby grant to Bitly an irrevocable, perpetual, non-exclusive, sublicensable, transferable, royalty-free, worldwide license, to use, copy, import, display, reproduce, perform, distribute, create derivative works, alter or modify all URLs and other information provided by You to Bitly (“Customer Content”) in connection with the provision, operation and promotion of the Bitly Services and for other business purposes, including of Bitly's group companies.

### 4.2.1

You are solely responsible for the content that you upload through Bitly Service, or transmit to or share with other users (collectively the "Customer Content"). You may not upload, transmit, or share Customer Content using the Bitly Service that you did not create or that you do not otherwise have permission to use. Bitly does not assert any ownership over Customer Content or other intellectual proprietary rights associated with your Customer Content. Bitly’s collection, use and sharing of personal information Bitly receives from you or third parties (including social media networks) is described in Bitly’s Privacy Policy.

### 4.2.2

As stated in our Privacy Policy, where permitted by law, if you register a Bitly Account with an email address on a domain owned by an organization, such as your employer, we may share your email address and information about your Account with our sales team and the business, including our group companies, to explore the business’ interest in



creating or managing an enterprise account, provide information on other services you might be interested in, or for related purposes.

## 5. INTELLECTUAL PROPERTY

### 5.1 Ownership

Except for Your Content and Your Services, you acknowledge and agree that Bitly is the sole and exclusive owner of all right, title and interest in and to the Bitly Services and all related documentation, source code, tools, scripts, processes, techniques, methodologies, inventions, know-how, concepts, formatting, arrangements, visual attributes, ideas, database rights, copyrights, patents, trade secrets, and other intellectual property, and all derivatives, enhancements, modifications and improvements thereof (“Bitly Materials”). Nothing in this Agreement or any other document shall be deemed to transfer ownership of any Bitly Materials. Except for the limited license rights expressly granted herein, no rights to Bitly Materials are granted hereunder and all rights in such Bitly Materials are reserved.

### 5.2 Feedback

If you provide feedback, request features, changes or tools, or otherwise provide comments relating to the Service or provide suggestions or ideas for improving the Service (“Feedback”), such Feedback will be fully assigned to Bitly without any obligation for separate compensation, and Bitly shall own all rights, title and interest to the Feedback and may, in its own discretion, elect to incorporate the Feedback into its Services.

### 5.3 General Restrictions

You and your Personnel will not, and will not permit any third party to: (i) access the Services or export data from the Services to create a service, software, documentation or data for a URL shortening service other than Bitly or create shortened links or a service that is competitive with, substantially similar or confusingly similar to any aspect of the Bitly Services (including to benchmark the Bitly Services against any competing services); (ii) use, modify, display, perform, copy, disclose or create derivative works of the Bitly Services except as expressly permitted herein; (iii) reverse engineer, decompile, disassemble, mimic, screen-scrape, frame or mirror the Bitly Services, or use any other means to



attempt to discover their source code except as expressly permitted herein; (iv) encumber, distribute, sublicense, assign, share, sell, rent, lease, pledge or otherwise transfer the Bitly Services to any third party; (v) transmit harmful, disabling or malicious code or devices, or infringing, defamatory, unlawful, tortious, deceptive, misleading, fraudulent, abusive, indecent or otherwise offensive content, phishing, spam, or content that contains someone's personal information or violates a third party's intellectual property, privacy or publicity rights or any other use or content that violates our [Acceptable Use Policy](#) (collectively "Prohibited Content") through the Bitly Services; (vi) access via automated or unauthorized means, interfere with, disrupt or attempt to monitor, override access or circumvent security measures for, the Bitly Services or related systems, including via robots, spiders and other electronic methods; and (vii) obscure, remove or alter any proprietary rights or other notices on the Bitly Services. Notwithstanding anything to the contrary herein, Bitly may, in its sole discretion, immediately revoke the grant of rights set forth in Section 3 if you breach or threaten to breach the restrictions in this Section or create other security or legal concerns. You agree that, in addition to any other remedies available to Bitly at law or in equity, Bitly will be entitled to seek injunctive relief to prevent the breach or threatened breach of your obligations under this Section, without any requirement to demonstrate irreparable harm or post a bond.

## 5.4 Technical Restrictions

You will not exceed the number and/or frequency of API calls, or other access to or use of Bitly Services in violation of the terms of your tier of Service. If Bitly believes that you have attempted to exceed or circumvent these limitations, Bitly may suspend or block your access to the Bitly Services. Bitly may monitor your use of the Bitly Services, including to ensure your compliance with this Agreement.

## 6. TERM AND TERMINATION

### 6.1 Term

This Agreement shall commence on the date the You accept this Agreement by creating an account or purchasing a paid service tier ("Effective Date") and remain in effect until terminated in accordance with this Section; provided, however, that if you purchased a paid account, the agreement will continue for the duration of the Term selected by You, unless otherwise terminated as permitted herein (the "Initial Term"). If your paid account is set to automatically renew, your





account will thereafter automatically renew for additional terms of the same length as the Initial Term, or to the extent a shorter renewal term is required by law, the maximum renewal term permitted by law (“Renewal Term”), subject to your cancellation prior to the next billing cycle by canceling your subscription in your account in accordance with Section 6.2 below. (“Term” shall include both the Initial Term and any Renewal Term(s)).

## 6.2 Right to Terminate

During the Term, You may terminate this Agreement at any time as set forth in Section 2 above, however, You shall not receive a refund or reimbursement of any fees paid for the then-current billing cycle or any prior billing cycles. Upon expiration or termination of this Agreement, all applicable rights and access granted to You hereunder will automatically terminate and you and your Personnel will cease any further use of the Bitly Services and return, or, if directed by Bitly, destroy all Confidential Information (defined below) of Bitly. Any Section of this Agreement which by its nature would survive such expiration or termination shall survive.

## 6.3 Termination Rights for Personal Use Customers in Germany (Consumers)

Please refer to section 14.

# 7. CONFIDENTIALITY

## Confidential Information.

Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Confidential Information” of the Disclosing Party). Bitly’s Confidential Information includes non-public information regarding features, functionality and performance of the Service and all pages and materials on the Bitly website that are accessible only after logging in. Your Confidential Information is limited to non-public data provided by you to Bitly in writing to enable the provision of the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the



foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in its possession or known by it prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law. The parties hereby agree that breach of this Section 7 may cause irreparable harm to the Disclosing Party, and that the Disclosing Party will be entitled, in addition to any other remedies available to it at law or in equity, to seek injunctive relief to prevent such breach (or threatened breach) without any requirement to post a bond.

## **8. DATA PROTECTION**

### **8.1 Data Privacy.**

You expressly acknowledge and agree that it is your responsibility to comply with any and all privacy and data protection laws (including but not limited to the EU General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), California Privacy Rights Act (CPRA), Colorado Privacy Act (CoPA), and any other privacy laws that may come into effect from time to time, regulations and terms applicable to any personal data provided by you for the purposes of the Service regardless of the country/state in which you are based. The above mentioned includes, but is not limited to, complying with the terms and restrictions related to your use of customer/contact databases and complying with any applicable privacy policies and cookie policies.

### **8.2 Data Processing.**

In the event that Bitly processes Personal Data as a processor on your behalf and applicable law requires parties to put in place a data processing agreement (DPA) to govern such data processing, the DPA attached to these Terms of Service as Appendix A shall apply. In this case, the DPA set forth in Appendix A shall be incorporated into this Agreement and form an integral part of this Agreement.

### **8.3 Privacy.**



Bitly may collect and process Personal Data regarding you and/or your personnel and/or other representatives in connection with the Service. Such processing is described in Bitly's Privacy Policy. Bitly may share such information with its partners, vendors and service providers, including without limitation in order to provide research, analytics, support, security, fraud prevention, spam prevention, advertising, and/or email marketing, to complete transactions or to ensure compliance with this Agreement. You consent to such collection, use, processing and sharing of Your Information in accordance with the terms of our privacy policy and applicable laws.

## 9. REPRESENTATIONS AND WARRANTIES

### 9.1 Content Warranties.

You represent and warrant that Your Content and all information you provide in connection with the Services, and the receipt, collection, use and provision thereof: (i) shall not infringe or violate any third party rights, including without limitation any intellectual property, privacy and publicity rights; (ii) is in compliance with all applicable laws, rules and regulations and self-regulatory guidelines and requirements, including without limitation laws on privacy and data security, unsolicited messaging, unfair or deceptive practices, or United States trade or export restrictions ("Laws"); (iii) has all necessary consents, approvals or other authorizations or permissions for use, and is in compliance with applicable privacy policies and third-party terms and conditions; and (v) does NOT contain any personally identifiable information or persistent identifiers from individuals under the age of 16.

### 9.2 Further Warranties.

You further represent and warrant that (i) you have implemented or contractually required industry-standard security measures to help protect the security and integrity of, and prevent, unauthorized access to the Bitly Services, Your Content and Your Services; (ii) you will not do anything that will make the Bitly Services subject to any open source or similar license which creates an obligation to grant any rights in the Bitly Services; (iii) you will not disrupt, disable, erase, alter, harm, damage, interfere with or otherwise impair in any manner the Bitly Services; (iv) in the event of any security breach or unauthorized access to any Bitly Services, Your Content and/or Your Services, you will immediately investigate such breach and notify Bitly in writing, and, unless otherwise notified by Bitly, take all corrective action necessary to remedy such breach and/or comply with applicable Law and the requirements of Bitly, all at your cost; and



(v) you, your use of the Bitly Services, Your Content and Your Services will comply with all Laws and not violate or infringe upon any third party intellectual property, privacy or publicity rights.

### 9.3 DISCLAIMERS.

BITLY SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. BITLY DOES NOT WARRANT THAT: (I) THE BITLY SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) SHORTENED URLS OR THE BITLY SERVICES WILL BE ACCURATE, ERROR-FREE OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) THE BITLY SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (IV) THE RESULTS OF USING THE BITLY SERVICES WILL MEET YOUR REQUIREMENTS OR ANY OF YOUR OR YOUR USERS’, PERSONNEL’S OR CUSTOMERS’ BUSINESS NEEDS; OR (V) THE BITLY SERVICES WILL BE UNINTERRUPTED OR THAT ANY INTERRUPTION WILL BE CORRECTED IN A TIMELY MANNER. YOUR USE OF THE BITLY SERVICES IS SOLELY AT YOUR OWN RISK. FURTHER, BITLY MAKES NO REPRESENTATIONS OR WARRANTIES AND SHALL ASSUME NO LIABILITY AMOUNTS OR INDEMNITY OBLIGATIONS WITH RESPECT TO ENSURING THAT YOUR USE OF THE BITLY SERVICES COMPLY WITH ANY LAWS OR REGULATIONS OUTSIDE THE UNITED STATES AND YOU SHALL BE SOLELY LIABLE FOR SUCH COMPLIANCE. BITLY SHALL BEAR NO RESPONSIBILITY FOR THIRD PARTY PRODUCTS OR SERVICES (E.G., OPEN SOURCE SOFTWARE, SOCIAL MEDIA PLATFORMS, THIRD PARTY MATERIALS OR FOR HOST OR APP STORE PROVIDERS).

## 10. INDEMNIFICATION

### Indemnity.

You will defend, indemnify and hold harmless Bitly, its parents, subsidiaries, affiliates and their employees, officers, directors, representatives, contractors, customers, business partners, successors and assigns (“Bitly Indemnitees”) from and against any third party claims and actions, and resulting damages, liabilities and costs (including reasonable attorneys’ fees and expenses) incurred by Bitly Indemnitees arising out of or directly or indirectly related to (a) Your Content, Your Services; (b) Your breach of Section 5.3 or any violation of Laws; and/or (c) any allegation of intellectual



property, privacy or publicity infringement concerning Your Content, Your Services, or the combination of the Bitly Services with any product, service or other material not provided by Bitly. Bitly shall promptly notify you of any claim for which it seeks indemnification; provided, however, that any delay in providing notification shall not vitiate your indemnification obligations unless you are materially prejudiced thereby. You will have sole control over the defense of any claim under this Section, except that Bitly may approve any counsel used by you, and that Bitly may participate in the defense, at its own cost and expense. All settlements of indemnification claims require the prior consent of Bitly.

## 11. LIMITATION OF LIABILITY

### 11.1 LIABILITY LIMITATION.

IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE BITLY SERVICES OR OTHERWISE HEREUNDER FOR ANY CLAIM RELATED TO: (I) ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (HOWEVER ARISING); (II) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN); (III) ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE BITLY SERVICES; (IV) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY OF YOUR CONTENT AND OTHER DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE BITLY SERVICES; (V) YOUR FAILURE TO PROVIDE BITLY WITH ACCURATE ACCOUNT OR OTHER INFORMATION; (VI) ANY LIABILITY RESULTING FROM YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL; OR (VII) YOUR FAILURE TO ACCESS THE BITLY SERVICES DUE TO MALFUNCTION(S) IN EQUIPMENT, INFRASTRUCTURE, SYSTEM, OR THE NETWORK USED BY YOU.

### 11.2

WITH THE EXCEPTION OF YOUR OBLIGATIONS UNDER SECTION 10, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY MAY NOT IN ANY CALENDAR YEAR STARTING FROM THE EFFECTIVE DATE OF ANY ORDER FORM OR FROM FIRST USE OF THE SERVICE, WHICHEVER IS



EARLIER, EXCEED AN AMOUNT EQUAL TO THE AGGREGATE AMOUNT OF FEES RECEIVED BY BITLY FOR THE SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

## **12. GOVERNING LAW, VENUE & DISPUTES**

### **12.1 For US and non-EU Customers:**

#### **12.1.1**

This Agreement and the transactions contemplated hereby will be governed by and construed under the Federal Arbitration Act and the laws of the State of New York without regard to the conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. To the extent any dispute between us is not subject to arbitration as set forth herein, the parties agree to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan in the City of New York for resolution of such dispute.

#### **12.1.2 Limitation for Bringing Claims.**

To the fullest extent permitted by law, you agree that any claim or cause of action you may have arising out of, related to or connected with the use of the Bitly Services or this Agreement must be filed within one (1) year after such claim of action arose or be forever barred.

#### **12.1.3 Arbitration of Disputes; Class Action Waiver.**

All disputes, claims or controversies arising out of or in connection with this Agreement or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "Disputes") shall be finally resolved in arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the ICC Rules. In an arbitration, an arbitrator decides any Disputes, and neither of us will have the right to bring a lawsuit in court or to have a judge or jury decide any Dispute. Each of us further agrees that any dispute over the scope of this arbitration provision, and any dispute as to whether a claim is subject to arbitration, shall be submitted to the arbitrator for decision.

If an in-person arbitration hearing is required, the venue for such hearing shall be (i) in the Borough of Manhattan in the



City of New York, or, (ii) if you are an individual consumer, then at your option either in the Borough of Manhattan in the City of New York, or in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you reside at the time the dispute is submitted to arbitration.

The foregoing notwithstanding, if you are an individual consumer then you and we both retain the right to seek relief in small claims court for any Dispute falling within the scope of such court’s jurisdiction.

In addition, we each agree that any Disputes will be adjudicated on an individual basis, and **of us waives the right to participate in a class action, collective or other joint or consolidated action with respect to any Disputes.** This arbitration and class action waiver provision shall survive termination of this Agreement.

## 12.2 For EU Customers:

### 12.2.1

This Agreement and the transactions contemplated hereby will be governed by and construed under the laws of Germany without regard to its conflict of laws provisions and to the exclusion of CISG.

### 12.2.2

Except to the extent set out in the clause below, you and we agree to submit to the exclusive jurisdiction of the German courts in respect of any dispute or claim that arises out of or in connection with this Agreement. In such cases, you and we agree to submit to the personal jurisdiction of the courts of Berlin, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to the venue of such courts.

### 12.2.3 Mandatory Arbitration of Disputes.

We each agree that any Disputes will be resolved solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding. All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the ICC said Rules. The venue for such proceedings shall be in Berlin, Germany.



#### 12.2.4

The European Commission provides for an online dispute resolution platform, which you can access at <https://ec.europa.eu/consumers/odr/>. We are not obliged and will not participate in an alternative dispute settlement procedure before a consumer dispute resolution entity.

### 13. MISCELLANEOUS

#### 13.1 Relationship of the Parties.

The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

#### 13.2 Entire Agreement and Severability.

This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between the parties with respect thereto, including any non-disclosure agreements signed by the parties, and may be modified only by an express written agreement between the parties. Without limiting the foregoing, no additional or conflicting terms set out on any purchase order, invoice or similar document are binding.

#### 13.3 Force Majeure.

Except for any Fees due hereunder, neither party shall not be liable for any delay in performing or failure to perform its obligations hereunder where such delay or failure results from any cause beyond its reasonable control, including, without limitation, cyber-attacks, mechanical, electronic or communications failures, acts of God, terrorism, war, natural disasters, failure of any telecommunications or transportation or of any third party provider or supplier (e.g., host or app store providers) or labor disputes.





### 13.4 Assignment.

Except to an affiliate or in the event of a merger, acquisition or other change of control, neither party may assign this Agreement without the prior written permission of the other party, and any attempt to do so is void. This Agreement shall be binding on any permitted successors and assigns.

### 13.5 Notices.

Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when sent, if transmitted by email; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

### 13.6 Headings; Interpretation.

The section and paragraph headings in this Agreement are for convenience only and shall not affect their interpretation. Any use of “including” “for example” or “such as” in this Agreement shall be read as being followed by “without limitation.”

### 13.7 Export.

The parties shall comply with all applicable export and import control laws and regulations, and, in particular, shall not export or re-export the Bitly Services without all required United States and foreign government licenses.

### 13.8 US Government Use.

The Bitly Services are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Any access to or use of the Bitly Services by any government entity is prohibited, except as expressly permitted by the terms of this Agreement. Additionally, any use by U.S. government entities must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. If you use the Bitly Services in its official capacity as an employee or representative of a



U.S state or local government entity and are legally unable to accept the indemnity, jurisdiction, venue or other clauses herein, then those clauses do not apply to such entity, but only to the extent as required by applicable law.

### **13.9 General.**

The failure of Bitly to enforce any right or provision of this Agreement will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Bitly. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

### **13.10 Publicity.**

You grant Bitly the right to use your name, trademarks and/or logos on its website, customer lists and/or in marketing, advertising or publicity materials to identify you as a customer that uses the Bitly Services.

## **14. German Personal Use Customers**

### **Widerrufsbelehrung**

Diese Widerrufsbelehrung gilt nur für Verbraucher (ausschließlich private Nutzung der Bitly Produkte) und bei Vertragsschluss mit der Bitly Europe GmbH.

### **Widerrufsrecht**

Sie haben das Recht, binnen vierzehn Tagen ohne Angaben von Gründen diesen Vertrag zu widerrufen. Die Widerrufsfrist beträgt vierzehn Tage ab dem Tag des Vertragsschlusses.



Sie können das Muster-Widerrufsformular oder eine andere eindeutige Erklärung auch auf unserer Website <https://www.qr-code-generator.com/> elektronisch ausfüllen und übermitteln. Machen Sie von dieser Möglichkeit Gebrauch, so werden wir Ihnen unverzüglich (z. B. per E-Mail) eine Bestätigung über den Eingang eines solchen Widerrufs übermitteln.

Zur Wahrung der Widerrufsfrist reicht es aus, dass Sie die Mitteilung über die Ausübung des Widerrufsrechts vor Ablauf der Widerrufsfrist absenden.

## Folgen des Widerrufs

Wenn Sie diesen Vertrag widerrufen, haben wir Ihnen alle Zahlungen, die wir von Ihnen erhalten haben, einschließlich der Lieferkosten (mit Ausnahme der zusätzlichen Kosten, die sich daraus ergeben, dass Sie eine andere Art der Lieferung als die von uns angebotene, günstigste Standardlieferung gewählt haben) einschließlich der Lieferkosten (mit Ausnahme der zusätzlichen Kosten, die sich daraus ergeben, dass Sie eine andere Art der Lieferung als die von uns angebotene, günstige Standardlieferung gewählt haben), unverzüglich und spätestens binnen vierzehn Tagen ab dem Tag zurückzuzahlen, an dem die Mitteilung über Ihren Widerruf dieses Vertrages bei uns eingegangen ist. Für diese Rückzahlung verwenden wir dasselbe Zahlungsmittel, das Sie bei der ursprünglichen Transaktion eingesetzt haben, es sei denn, mit Ihnen wurde ausdrücklich etwas anderes vereinbart; in keinem Fall werden Ihnen wegen dieser Rückzahlung Entgelte berechnet.

## Muster-Widerrufsformular

Wenn Sie den Vertrag widerrufen wollen, dann füllen Sie bitte dieses Formular aus und senden Sie es zurück.

An

Bitly Europe GmbH

Am Lenkwerk 13

33609 Bielefeld

E-Mail

Hiermit widerrufe(n) ich/wir (\*) den von mir/uns (\*) abgeschlossenen Vertrag über den Kauf der folgenden Waren (\*)/



die Erbringung der folgenden Dienstleistung (\*) Bestellt am (\*) /erhalten am (\*)

Name des/der Verbraucher(s)

Anschrift des/der Verbraucher(s)

Unterschrift des/der Verbraucher(s) (nur bei Mitteilung auf Papier)

Datum

(\*) Unzutreffendes streichen

## Hinweis zum vorzeitigen Erlöschen des Widerrufs

Wir weisen darauf hin, dass bei Verträgen über die Lieferung von nicht auf einem körperlichen Datenträger befindlichen Daten, die in digitaler Form hergestellt und bereitgestellt werden (digitale Inhalte) Ihr Widerrufsrecht vorzeitig erlischt, wenn Sie ausdrücklich zugestimmt haben, dass Bitly Europe mit der Ausführung des Vertrags vor Ablauf der Widerrufsfrist beginnt, und Ihre Kenntnis davon bestätigt haben, dass Sie durch Ihre Zustimmung mit Beginn der Ausführung des Vertrags Ihr Widerrufsrecht verlieren.

## English Version for Convenience Only.

**Cancellation Right for Personal Users of our Service in Germany.** This cancellation policy is only applicable to you if you are a consumer (personal/non-business use of the Bitly Service only) and are contracting with Bitly Europe GmbH. You have the right to cancel this contract within fourteen days for any reason. The withdrawal period is fourteen days from the date of the conclusion of the contract. To exercise your right of withdrawal, you must inform us - Bitly Europe GmbH, Am Lenkwerk 13, 33609 Bielefeld, [terms@bitly.com](mailto:terms@bitly.com) - of your decision to withdraw from this contract by means of a clear statement (e.g. a letter sent by post or e-mail). You can also fill out and submit the model withdrawal form or another clear declaration electronically on our website <https://www.qr-code-generator.com>. If you use this option, we will immediately send you (e.g. by email) a confirmation of receipt of such revocation. To comply with the revocation period, it is sufficient that you send the notice of exercise of the right of revocation before the expiry of the revocation period.

## Consequences of the revocation.



If you revoke this contract, we shall reimburse you all pre-payments we have received from you for services not yet received by you, without undue delay and no later than within fourteen days from the day on which we received the notification of your revocation of this contract. For this repayment, we will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; in no case will you be charged for this repayment.

**- Ende der Widerrufsbelehrung -**

## **APPENDIX A to BITLY TERMS OF SERVICE**

### **DATA PROCESSING AGREEMENT**

This Data Processing Agreement (“**DPA**”) forms part of the Agreement between Bitly, Inc. or Bitly Affiliate relevant as identified in the Agreement or any applicable Order Form (“**Bitly**”) and Customer (“Customer”), for the provision of products, a platform and services by Bitly (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 Customer Personal Information (as such terms are defined herein). References in this DPA to the Agreement are to the Agreement as amended by, and including, this DPA.

In the course of providing the Services to Client pursuant to the Agreement, Bitly may Process Client Personal Information on behalf of Client and the parties agree to comply with the following provisions with respect to such Processing of Client Personal Information:

### **1. DEFINITIONS**

Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.



**“Affiliate”** means 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 ownership (directly or indirectly) of more than 50% of the voting rights in the applicable entity;

**“CCPA”** means the California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq.

“Customer **Group Member**” means Client or any Client Affiliate;

“Customer **Personal Information**” means any Personal Information that is provided by Customer to Bitly or any Subprocessor and Processed by Bitly or a Subprocessor on behalf of Customer pursuant to the Agreement;

**“Data Protection Laws”** means as applicable (i) the GDPR; (ii) the UK GDPR; (iii) the CCPA; and (iv) any relevant law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding instrument which implements any of the above or which otherwise relates to data protection, privacy or the use of Personal Information, in each case as applicable and in force from time to time, and as amended, consolidated, re-enacted or replaced from time to time;

**“GDPR”** means EU General Data Protection Regulation 2016/679;

**“Personal Information”** means information that identifies, relates to, describes, is capable of being associated with, or can reasonably be linked, directly or indirectly, with a particular individual or household or is otherwise defined as “personal information” or “personal data” by applicable Data Protection Laws.

**“Subprocessor”** means any third party appointed by Bitly to Process Customer Personal Information on behalf of Customer in connection with the Agreement.

**“Third Country”** means (i) in relation to Personal Information transfers subject to the GDPR, any country or territory outside of the scope of the data protection laws of the EEA, excluding countries or territories approved as providing adequate protection for Personal Information by the European Commission from time to time; and (ii) in relation to



Personal Information transfers subject to the UK GDPR, any country or territory outside of the scope of the data protection laws of the UK, excluding countries or territories approved as providing adequate protection for Personal Information by the relevant competent authority of the UK from time to time.

**“UK”** means the United Kingdom of Great Britain and Northern Ireland.

**“UK GDPR”** means the UK Data Protection Act 2018 (“DPA 2018”), the UK General Data Protection Regulation, as defined by the DPA 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.

The terms, **“Aggregated”**, **“Business”**, **“Business Purpose”**, **“Commercial Purpose”**, **“Controller”**, **“Data Subject”**, **“Deidentified”**, **“Member State”**, **“Processing”**, **“Sale”**, **“Service Provider”** and **“Supervisory Authority”** shall have the same meaning as in the GDPR or the CCPA, as applicable, and their cognate terms shall be construed accordingly.

## 2. PROCESSING OF PERSONAL INFORMATION

### 2.1 Roles of the Parties.

The parties acknowledge and agree that, with regard to the Processing of Customer Personal Information pursuant to this DPA, Information pursuant to this DPA,

#### 2.1.1

that is subject to the GDPR or the UK GDPR, Customer is the Controller, Bitly is the Processor, and that Bitly will engage Subprocessors pursuant to the requirements set forth in Section 5 below.

#### 2.1.2



that is subject to the GDPR or the UK GDPR, Customer is a Processor, Bitly is a Subprocessor, and that Bitly will engage Subprocessors pursuant to the requirements set forth in Section 5 below.

### 2.1.3

that comprises “Personal Information” as defined by applicable laws where Customer is a Business, Bitly is a Service Provider and shall not collect, retain, use or disclose such Customer Personal Information except as necessary to perform the Business Purpose(s) or as otherwise permitted under applicable laws, including retaining, using, or disclosing any such Customer Personal Information for a Commercial Purpose other than providing the Services to Customer and only this section 2.1 and sections 2.2 and 10 of this DPA shall apply to the Parties.

## 2.2 Customer’s Processing of Personal Information.

Customer shall not provide Personal Information to Bitly except as is necessary for Bitly’s performance of Services and unless Customer shall have given the necessary notices and obtained the necessary consents, in each case, from the applicable Data Subjects whose Personal Information is Processed by Bitly and fulfilled all other requirements under Data Protection Law in relation to the collection, disclosure and transfer to Bitly and use by Bitly of all Personal Information for the Permitted Purposes (defined below) and as otherwise envisaged by this DPA. Customer shall, in its use of the Services, Process Personal Information in accordance with the requirements of Data Protection Laws and shall immediately notify Bitly if Customer is in breach of any Data Protection Law. For the avoidance of doubt, Customer’s instructions for the Processing of Customer Personal Information shall comply with Data Protection Laws. As between the parties, Customer shall have sole responsibility for the accuracy, quality, and legality of Customer Personal Information and the means by which Customer acquired Customer Personal Information.

## 2.3 Bitly’s Processing of Personal Information.

Bitly shall treat Customer Personal Information as confidential and shall only Process Customer Personal Information as necessary to perform its obligations on behalf of and in accordance with Customer’s documented instructions for the following permitted purposes (the “Permitted Purposes”) unless required to Process such Customer Personal Information by applicable law to which Bitly is subject (in such a case, Bitly shall inform Customer of that legal





requirement before Processing, unless that law prohibits such information on important grounds of public interest): (i) in accordance with the Agreement and applicable order or scope of work (ii) if initiated by Data Subjects in their use of the Services; and/or (iii) 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 and Data Protection Laws. In addition, Bitly shall not: (a) Sell Customer Personal Information; (b) retain, use or disclose Customer Personal Information for any purpose other than for the Permitted Purposes; or (c) retain, use, or disclose the information outside of the direct business relationship between Bitly and Customer. Bitly hereby certifies that it understands the foregoing restrictions and that it shall comply with such restrictions. In no event shall Bitly Process Customer Personal Information for its own purposes or those of any third party; provided however, Bitly may utilize Customer Personal Information in Aggregated and/or Deidentified form to the extent permitted under Data Protection Laws.

## 2.4 Details of the Processing.

The subject-matter of Processing of Customer Personal Information by Bitly 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 Customer Personal Information and categories of Data Subjects Processed under this DPA are further specified in Schedule 1 attached hereto.

## 2.5 Instructions for Processing.

Each Customer Group Member instructs Bitly and each Bitly Affiliate (and authorizes Bitly and each Bitly Affiliate to instruct each Subprocessor) to: Process Customer Personal Information; and in particular, transfer Customer Personal Information to any country or territory, as necessary for the provision of the Services and consistent with the Agreement; and warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give the instructions set out in this section. Bitly shall notify Customer without undue delay if Bitly is of the opinion that a Customer instruction is not in compliance with Data Protection Laws, this DPA or the Agreement.

## 3. RIGHTS OF DATA SUBJECTS



**Data Subject Request.** Bitly shall, to the extent legally permitted, notify Customer without undue delay if Bitly receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of or objection to Processing and/or the Sale of information, erasure ("right to be forgotten"), data portability or any other request with respect to Personal Information of the applicable Data Subject as set forth under applicable Data Protection Laws with respect to Bitly's Processing of Personal Information under this DPA ("Data Subject Request"). Taking into account the nature of the Processing and the Customer Personal Information, Bitly shall assist Customer by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws.

## 4. PERSONNEL

### 4.1 Confidentiality.

Bitly shall ensure that its personnel engaged in the Processing of Customer Personal Information are informed of the confidential nature of the Customer Personal Information and bound by confidentiality obligations, and have received appropriate training regarding the Processing of Personal Information.

### 4.2 Limitation of Access.

Bitly shall ensure that Bitly's access to Customer Personal Information is limited to those personnel performing Services in accordance with the Agreement.

## 5. SUBPROCESSORS

### 5.1 Appointment of Subprocessors.

With respect to the Processing of Customer Personal Information, each Customer Group Member authorizes Bitly and each Bitly Affiliate to appoint (and permit each Subprocessor appointed in accordance with this Section 5.1 to appoint) Subprocessors in accordance with this section 5. Bitly and each Bitly Affiliate may continue to use those Subprocessors



already engaged by Bitly or any Bitly Affiliate as of the date of this DPA, subject to Bitly and each Bitly Affiliate in each case, as soon as practicable, meeting the obligations set out in this section. Bitly or a Bitly Affiliate has entered or will enter into a written agreement with each Subprocessor containing data protection obligations on the Subprocessor which are no less onerous on the relevant Subprocessor than the obligations on Bitly under this Agreement with respect to the protection of Customer Personal Information.

## **5.2 Notification of New Subprocessors.**

Bitly shall give Customer written notice of the appointment of any new Subprocessor, including details of the Processing to be undertaken by the Subprocessor at least 30 days prior to any processing of Customer Personal Information. If, within five (5) business days of receipt of that notice, Customer (acting reasonably and in good faith) notifies Bitly in writing of any objections to the appointment, Bitly shall use commercially reasonable effort to cease disclosing any Customer Personal Information to the announced Subprocessor.

## **6. SECURITY AND AUDIT**

### **6.1 Controls for the Protection of Customer Data.**

Bitly shall maintain appropriate technical and organizational measures designed to protect the security (including against unauthorized or unlawful Processing of, and against accidental or unlawful destruction, loss or alteration, unauthorized disclosure of, or access to, Customer Personal Information), confidentiality and integrity of Customer Personal Information; and Bitly shall monitor compliance with these measures in accordance with its internal information security program as set out in Bitly's security documentation which is available upon written request. Customer agrees that the security measures set forth by Bitly provide an adequate level of protection for the Customer Personal Data processed under this DPA. If Customer deems that the security measures are insufficient to provide adequate protection, Customer shall inform Bitly in writing and the parties agree to work together to resolve such matter(s).

### **6.2 Audit and Reports.**



Upon Customer's written request Bitly shall make available to Customer all reasonably required information, certificates, documents and reports to demonstrate Bitly's and Bitly Affiliate's compliance with this DPA. Any information Bitly and/or Bitly Affiliates makes available to Customer, Customer's affiliates or any of Customer's representatives shall be subject to the confidentiality obligations set forth in the Agreement.

## 7. CUSTOMER DATA INCIDENT MANAGEMENT AND NOTIFICATION

Bitly maintains security incident management policies and procedures and shall notify Customer without undue delay and in line with the timelines required by applicable Data Protection Laws after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Personal Information that is transmitted, stored or otherwise Processed by Bitly or its Subprocessors which results in any actual loss or unauthorized use of Customer Personal Information (a **"Data Security Incident"**). Bitly shall make reasonable efforts to identify the cause of such Data Security Incident and take those steps as Bitly deems reasonably necessary in order to remediate the cause of any such Data Security Incident to the extent the remediation is within Bitly's reasonable control. Bitly shall have no liability for costs arising from a Data Security Incident unless caused by Bitly's violation of Data Protection Laws for which Bitly is legally responsible. In the event of a Data Security Incident, Customer shall be responsible for notifying Data Subjects and/or Supervisory Authorities. Before any such notification is made, Customer shall consult with and provide Bitly an opportunity to comment on any notification made in connection with a Customer Data Incident. Upon Customer's written request and if required to deal or comply with any assessment, enquiry, notice or investigation by the Supervisory Authority Bitly will provide commercially reasonable assistance to Customer at Customer's expense.

## 8. RETURN AND DELETION OF CUSTOMER DATA

Bitly shall, on the written request of Customer, return all Customer Personal Information to Customer and/or at Customer's request delete the same from its systems, other than any back-up copies which Bitly or its Affiliates are required to retain for compliance with applicable laws or regulatory requirements provided that such copies are kept confidential and secure in accordance with this Agreement.



## 9. TRANSFER MECHANISMS FOR DATA TRANSFERS

Customer authorizes Bitly, its Affiliates and their subprocessors to make international transfers of Customer Personal Data in accordance with this DPA and applicable data protection law.

If the Processing of Customer Personal Information includes transfers from the EEA to Third Countries or any international transfers subject to the GDPR to Third Countries and if required by Data Protection Laws, Bitly shall (i) comply with the data importer's obligations set out in the EU Standard Contractual Clauses at Schedule 2 where Customer is acting as a Controller and Bitly is acting as a Processor which are hereby incorporated into and form part of this DPA; or (ii) comply with the data importer's obligations set out in the EU Standard Contractual Clauses at Schedule 3 where Customer is acting as a Processor and Bitly is acting as a Subprocessor which are hereby incorporated into and form part of this DPA; or (ii) comply with any of the other mechanisms provided for under Data Protection Laws for transferring Client Personal Information to such Third Countries.

If the Processing of Customer Personal Information includes transfers from the UK to Third Countries or any international transfers subject to the GDPR to UK Third Countries and if required by Data Protection Laws, Bitly shall (i) comply with the data importer's obligations set out in the international data transfer addendum to the EU/EEA standard contractual clauses (version B.1.0) issued by the UK Information Commissioner as set forth in **Schedule 4** which is hereby incorporated into and forms part of this DPA; or (ii) comply with any of the other mechanisms provided for under Data Protection Laws for transferring Client Personal Information to such Third Countries.

## 10. TERMINATION

Termination of this DPA shall be governed by the Agreement.

## 11. GOVERNING LAW



Without prejudice to clauses 17 (Governing Law) and 18 (Choice of forum and jurisdiction) of the Standard Contractual Clauses, the parties to this DPA hereby submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims howsoever arising under this DPA, including disputes regarding its existence, validity or termination or the consequences of its nullity; and this DPA and is governed by the laws of the country or territory stipulated for this purpose in the Agreement.

## SCHEDULE 1

### DETAILS OF PROCESSING OF CLIENT PERSONAL INFORMATION

This Schedule 1 includes certain details of the Processing of Client Personal Information as required by Article 28(3) GDPR and the UK GDPR.

Subject matter and duration of the Processing of Client Personal Information

The subject matter and duration of the Processing of the Customer Personal Information are set out in the Agreement and this DPA.

The nature and purpose of the Processing of Client Personal Information

Bitly will process personal information as necessary to perform the Services pursuant to the Agreement and this DPA.

The types of Client Personal Information to be Processed

Customer may submit personal information to the Services, the extent of which is typically determined and controlled by Customer in its sole discretion, and which may include, but is not limited to the following types of personal data:

- First and last name
- Email



- Title
- Contact information (company, phone, fax number, physical business address)
- IP address
- Unique identifier

The categories of Data Subject to whom the Client Personal Information relates

- Persons whose Personal Information are provided by Customer to Bitly or its Affiliates.
- End users who interact with a link or QR code.

The obligations and rights of Client and Client Affiliates

The obligations and rights of Client and Client Affiliates are set out in the Agreement and this DPA.

## **SCHEDULE 2**

### **STANDARD CONTRACTUAL CLAUSES MODULE TWO (CONTROLLER TO PROCESSOR)**

## **SECTION I**

### **Clause 1**

#### **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 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.

## Clause 2

### 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.

## Clause 3





## 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 7;
  - (ii) Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
  - (iii) Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
  - (iv) Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clause 15.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

## Clause 4

### 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.



## Clause 5

### Hierarchy

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.

## Clause 6

### Description of the transfer(s)

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.

## Clause 7

### Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

## SECTION II – OBLIGATIONS OF THE PARTIES



## Clause 8

### 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 organizational measures, to satisfy its obligations under these Clauses.

#### 8.1 Instructions

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

#### 8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

#### 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

#### 8.4 Accuracy



If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

## 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. 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 return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

## 8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organizational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organizational measures specified in Annex II. The data



importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

- (b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

## 8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offenses (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.



## 8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (a) the onward transfer is to a country benefiting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (b) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (c) the onward transfer is necessary for the establishment, exercise or defense of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (d) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

## 8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there



are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.

- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

## Clause 9

### Use of sub-processors

- (a) **GENERAL WRITTEN AUTHORISATION** The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least 30 days in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.



- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

## Clause 10

### Data subject rights

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

## Clause 11

### 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.





- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
  - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
  - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

## Clause 12

### 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) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) 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 and, where the data



exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.

- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- (e) 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.
- (f) The Parties agree that if one Party is held liable under paragraph (e), 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.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

## Clause 13

### Supervision

- (a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of



one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

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

### **Clause 14**

#### **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 16(d) and (e) shall apply.

## Clause 15

### Obligations of the data importer in case of access by public authorities

#### 15.1 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 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

## 15.2 Review of legality and data minimisation

- (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 14(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

### Clause 16

#### 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 14(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 that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. 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.

## Clause 17

### Governing law

These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of Germany.

## Clause 18

### Choice of forum and jurisdiction

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Germany.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

## SCHEDULE 3

### STANDARD CONTRACTUAL CLAUSES MODULE THREE (PROCESSOR TO PROCESSOR)

## SECTION I

### Clause 1





## 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)[1] 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”)
  - (iii) 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.

## Clause 2

### 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.

## Clause 3

### 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 7;
  - (ii) Clause 8 - Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
  - (iii) Clause 9 - Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
  - (iv) Clause 12 - Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clause 15.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clause 18 - Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

## Clause 4

### 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.

## Clause 5

### Hierarchy

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.

## Clause 6

### Description of the transfer(s)

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.

## Clause 7

### Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.



- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

## SECTION II – OBLIGATIONS OF THE PARTIES

### Clause 8

#### 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.

#### 8.1 Instructions

- (a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.
- (b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.
- (c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.
- (d) The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter[2].

#### 8.2 Purpose limitation



The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B., unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

### 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

### 8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

### 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. 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 return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).



## 8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (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, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information



then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

## 8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter "sensitive data"), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

## 8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union[3] (in the same country as the data importer or in another third country, hereinafter "onward transfer") if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (a) the onward transfer is to a country benefiting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (b) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;
- (c) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or



- (d) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

## 8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.
- (c) The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.
- (d) The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.
- (e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.
- (f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (g) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

## Clause 9





## Use of sub-processors

- (a) **GENERAL WRITTEN AUTHORISATION** The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least 30 days in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects.[4] The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent - the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

## Clause 10



## Data subject rights

- (a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.
- (b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

## Clause 11

### 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.
- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
  - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
  - (ii) refer the dispute to the competent courts within the meaning of Clause 18.



- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

## Clause 12

### 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) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) 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 and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- (e) 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.



- (f) The Parties agree that if one Party is held liable under paragraph (e), 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.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

## Clause 13

### Supervision

- (a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.



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

### Clause 14

#### 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[5];
  - (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). The data exporter shall forward the notification to the controller.
- (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, if appropriate in consultation with the controller. 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 controller or 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 16(d) and (e) shall apply.

## Clause 15

### Obligations of the data importer in case of access by public authorities

#### 15.1 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.

The data exporter shall forward the notification to the controller.

- (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.). The data exporter shall forward the information to the controller.
- (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 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

## 15.2 Review of legality and data minimisation



- (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 14(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. The data exporter shall make the assessment available to the controller.
- (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

### Clause 16

#### 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 14(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 and the controller 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 that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. 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.

## Clause 17

### Governing law



These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of Germany.

## Clause 18

### Choice of forum and jurisdiction

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Germany..
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

## APPENDIX TO SCHEDULE 2 and 3 (SCCS MODULE 2 and Module 3)

### ANNEX I

#### A. LIST OF PARTIES

Data exporter(s):

Data exporter shall be Customer as defined in the Agreement or as set out in the applicable Order Form.

Activities relevant to the data transferred under these Clauses:

The Data Exporter controls personal data, processed by the Data Importer in its role as the data processor as necessary to provide the services described in the agreement between the Data Exporter and the Data Importer.

Role: Controller



Data importer(s):

Name: Bitly, Inc.

Address: DPT 5006, 601 W. 26th St., Suite 357 (3rd Floor), New York, NY 10001-1101

Contact person's name, position and contact details: Chief Technology Officer, security@bitly.com

Activities relevant to the data transferred under these Clauses:

Data Importer acts as a processor for Data Exporter as necessary to provide the services described in the agreement between the Data Exporter and the Data Importer.

Role: Processor

## B. DESCRIPTION OF TRANSFER

1. Categories of data subjects whose personal data is transferred:

- Customers
- End users clicking on a Bitly link

2. Categories of personal data transferred:

- Name
- E-Mail
- Phone number
- IP address
- Contact information (company, phone, fax number, physical business address)
- Timestamp (link is clicked)
- Unique identifier

3. Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation,



access restrictions (including access only for staff having followed specialized training), keeping a record of access to the data, restrictions for onward transfers or additional security measures:

- Not applicable
4. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis):
- A transfer occurs each time a short link is created or clicked
5. Nature of the processing:
- Bitly will process aforementioned data categories as necessary to perform the services pursuant to the Agreement and this DPA.
6. Purpose(s) of the data transfer and further processing:
- Providing services to make long Internet URLs accessible through short URLs
  - Providing customer with link click statistics
  - Fraud prevention and abuse
  - Product service notifications
7. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:
- Product data is being retained until the customer submits a purge request.
8. Bitly shall provide Client with a current list of sub-processors upon written request (email to suffice).

## C. COMPETENT SUPERVISORY AUTHORITY

The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer identified in accordance with Clause 13 shall be Berlin Commissioner for Data Protection and Freedom of Information (Berliner Beauftragte für Datenschutz und Informationsfreiheit), Alt-Moabit 59-61, 10555 Berlin, Germany.



ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES

For the purposes of Annex II to the SCCs, Company shall implement and maintain the technical and organizational security measures set out in "Technical and organizational measures" available at upon request.

SCHEDULE 4

International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

PART 1: TABLES

Table 1:

Start date	The date of the DPA.	
The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)



Parties' details	Full legal name:	Full legal name: Bitly, Inc.
	Trading name (if different):	Trading name (if different): N/A
	Main address (if a company registered address):	Main address (if a company registered address): DPT 5006, 601 W. 26th St., Suite 357 (3rd Floor), New York, NY 10001-1101
	Official registration number (if any) (company number or similar identifier):	Official registration number (if any) (company number or similar identifier): 82-1992011
	*Customer as identified in the account or applicable Order Form.	
Key Contact	Full Name (optional):	Full Name (optional):
	Job Title:	Job Title: Chief Technology Officer
	Contact details including email:	Contact details including email: security@bitly.com
	*As identified in the account or applicable Order Form.	
Signature (if required for the purposes of Section 2)		

Table 2: Selected SCCs, Modules and Selected Clauses



<b>Addendum EU SCCs</b>	<div><input checked="" type="checkbox"/> The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information: Date: The date of this DPA. Reference (if any): N/A Other identifier (if any): N/A</div>
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Table 3: Appendix Information

“Appendix Information” means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

<div>Annex 1A: List of Parties: Annex I to Appendix to Schedule 2 and 3 of the DPA.  Annex 1B: Description of Transfer: Annex I to Appendix to Schedule 2 and 3 of the DPA.  Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data: Annex II to the DPA.  Annex III: List of Sub processors (Modules 2 and 3 only): As provided to the Exporter upon request.</div>
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Table 4: Ending this Addendum when the Approved Addendum Changes



**Ending this Addendum when the Approved Addendum changes**

Which Parties may end this Addendum as set out in Section 19:

- ✓ Importer
- x Exporter
- x Neither Party

**PART 2: Mandatory Clauses****Mandatory Clauses**

Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.

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