

# SHARPLAUNCH PERSONAL DATA PROCESSING AGREEMENT

Effective date: June 14 2019

This Personal Data Processing Agreement (the “Agreement”) governs the Processing of Personal Data by SharpLaunch, Inc., a company having a principal place of business at PO Box 504 Portsmouth, NH 03802, the United States of America (“**SharpLaunch, Inc.**”), operating the software-as-a-service platform “SharpLaunch” available at <https://www.sharplaunch.com> (“**SharpLaunch**”). This Agreement governs the Processing of Personal Data submitted by an individual user or legal entity (the “**End-User**”) within the course of communication with a business entity that uses SharpLaunch to facilitate its communication with the end-user (the “**Client**”). SharpLaunch, Inc. and the Client are collectively referred to as the “Parties” and each individually a “Party”. The Agreement explains the rights and obligations of the Parties regarding the Processing of Personal Data through SharpLaunch, where SharpLaunch, Inc. acts in a capacity of the Data Processor and the Client acts in a capacity of the Data Controller. The Agreement is drafted in accordance with EU Standard Contractual Clauses included in Exhibit I of the Agreement and is incorporated in SharpLaunch Terms and Conditions available at <https://www.sharplaunch.com/saas-terms-conditions> (the “Terms”).

*The Agreement is pre-signed by SharpLaunch, Inc. To conclude the Agreement, the Client is requested to fill in Client’s information in Exhibit I, sign Exhibit I and return the Agreement to SharpLaunch, Inc. by email at [info@sharplaunch.com](mailto:info@sharplaunch.com).*

## 1. Definitions

In this Agreement, the following definitions shall apply:

“**Client’s Data**” shall mean the Personal Data of which the Client is the Data Controller.

“**Data Controller**” shall have the meaning of “controller” as defined in Art. 4(7) of the GDPR.

“**Data Exporter**” shall have the meaning as defined in Clause 1(b) of the Standard Contractual Clauses (Processors).

“**Data Importer**” shall have the meaning as defined in Clause 1(c) of the Standard Contractual Clauses (Processors).

“**Processor**”, “**Data Processor**”, “**Data Processing**”, “**Processing**” shall have the meaning of “processor” and “processing” as defined in Art. 4(2) and 4(8) of the GDPR.

“**Data Protection Law**” means the statutory data privacy and protection regulations applicable to the Client protecting the fundamental rights and freedoms of persons with regard to data privacy and the Processing of Client’s Data by SharpLaunch, Inc.

“**Data Subject**” shall have the meaning of “data subject” as defined in Art. 4(1) of the GDPR.

“**EU**” shall mean European Union.

“**GDPR**” shall mean the Regulation (EU) 2016/679 (General Data Protection Regulation).

“**Instruction**” shall mean an instruction issued by the Client to SharpLaunch, Inc. and directing SharpLaunch, Inc. to perform a specific action with regard to the Processing of Client’s Data in order to achieve compliance with the Data Protection Law.

“**Personal Data**” shall have the meaning as defined in Art. 4(1) of the GDPR related to the Services.

“**Service(s)**” shall mean the services provided by SharpLaunch, Inc. pursuant to the Terms, namely, providing and maintaining SharpLaunch, a software-as-a-service product for commercial real estate companies that facilitates marketing operations and allows the Clients to market their services to End-Users, communicate with the End-Users, and provide End-Users with access to information and documents stored on SharpLaunch.

“**Standard Contractual Clauses (Processors)**” or “**Clauses**” shall mean the clauses approved by the European Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in Third Countries or any EU Commission-approved clauses that may replace the aforementioned clauses in the future.

“**Subprocessing**” shall mean the Processing of Personal Data as a subcontractor of a Data Processor.

“**Subprocessor**” shall mean an entity that Processes Personal Data as a subcontractor of the Data Processor.

## **2. Subject matter of Processing**

- 2.1. The Client engages SharpLaunch, Inc. to provide the Services to the Client though SharpLaunch and agrees that SharpLaunch, Inc. shall carry the Processing of Client’s Data, the categories of which are described in Section 2 of this Agreement, pursuant to the terms stated herein.
- 2.2. This Agreement stipulates the rights and obligations of the Parties regarding the Processing of Client’s Data in connection with the Services. It shall apply to all activities within the scope of the Services and the Terms in the context of which SharpLaunch, Inc. or the Subprocessors may come into contact with Client’s Data.
- 2.3. To ensure the transparency of the Processing, the Parties shall keep records of all Processing activities regarding the Personal Data as required by Art. 30 of the GDPR.

## **3. Scope, nature, and purpose of Processing**

- 3.1. SharpLaunch, Inc. shall Process Client’s Data on behalf of the Client as Client’s Processor. The scope, extent, and nature of the Processing are the sole purpose of facilitation of the provision of the Services by SharpLaunch, Inc. to the Client.
- 3.2. SharpLaunch, Inc. shall ensure that any of its officers, directors, employees, consultants, representatives and other natural persons that participate in the Processing of Client’s Data agree to the same restrictions and conditions as those listed in this Agreement.
- 3.3. The Client as the Data Controller shall be responsible for complying with the applicable Data Protection Law, including, but not limited to, the lawfulness of the Processing and the lawfulness of the transmission (if any) of Client’s Data to SharpLaunch, Inc.
- 3.4. SharpLaunch, Inc. shall Process Client’s Data only to the extent required and with the purpose of fulfilling SharpLaunch, Inc.’s obligations under the Terms, to the extent necessary for the provision of the Services, and in accordance with Client’s Instructions.
- 3.5. If Should SharpLaunch, Inc. wishes to use the Client’s Data for the purposes that are not specified in this Section 3, SharpLaunch, Inc. shall request the Client to provide prior consent in writing.

#### **4. Categories of Personal Data**

- 4.1.** SharpLaunch, Inc. shall Process all Client's Data submitted by the End-User through SharpLaunch. To the extent the Client's Data contains the Personal Data, it may consist of Data Subjects' identifying information submitted through SharpLaunch.
- 4.2.** The Client's Data processed by SharpLaunch Inc. may include, but is not limited to, the following types of Data Subject's Personal Data:
- i. Full name;
  - ii. Email address;
  - iii. Phone number;
  - iv. Company name;
  - v. Files containing Personal Data; and
  - vi. Other communication data between the Client and the End-Users.
- 4.3.** It is possible that some types of special categories of Personal Data as defined in Art. 9(1) of the GDPR are processed according to this Agreement in individual cases. The Processing of special categories of Personal Data depends solely on whether the Data Subject, in its sole discretion, provides such information to the Client through SharpLaunch.

#### **5. Categories of Data Subjects**

- 5.1.** The affected Data Subjects shall include the End-Users, current or potential customers of the Client, to which the Client markets Client's services.
- 5.2.** SharpLaunch, Inc. does not interact with the Data Subject directly in any manner.

#### **6. Duration of Processing**

- 6.1.** Except where this Agreement expressly stipulates any surviving obligation, this Agreement shall follow the term of the Terms.
- 6.2.** SharpLaunch, Inc. shall Process Client's Data for as long as Client's Data is necessary for the purpose described in Section 3 of this Agreement.
- 6.3.** SharpLaunch, Inc. shall return to the Client or securely erase Client's Data from its storage systems as soon as Client's Data is no longer necessary for the purpose described in Section 3 of this Agreement or the Client requests SharpLaunch, Inc. to do so. Upon request of the Client, SharpLaunch, Inc. shall provide the Client with a proof of erasure of Client's Data.

#### **7. Security of Processing**

- 7.1.** SharpLaunch, Inc. shall exercise a reasonable degree of care to protect Client's Data from any misuse, unauthorized access, disclosure, and transfer to any third parties unauthorized by the Client. Such measures shall include, without limitation:
- a) Maintaining adequate access control mechanisms (e.g., two-factor authentication, password protection, and limited access) covering any systems, servers, or files in which the Client's Data is stored;
  - b) Encryption;
  - c) Using secure networks; and
  - d) Limiting access to Client's Data by SharpLaunch, Inc.'s officers, directors, employees, consultants, and representatives only to the purpose stated in Section 3 of this Agreement.
- 7.2.** SharpLaunch, Inc. declares that it has taken appropriate technical and organizational measures according to Art. 32 GDPR to keep Client's Data secure and protected against unauthorized or

unlawful processing and accidental loss, destruction or damage, and undertakes to continue doing so during the term of this Agreement.

- 7.3. If, under applicable laws, SharpLaunch, Inc. is compelled to disclose Client's Data, SharpLaunch, Inc. shall inform the Client before any such mandatory disclosure within 24 hours after such a disclosure is requested.
- 7.4. Any significant changes to the security measures listed in Section 7.1 of the Agreement shall be documented by SharpLaunch, Inc. and reported to the Client.
- 7.5. SharpLaunch, Inc. shall appropriately document the technical and organizational measures actually implemented (including each update) for the Processing of Client's Data and will hand out the then current version of such documentation to the Client, upon Client's request (e.g., for audit purposes).
- 7.6. For the purpose of documentation, SharpLaunch, Inc. shall be entitled to provide evidence for the implementation of appropriate technical and organizational measures by providing up-to-date attestations, reports or extracts from independent bodies that scrutinize and confirm the processing of Client's Data is in accordance with the agreed to measures herein.

## **8. Correction and deletion of Personal Data**

- 8.1. SharpLaunch, Inc. may be required to correct, erase and/or block Client's Data if and to the extent the functionality of the Services does not allow the Client to do so. However, SharpLaunch, Inc. shall not correct, erase or block Client's Data, unless instructed by the Client.
- 8.2. Unless the Data Protection Law provides otherwise, there shall not be any direct communication between the Data Subjects and SharpLaunch, Inc. In the event that a Data Subject does apply directly to SharpLaunch Inc. in writing, e.g., to request the correction or deletion of the Personal Data, SharpLaunch, Inc. shall forward this request to the Client without undue delay and shall not respond directly to the Data Subject.

## **9. SharpLaunch Inc.'s obligations**

- 9.1. Within the term of the Agreement, SharpLaunch, Inc. shall:
  - a) Process Client's Data only on documented instructions from the Client;
  - b) Ensure that persons authorized to Process the Client's Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. SharpLaunch, Inc. shall regularly train those persons to whom it grants access to Client's Data on IT security and privacy law compliance. The undertaking to data secrecy shall continue after the termination of this Agreement;
  - c) Implement appropriate technical and organizational security measures to ensure a level of security appropriate to Client's Data;
  - d) Ensure that any natural person acting under the authority of SharpLaunch, Inc. who has access to the Personal Data does not process them except on instructions from the Client;
  - e) Assist the Client in compliance with Client's data protection obligations under Art. 32 to 36 of the GDPR;
  - f) Make available to the Client all information necessary to demonstrate compliance with SharpLaunch, Inc.'s obligations under the Agreement, the Data Protection Law, and allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client;
  - g) Appoint a data protection officer if it is legally obliged to do so or, if it is not obliged to do so, a contact person for data protection issues;

- h) Provide the Client, upon request in writing, with the name and contact details of its data protection officer or the contact person for data protection issues;
  - i) Monitor the Processing by way of regular reviews concerning the performance of and compliance with this Agreement, the Terms, and the applicable Data Protection Law;
  - j) At Client's written request, reasonably support the Client in dealing with requests from individual Data Subjects and/or a supervisory authority with respect to the Processing of the Personal Data hereunder;
  - k) Assist the Client with the implementation of appropriate technical and organizational measures in order to respond to applications by the Data Subjects for the exercise of their rights (in particular, Art. 13 to 23 of the GDPR);
  - l) Support the Client with ensuring the security of the processing as required pursuant to Art. 32 of the GDPR;
  - m) Provide at minimum the information set out in Art. 33(3) of the GDPR in the case of a Personal Data breach;
  - n) Communicate information to the Data Subjects after a Personal Data breach, in particular pursuant to Art. 34 of the GDPR;
  - o) Conduct prior (i.e. before the start of the Processing) data protection impact assessments pursuant to Art. 35 of the GDPR and, if necessary, consult with a supervisory authority pursuant to Art. 36 of the GDPR.
- 9.2.** SharpLaunch, Inc. commits to observe any and all other duties that are imposed to the Processors pursuant to Art. 28 of the GDPR.
- 9.3.** SharpLaunch, Inc. shall collaborate with the data protection officer of the Client to generate the records of processing activities, pursuant to Art. 30 of the GDPR, and provide all the necessary details to the Client.

## **10. Subprocessors**

- 10.1.** The Client hereby authorizes SharpLaunch, Inc. to engage Subprocessors as further specified in this Section 10, provided that SharpLaunch, Inc. remains responsible for any acts or omissions of its Subprocessors in the same manner as for its own acts and omissions hereunder.
- 10.2.** SharpLaunch, Inc. may remove or appoint suitable and reliable other Subprocessor(s) at its own discretion in accordance with the following conditions:
- a) SharpLaunch, Inc. shall inform the Client 30 days in advance of any envisaged changes to the list of Subprocessors;
  - b) If the Client has a legitimate data protection related reason to object to SharpLaunch Inc.'s use of Subprocessor(s), the Client shall notify SharpLaunch Inc. within fourteen (14) days after receipt of SharpLaunch, Inc.'s notice;
  - c) If the Client does not object during this time period, the new Subprocessor(s) shall be deemed accepted;
  - d) If the Client objects to the use of the Subprocessor(s) concerned, SharpLaunch, Inc. shall have the right to cure the objection through one of the following options (to be selected at SharpLaunch, Inc.'s sole discretion):
    - i. SharpLaunch, Inc. will abort its plans to use the Subprocessor(s) with regard to Client's Data; or
    - ii. SharpLaunch, Inc. will take corrective steps and proceed to use the Subprocessor(s) with regard to Client's Data.

e) If SharpLaunch, Inc. decides not to implement option 10.2.d.i or 10.2.d.ii above, SharpLaunch, Inc. shall notify the Client without undue delay. In this case, the Client shall be entitled within further fourteen (14) days to notify in writing SharpLaunch, Inc. about its termination of the Agreement and any such termination would become effective upon the expiry of the second (2<sup>nd</sup>) calendar month after SharpLaunch, Inc.'s receipt of the termination notice.

**10.3.** SharpLaunch, Inc. shall pass on to its subcontractors acting as Subprocessors SharpLaunch, Inc.'s obligations under this Agreement.

**10.4.** The list of Subprocessors used by SharpLaunch, Inc. includes the following subcontractors:

- a) The hosting service provider MediaTemple;
- b) The cloud storage provider Amazon Web Services;
- c) The transactional email service providers MailGun;
- d) The Web analytics service providers Google Analytics and OpenWebAnalytics;
- e) The marketing service providers ActiveCampaign and Hubspot;
- f) The payment and accounting service providers Stripe and Xero; and
- g) The CRM service provider SalesForce.

## **11. Personal Data breaches**

**11.1.** Within 24 hours after SharpLaunch, Inc. becomes aware of any unauthorized use or disclosure of Client's Data, SharpLaunch, Inc. shall promptly report the unauthorized use or disclosure of the Client's Data to the Client.

**11.2.** SharpLaunch, Inc. shall cooperate with any remediation that the Client, in its discretion, determines is necessary to (i) address any applicable reporting requirements and (ii) mitigate any effects of unauthorized use or disclosure of the Client's Data.

**11.3.** In consultation with the Client, SharpLaunch Inc. must take appropriate measures to secure Client's Data and limit any possible detrimental effect on the Data Subjects. Where obligations are placed on the Client under the Data Protection Law, SharpLaunch, Inc. shall provide commercially reasonable assistance in meeting them.

## **12. Notifications**

**12.1.** If SharpLaunch, Inc. receives a request, subpoena or court order (including through an obligation due to legal provisions or official injunctions from state authorities) requesting to provide any Client's Data Processed under this Agreement to an authority, SharpLaunch, Inc. shall attempt to redirect the relevant authority to request that data directly from the Data Controller, and notify the Client without undue delay.

**12.2.** Where Client's Data becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while in SharpLaunch, Inc.'s control, SharpLaunch, Inc. shall notify the Client of such action without undue delay.

## **13. Instructions**

**13.1.** The Instructions to SharpLaunch, Inc. are initially laid out in this Agreement. However, the Client shall be entitled to issuing modifications to Instructions and to issue new Instructions, subject to feasibility.

**13.2.** The Client shall designate a person competent to issue the Instructions. Modifications or new Instructions shall be issued in writing and shall need to be agreed between the Parties as a contract modification/change request under this Agreement.

**13.3.** SharpLaunch, Inc. shall notify the Client if SharpLaunch, Inc. considers an Instruction to be in violation of the applicable Data Protection Law. SharpLaunch, Inc. shall not be obligated to perform a comprehensive legal examination and shall in no event render any legal services to the Client.

**13.4.** SharpLaunch, Inc. shall not be responsible for any consequences of an Instruction issued by the Client and the Client shall indemnify and hold SharpLaunch, Inc. harmless against any damages and third-party claims resulting from the Instruction.

**13.5.** Unless otherwise agreed, SharpLaunch, Inc. shall be entitled to charge any efforts incurred in connection with the Instructions on time and material basis.

#### **14. Miscellaneous**

**14.1.** No modification of this Agreement shall be valid and binding unless made in writing and then only if such modification expressly states that such modification applies to the regulations of this Agreement. The foregoing shall also apply to any waiver or modification of this mandatory written form.

**14.2.** This Agreement shall take precedence over any conflicting provisions of the Terms.

**14.3.** This agreement will commence on the Effective Date and continue until terminated earlier by either Party.

**14.4.** Either Party may terminate this Agreement for any reason upon thirty (30) calendar days' notice to the other Party.

**14.5.** Each Party may terminate this Agreement with immediate effect by delivering a notice of the termination to the other Party if:

- a) The other Party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations; and
- b) The failure, inaccuracy, or breach continues for a period of thirty (30) calendar days' after the injured Party delivers notice to the breaching Party reasonably detailing the breach.

**14.6.** If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect.

**14.7.** Upon expiration or termination of this Agreement or on Client's request, SharpLaunch, Inc. shall:

- a) Promptly securely delete or return any Client's Data available to SharpLaunch, Inc. and any other information and documents, provided by the Client; and
- b) If requested by the Client, deliver to the Client a certificate confirming SharpLaunch, Inc.'s compliance with the destruction obligation under this Section 14.7.

**14.8.** Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's prior written consent.

**14.9.** The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement in a good faith through negotiations between senior executives of the Parties, who have authority to settle the same. If the matter is not resolved by negotiation within thirty (30) days of receipt of a written invitation to negotiate, the dispute shall be resolved by using binding arbitration services.

**14.10.** The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

**14.11.** If there is any inconsistency between the terms of this Agreement and those in any document entered into under this Agreement, the terms of this Agreement shall prevail. The Parties shall take all necessary steps to conform the inconsistent terms to the terms of this Agreement.

**EXHIBIT I**



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship  
Unit C.3: Data protection

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**Commission Decision C(2010)593  
Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation:.....

Address:.....

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

Other information needed to identify the organisation:

.....

(the data **exporter**)

And

Name of the data importing organisation: SharpLaunch, Inc.

Address: PO Box 504 Portsmouth, NH 03802, the United States of America

Tel.: 800-831-9256; e-mail: info@sharplaunch.com

Other information needed to identify the organisation: company registration number EIN 81-0800945

(the data **importer**)

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

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



## Clause 1

### **Definitions**

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### **Details of the transfer**

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

## Clause 3

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

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the

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<sup>1</sup> Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

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

#### *Clause 4*

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

The data exporter agrees and warrants:

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

Clause 5

***Obligations of the data importer<sup>2</sup>***

The data importer agrees and warrants:

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

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<sup>2</sup> Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter alia*, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

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

*Clause 6*

***Liability***

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

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

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

*Clause 7*

***Mediation and jurisdiction***

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

*Clause 8*

***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

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

*Clause 9*

***Governing Law***

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

*Clause 10*

***Variation of the contract***

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

*Clause 11*

***Subprocessing***

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

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<sup>3</sup> This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision.

Clause 12

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

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

**On behalf of the data exporter:**

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

Position: .....

Address: .....

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

Signature.....

(stamp of organisation)

**On behalf of the data importer:**

Name (written out in full): Bob Samii

Position: CEO

Address: SharpLaunch, Inc., PO Box 504 Portsmouth, NH 03802

Signature.....

**APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.  
The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

**Data exporter**

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

.....  
.....

**Data importer**

The data importer is (please specify briefly activities relevant to the transfer): the owner and operator of the software-as-a-service product “SharpLaunch” available at <https://www.sharplaunch.com>.

**Data subjects**

The personal data transferred concern the following categories of data subjects (please specify): the affected data subjects shall include End-Users, current or potential customers of the Data Exporter targeted by the the Data Exporter for marketing purposes by using SharpLaunch.

**Categories of data**

The personal data transferred concern the following categories of data (please specify): data subject’s (i) full name, (ii) email address; (iii) phone number, (iv) company name; (v) files containing personal data, and (vi) other communication data between the Data Exporter and the data subjects.

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

The personal data transferred concern the following special categories of data (please specify): it is possible that some types of special categories of personal data as defined in Art. 9(1) of the GDPR are processed. The processing of special categories of personal data depends solely on whether the data subjects include such information in their communication with the Data Exporter.

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify): accessing, storing, using, managing, and making available personal data for the purposes of allowing the Data Exporter to (i) target data subjects for marketing purposes, (ii) permit data subjects’ access to the information and files stored on SharpLaunch, and (iii) communicate with data subjects through SharpLaunch.

**DATA EXPORTER**

Name:.....

Authorised Signature .....

**DATA IMPORTER**

Name: SharpLaunch Inc

Authorised Signature



## **APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

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

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

1. Maintaining adequate access control mechanisms (e.g., two-factor authentication, password protection, and limited access) covering any systems, servers, or files in which the personal is stored;
2. Encryption;
3. Using secured networks; and
4. Limiting access to personal data by SharpLaunch Inc.'s officers, directors, employees, consultants, and representatives only to the purpose stated in Section 3 of this Agreement.

## **INDEMNIFICATION CLAUSE**

### ***Liability***

The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim<sup>4</sup>.

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<sup>4</sup>

Paragraph on liabilities is optional.