



DATA PROCESSING ADDENDUM

(WITH STANDARD CONTRACTUAL CLAUSES)

THIS DATA PROCESSING ADDENDUM, and all its attachments (this “**DPA**”) is incorporated into the Master Subscription Agreement (the “**MSA**”) between the undersigned Customer and BetterCloud, Inc. (“**BetterCloud**”). Capitalized but undefined terms used in this DPA will have the meanings assigned to those terms in the MSA.

In the course of providing the Services to Customer pursuant to the MSA, BetterCloud may Process Personal Data on behalf of Customer. BetterCloud agrees to comply with the following provisions with respect to its Processing of Customer Personal Data (as such term is defined herein).

1. DEFINITIONS

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

“**Customer Personal Data**” means Personal Data submitted or provided by or for Customer, or at Customer’s direction, to BetterCloud in connection with Customer’s use of the Services, and to which Data Protection Laws apply.

“**Data Protection Laws**” means all data privacy laws and regulations, including data privacy laws and regulations of the European Union, the European Economic Area (“**EEA**”) and their member states, Switzerland, and the United Kingdom (“**UK**”), applicable to the Processing of Customer Personal Data by BetterCloud under the MSA.

“**Data Subject**” means an identified or identifiable natural person about whom BetterCloud Processes Personal Data in connection with the Services.

“**DPA Effective Date**” means the date on which the parties execute this DPA.

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

“**Personal Data**” means any information which relates to an identified or identifiable natural person, and to which Data Protection Laws apply.

“**Personal Data Breach**” means a breach of BetterCloud’s security leading to the unauthorized, accidental or unlawful destruction, loss, alteration, disclosure of, or access to, Customer Personal Data in BetterCloud’s possession, custody or control. “**Personal Data Breaches**” will not include unsuccessful attempts or activities that do not compromise the security of Customer Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

“**Process/Processing**” shall have the same meaning as “processing” as defined in the GDPR.

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

“**Security Documentation**” means the Security Documentation applicable to the Services purchased by Customer, as described in summaries of the then-current SSAE 16 SOC Type II audit reports (or comparable industry-standard successor report) that BetterCloud generally makes available to its customers as updated from time to time, or otherwise made reasonably available by BetterCloud.

“**Standard Contractual Clauses**” means the agreement executed by and between Customer and BetterCloud and attached to this Addendum as Attachment 1 pursuant to European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council.

“**Sub-processor**” means any entity that BetterCloud engages to Process Customer’s Personal Data on behalf of BetterCloud.

2. PROCESSING OF CUSTOMER PERSONAL DATA

2.1 Roles of the Parties; Purpose. The parties acknowledge and agree that with regard to the Processing of Customer Personal Data, Customer is the Controller, BetterCloud is a Processor and that BetterCloud may engage Sub-processors pursuant to the requirements set forth herein.

2.2 BetterCloud’s Processing of Personal Data. BetterCloud shall only Process Customer Personal Data on behalf of and in accordance with Customer’s instructions. Customer instructs BetterCloud to Process Customer Personal Data for the following purposes: (i) Processing in accordance with the MSA, the DPA and applicable Order Form(s); (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the MSA and this DPA. This DPA and the MSA are Customer’s complete and final instructions to BetterCloud for the Processing of Customer Personal Data. Any additional or alternate instructions must be agreed upon separately in writing signed by authorized representatives of both parties.

2.3 Customer’s Processing of Personal Data. Customer shall, in its use of the Services, Process Customer Personal Data in accordance with the requirements of Data Protection Laws. Customer’s instructions for the Processing of Personal Data by BetterCloud shall comply with all Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Customer Personal Data and the means by which Customer acquired Personal Data.

2.4 Security of Processing. BetterCloud will secure Customer Personal Data by implementing appropriate technical and organizational measures designed to provide a level of security appropriate to the risk, as required under the applicable Data Protection Laws. Such measures include those set forth in the Security Documentation. BetterCloud will not materially decrease the overall security of the Services during the term of the MSA.

2.5 BetterCloud’s Security Assistance. BetterCloud will (taking into account the nature of the processing of Customer Personal Data and the information available to BetterCloud) provide Customer with reasonable assistance necessary for Customer to comply with its obligations in respect of Customer Personal Data under Data Protection Laws, including Articles 32 to 34 (inclusive) of the GDPR, by (a) implementing the security measures in accordance with Section 2.4 (Security of Processing); (b) complying with the terms of Section 2.8 (Personal Data Breach Notification); and (c) providing Customer with the third-party certifications and summaries of the audit reports set forth in the Security Documentation in accordance with Section 2.14 (Audits).

2.6 Customer's Security Responsibilities. Customer agrees that, without prejudice to BetterCloud's obligations under Section 4 (BetterCloud Personnel) and Section 2.8 (Personal Data Breach Notification), Customer is solely responsible for its use of the Services, including (a) making appropriate use of the Services to ensure a level of security appropriate to the risk in respect of the Customer Personal Data; (b) securing the account authentication credentials, systems and devices Customer uses to access the Services; and (c) backing up its Customer Personal Data.

2.7 Customer's Security Assessment. Customer is solely responsible for reviewing the Security Documentation and evaluating for itself whether the Services, the Security Documentation and BetterCloud's data security commitments under this DPA will meet Customer's needs, including with respect to any security obligations of Customer under the Data Protection Laws.

2.8 Personal Data Breach Notification. BetterCloud will notify Customer without undue delay after becoming aware of a Personal Data Breach. To the extent such Personal Data Breach is caused by a violation of the requirements of this DPA by BetterCloud, BetterCloud shall make reasonable efforts to identify and remediate the cause of such Personal Data Breach. Customer is solely responsible for complying with incident notification laws applicable to Customer and fulfilling any third party notification obligations related to any Personal Data Breach. BetterCloud's notification of or response to a Personal Data Breach under this Section 2.8 will not be construed as an acknowledgement by BetterCloud of any fault or liability with respect to the Personal Data Breach. Customer agrees that the provisions of this Section 2.8 satisfy the requirements of Clause 5(d)(2) of the Standard Contractual Clauses.

2.9 Impact Assessments and Consultations. BetterCloud will (taking into account the nature of the processing and the information available to BetterCloud) reasonably assist Customer in complying with its obligations under Data Protection Laws in respect of data protection impact assessments and prior consultation, including, if applicable, Customer's obligations pursuant to Articles 35 and 36 of the GDPR, by (a) making available for review copies of the the third-party certifications and summaries of the audit reports set forth in the Security Documentation or other documentation describing relevant aspects of BetterCloud's information security program and the security measures applied in connection therewith, (b) providing the information contained in the MSA, including this DPA, and (c) providing a description of the processing of Customer Personal Data undertaken by BetterCloud.

2.10 Data Subject Rights. During the term of the MSA, if BetterCloud receives any request from a Data Subject in relation to Customer Personal Data, BetterCloud will advise the Data Subject to submit their request to Customer and Customer will be responsible for responding to any such request. Upon request from Customer, BetterCloud shall provide commercially reasonable assistance to Customer in relation to the handling of a Data Subject's request for exercising the Data Subject's rights laid down in Chapter III of the GDPR, taking into account the nature of BetterCloud's Processing of Customer Personal Data and solely to the extent Customer is unable to fulfill such requests through the Services. Customer shall be responsible for any costs arising from BetterCloud's provision of such assistance.

2.11 Deletion of Customer Personal Data. BetterCloud shall delete all Customer Personal Data and copies thereof upon request of Customer, unless otherwise required by the applicable Data Protection Laws, provided, however, that BetterCloud shall delete backup data and operational or system log data in the ordinary course of business. In the event applicable law does not permit BetterCloud to delete the Customer Personal Data, BetterCloud warrants that it shall ensure the confidentiality of the Customer Personal Data and that it shall not use or disclose any Customer Personal Data after termination of the MSA, except as required by law.

2.12 **Data Storage and Processing Facilities.** BetterCloud may, subject to Section 2.13 (BetterCloud's Data Transfer Obligations), store and process Customer Personal Data anywhere BetterCloud or its Sub-processors maintain facilities.

2.13 **Data Transfers.** With respect to Customer Personal Data transferred from the EEA to outside the EEA, from the UK to outside of the UK, or from Switzerland to outside of Switzerland in conjunction with Customer's use of the Services, either directly or via onward transfer, BetterCloud will provide at least the same level of protection for such Customer Personal Data as is required by the Standard Contractual Clauses. In the event the European Commission revises and thereafter publishes new Standard Contractual Clauses or as otherwise required or implemented by the European Commission, such new Standard Contractual Clauses will supersede the present Standard Contractual Clauses.

2.14 **Audits.** BetterCloud will make available to Customer all information reasonably necessary to demonstrate compliance with its obligations under the GDPR. BetterCloud has obtained the third-party certifications and audits set forth in the Security Documentation. Upon Customer's written request at reasonable intervals, BetterCloud shall provide a copy of BetterCloud's then most recent summaries of third-party audits or certifications, as applicable, that BetterCloud generally makes available to its customers at the time of such request. The parties agree that the audit rights described in Article 28 of the GDPR shall be satisfied by BetterCloud's provision of such summaries. The information and audit obligations described in Section 2.9 and in this Section 2.14 are made at Customer's request to ensure regularity and consistency in the audit process and shall fully satisfy Customer's rights under Clauses 5(f) and 12.2 of the Standard Contractual Clauses to conduct an audit of the data processing facilities used by BetterCloud.

2.15 **Processing Records.** Customer acknowledges that BetterCloud is required under the GDPR to: (a) collect and maintain records of certain information, including the name and contact details of each processor and/or controller on behalf of which BetterCloud is acting and, where applicable, of such processor's or controller's local representative and data protection officer; and (b) make such information available to the supervisory authorities. Accordingly, if the GDPR applies to the processing of Customer Personal Data, Customer will, where requested, provide such information to BetterCloud, and will ensure that all information provided is kept accurate and up-to-date.

3. BETTERCLOUD PERSONNEL

3.1 **Confidentiality.** BetterCloud shall ensure that its personnel engaged in the Processing of Customer Personal Data are informed of the confidential nature of the Customer Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements or are under an appropriate statutory obligation of confidentiality. BetterCloud shall ensure that such confidentiality obligations survive the termination of the personnel engagement.

3.2 **Limitation of Access.** BetterCloud shall ensure that BetterCloud's access to Customer Personal Data is limited to those personnel who require such access to perform under the MSA.

4. SUB-PROCESSORS

4.1 **General Authorization.** Customer authorizes and consents to BetterCloud engaging Sub-processors to process Customer Personal Data under this DPA. BetterCloud will: (a) provide Customer with such details about the Sub-processor(s) it uses as may be reasonably requested by Customer from time to time; (b) flow down its obligations under this DPA to such Sub-processor, such that the data processing requirements of such Sub-processor with respect to Customer Personal Data are no less onerous than the data processing requirements of BetterCloud as set out in this DPA; and (c) be fully liable to Customer for

the performance of the Sub-processor's obligations under this DPA if such Sub-processor fails to fulfill its data protection obligations. Information about the Sub-processors that BetterCloud uses, including their functions and contact details, is available at <https://www.bettercloud.com/subprocessors> (as may be updated by BetterCloud from time to time in accordance with this DPA).

4.2 New Sub-Processors. BetterCloud will inform Customer of any intended changes concerning the addition or replacement of Sub-processors at least ten (10) days prior to permitting any new Sub-processor to process Personal Data if Customer subscribes to notifications of updates to the list of Sub-processors by using the mechanism set forth at <https://www.bettercloud.com/subprocessors>. If Customer has a reasonable basis to object to BetterCloud's use of a new Sub-processor, Customer shall notify BetterCloud promptly in writing within ten (10) days after BetterCloud informs Customer of such change. If such objection is not unreasonable, BetterCloud will use reasonable efforts to make available to Customer a change in the affected Services or recommend a commercially reasonable change to Customer's configuration or use of the affected Services to avoid processing of Customer Personal Data by such new Sub-processor. If BetterCloud is unable to make available such change within a reasonable period of time, which shall not exceed sixty (60) days, Customer may terminate the applicable Order Form(s) in respect only to those Services which cannot be provided by BetterCloud without the use of the objected-to new Sub-processor, by providing written notice to BetterCloud. Customer shall receive a refund of any prepaid fees for the period following the effective date of termination in respect of such terminated Services.

4.3 Customer Consent to Sub-processing; Access to Sub-processing Agreements.

4.3.1 Customer consents to BetterCloud's transfer of Customer Personal Data to Sub-processors as described in Sections 4.1 and 4.2 above, and agrees that Customer's consent satisfies the requirements of Clauses 5(h) and 11.1 of the Standard Contractual Clauses; and

4.3.2 Upon Customer's written request, BetterCloud shall allow Customer to examine the data protection provisions of agreements between BetterCloud and its Sub-processors that access Customer Personal Data; provided that (a) such agreements shall remain BetterCloud's Confidential Information, and (b) such copies may have all commercial information and clauses unrelated to this DPA removed by BetterCloud beforehand. Customer agrees that this Section 4.3.2 satisfies the requirements of Clause 5(j) of the Standard Contractual Clauses.

5. GENERAL PROVISIONS.

5.1 Conflicting Terms. This DPA applies only between Customer and BetterCloud and does not confer any rights to any third party. To the extent of any conflict or inconsistency between this DPA and the MSA, this DPA will govern. This DPA replaces and supersedes all prior and contemporaneous agreements concerning its subject matter.

5.2 Term and Termination. This DPA will become effective as of the DPA Effective Date. This DPA will terminate simultaneously and automatically upon the termination of the MSA. BetterCloud may terminate this DPA at any time upon notice to Customer if BetterCloud offers alternative means to Customer that comply with all applicable Data Protection Laws. Customer may terminate this DPA at Customer's discretion upon BetterCloud's receipt of Customer's written notice of termination.

5.3 Liability. The total liability of either party and its Affiliates towards the other party and its Affiliates, whether in contract, tort or any other theory of liability, under or in connection with this DPA will be limited to limitations on liability or other liability caps agreed to by the parties in the MSA.

5.4 **Governing Law.** This DPA shall be governed by the laws and the jurisdiction stated in the MSA, except as otherwise required by the Standard Contractual Clauses.

IN WITNESS WHEREOF, this Data Processing Addendum has been executed by duly authorized signatories of Customer and BetterCloud as of the later date set forth below.

ACCEPTED AND AGREED TO:

CUSTOMER:

BETTERCLOUD, INC.

By: _____
Authorized Signature

By: _____
Authorized Signature

Print Name: _____

Print Name: R. Bart Hacking

Title: _____

Title: Chief Financial Officer

Date: _____

Date: _____

Internal Use: _____

Attachment 1

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

BetterCloud, Inc.

Address: 330 7th Avenue, 14th Floor, New York, NY 10001, USA

Tel. (888) 999-0805; e-mail: privacy@bettercloud.com

Other information needed to identify the organisation: N/A

(the “**Data Importer**”)

each a “**Party**”; together the “**Parties**”,

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

Clause 1

Definitions

For the purposes of the Clauses:

- (a) ‘*personal data*’, ‘*special categories of data*’, ‘*process/processing*’, ‘*controller*’, ‘*processor*’, ‘*Data Subject*’ and ‘*Supervisory Authority*’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) ‘the *Data Exporter*’ means the controller who transfers the personal data;
- (c) ‘the *Data Importer*’ means the processor who agrees to receive from the Data Exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25 (1) of Directive 95/46/EC;
- (d) ‘the *Subprocessor*’ means any processor engaged by the Data Importer or by any other subprocessor of the Data Importer who agrees to receive from the Data Importer or from any other subprocessor of the Data Importer personal data exclusively intended for processing activities to be carried out on behalf

of the Data Exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

- (e) ‘the ***Applicable Data Protection Law***’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the Data Exporter is established;
- (f) ‘***Technical and Organisational Security Measures***’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

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

Clause 3

Third-party beneficiary clause

1. The Data Subject can enforce against the Data Exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The Data Subject can enforce against the Data Importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the Data Exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Exporter, in which case the Data Subject can enforce them against such entity.

3. The Data Subject can enforce against the 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 sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a Subprocessor providing at least the same level of protection for the personal data and the rights of Data Subject as the Data Importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the Data Importer

The Data Importer agrees and warrants:

- (a) to process the personal data only on behalf of the Data Exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Exporter of its inability to comply, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Data Exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the Data Exporter as soon as it is aware, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (c) that it has implemented the Technical and Organisational Security Measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the Data Exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
 - (ii) any accidental or unauthorised access; and
 - (iii) any request received directly from the Data Subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the Data Exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the Data Exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the Data Exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Data Exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the Data Subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the Data Subject is unable to obtain a copy from the Data Exporter;
- (h) that, in the event of sub-processing, it has previously informed the Data Exporter and obtained its prior written consent;
- (i) that the processing services by the Subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any Subprocessor agreement it concludes under the Clauses to the Data Exporter.

Clause 6 **Liability**

1. The parties agree that any Data Subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or Subprocessor is entitled to receive compensation from the Data Exporter for the damage suffered.

2. If a Data Subject is not able to bring a claim for compensation in accordance with paragraph 1 against the Data Exporter, arising out of a breach by the Data Importer or his Subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the Data Exporter has factually disappeared or ceased to exist in law or has become insolvent, the Data Importer agrees that the Data Subject may issue a claim against the Data Importer as if it were the Data Exporter, unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, in which case the Data

Subject can enforce its rights against such entity. The Data Importer may not rely on a breach by a Subprocessor of its obligations in order to avoid its own liabilities.

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

Clause 7

Mediation and jurisdiction

1. The Data Importer agrees that if the Data Subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the Data Importer will accept the decision of the Data Subject;

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the Data Exporter is established.

2. The parties agree that the choice made by the Data Subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The Data Exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the Applicable Data Protection Law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the Data Importer, and of the Subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the Data Exporter under the Applicable Data Protection Law.

3. The Data Importer shall promptly inform the Data Exporter about the existence of legislation applicable to it or any Subprocessor preventing the conduct of an audit of the Data Importer, or any Subprocessor, pursuant to paragraph 2. In such a case the Data Exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing Law

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

Clause 10

Variation of the contract

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

Clause 11
Sub-Processing

1. The Data Importer shall not subcontract any of its processing operations performed on behalf of the Data Exporter under the Clauses without the prior written consent of the Data Exporter. Where the Data Importer subcontracts its obligations under the Clauses, with the consent of the Data Exporter, it shall do so only by way of a written agreement with the Subprocessor which imposes the same obligations on the Subprocessor as are imposed on the Data Importer under the Clauses. 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 sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Exporter is established.

4. The Data Exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the Data Importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the Data Exporter’s data protection supervisory authority.

Clause 12
Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the Data Importer and the 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:

Insert Legal Name of Customer

By: _____

On behalf of the Data Importer:

BetterCloud, Inc.

By: _____

Authorized Signature

Print Name: _____

Title: _____

Address: _____

Authorized Signature

Print Name: _____

Title: _____

Address: 330 7th Avenue, 14th Floor
New York, NY 10001, USA

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 Customer. The data exporter may directly or indirectly submit or provide Customer Personal Data to data importer in connection with Customer's use of the Services.

Data importer

The data importer is BetterCloud, Inc. a legal entity that provides the Services, and which from time to time processes Customer Personal Data in accordance with the terms of the DPA, MSA and the applicable Order Form.

Data subjects

Data exporter may submit or provide Customer Personal Data to data importer, the extent of which is determined and controlled by data exporter in its sole discretion and which may include, but is not limited to, Customer Personal Data relating to the following categories of data subjects:

- Employees of the data exporter and any affiliate entities.
- Independent contractors of the data exporter and any affiliate entities.

Categories of data

Data exporter may submit or provide Customer Personal Data to data importer, the extent of which is determined and controlled by data exporter in its sole discretion, and which may include, but is not limited to the following categories of Customer Personal Data:

- Name, Email, Phone, Photo, Title, Address, Department, Manager, IP address, user activity, helpdesk tickets, satisfaction data.
- Payment information.
- Other Customer Personal Data the data exporter submits or provides to the data importer in the course of using the Services including through its use of the content scanning features included in the Services.

Special categories of data (if appropriate)

Data importer does not require special categories of data to provide the Services, but it may process such special categories of data if submitted or provided to data importer by the data exporter including through its use of the content scanning features included in the Services.

Processing operations

The personal data transferred will be subject to the following basic processing activities:

Data importer will process Customer Personal Data for the purposes of providing the Services to data exporter, prevent or address service or technical problems, or as may be required by law, in accordance with the MSA and DPA.

Data Exporter:

Insert Legal Name of Customer

By: _____
Authorized Signature

Print Name: _____

Data Importer:

BetterCloud, Inc.

By: _____
Authorized Signature

Print Name: _____

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):

Data importer will implement the security measures described in the Security Documentation.

Data Exporter:

 Insert Legal Name of Customer

By: _____
 Authorized Signature

Print Name: _____

Data Importer:

BetterCloud, Inc.

By: _____
 Authorized Signature

Print Name: _____