



## Data Processing Agreement Overview

Close (the Processor) takes the security and privacy of data subjects (consumers) seriously, and wishes to comply with relevant Data Protection Law(s)<sup>1</sup>. Close leverages the Standard Contractual Clauses<sup>2</sup> (Comprising Schedule 1, Schedule 2 and Appendix 1) for data transfers outside the EU. For GDPR compliance, the SCCs have been supplemented by Appendix 2. Under the EU GDPR, data transfers can only be made to Processors who agree to the following controls and obligations:

- The Processor must have adequate information security in place, taking into account the sensitivity of the data to be received;
- The data received remains the property of the Controller at all times unless ownership is explicitly shared or transferred by a written agreement.
- The Processor must not use sub Processors without advanced notification or consent of the Controller; sub Processors must have equivalent security and privacy controls to those of Processor.
- The Processor shall cooperate with the relevant Data Protection Authorities in the event of an enquiry;
- The Processor must keep all received information confidential;
- The Processor must report data breaches to the Controller without delay;
- The Processor may need to appoint a mandatory Data Protection Officer. The processor must do its own due diligence in this matter and appoint a qualified individual, if appropriate;
- The Processor must keep records of all processing activities;
- The Processor must comply with EU trans-border data transfer rules;
- The Processor must help the Controller to comply with data subjects rights;
- The Processor must assist the Data Controller in managing the consequences of data breaches;
- The Processor must delete or return all personal data at the end of the contract at the choice of the Controller; and
- The Processor must inform the Controller if the processing instructions infringe GDPR.
- The processor must comply with security and privacy due diligence requirements placed on the Controller for the validation of the above.

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<sup>1</sup> **“Data Protection Law(s)”** means EU Data Protection laws and all applicable laws and regulations relating to the processing of Personal Data that may exist in any relevant jurisdiction, including, where relevant, guidance and codes of practice issued by the supervisory authorities, any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them. It includes the Irish Data Protection Acts as amended and the General Data Protection Regulation (Regulation (EU) 2016/679). All references to Directive 95/46/EC shall be read as inclusive of their meaning under the GDPR.

<sup>2</sup> **“Standard Contractual Clauses (SCCs)”** means the clauses approved by European Commission for the transfer of Personal Data to processors established in third countries: for controllers (C(2004)5721) and for processors (C(2010)593).

If the data transfer is from the Controller to another Controller (Peer transfer), then the Peer must agree to all of the above controls and obligations, in addition to those required for EU GDPR compliance.

**Signed and Agreed (Exporter)**

Name:

Position:

Company:

Date:

**Signed and Agreed (Importer)**

Name: Anthony Nemitz

Position: COO/CCO

Company: Close (Elastic Inc)

Date:

# SCHEDULE 1 – DETAILS OF THE PROCESSING

## Categories of Data Subjects

Customer may submit, and users may submit on behalf of Customer: Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospects, customers, business partners and vendors of Customer and Customer's customers (who are natural persons)
- Employees or contact persons of Customer's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of Customer (who are natural persons)
- Customer's Users authorized by Customer to use the Services

## Categories of Personal Data

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

- Customer's Users authorized by Customer to use the Services
- First and last name
- Title and Position
- Employer
- Contact information (company, email, phone, physical business address)
- ID data
- Professional life data
- Personal life data
- Connection data
- Localization data
- Business requirements

## SCHEDULE 2 – STANDARD CONTRACTUAL CLAUSES

### 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.

**Exporting organization:**

Address:

Telephone:

AND

**Importing organization:** Close (Elastic Inc)

Address: PO Box 1145, Jackson, WY 83001 USA

Telephone: +1-855-256-7346

E-mail: [support@close.com](mailto:support@close.com)

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<sup>3</sup> of Directive 95/46/EC;
- (d) ‘the subprocessor’ means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) ‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) ‘technical and organizational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## *Clause 2*

### **Details of the transfer**

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

## *Clause 3*

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<sup>3</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.

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

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

### *Clause 4*

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

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organizational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented

by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

## *Clause 5*

### **Obligations of the data importer<sup>4</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

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<sup>4</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, defense, 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 recognized sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

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

## *Clause 6*

### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any



of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

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

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

## *Clause 7*

### **Mediation and jurisdiction**

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

## *Clause 8*

### **Cooperation with supervisory authorities**

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

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

### *Clause 9*

#### **Governing Law**

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

### *Clause 10*

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

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

### *Clause 11*

#### **Subprocessing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses<sup>5</sup>. Where the subprocessor fails to fulfill its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations

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<sup>5</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.

of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

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

## *Clause 12*

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

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

**Signed and Agreed (Exporter)**

Name:

Position:

Company:

Date:

**Signed and Agreed (Importer)**

Name: Anthony Nemitz

Position: COO/CCO

Company: Close (Elastic Inc)

Date:

## 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 Exporter is (i) the legal entity that has executed the Standard Contractual Clauses as a Data Exporter and, (ii) all Affiliates (as defined in the Agreement) of Customer established within the European Economic Area (EEA) and Switzerland that have purchased Services on the basis of one or more Order Form(s) or Subscriptions.

### **Data importer**

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

Close is a distributed database service which processes personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

### **Data subjects**

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

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

- Prospects, customers, business partners and vendors of data exporter (who are natural persons)
- Employees or contact persons of data exporter's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of data exporter (who are natural persons)
- Data exporter's Users authorized by data exporter to use the Services

### **Categories of data**

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

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

- First and last name

- Title
- Position
- Employer
- Contact information (company, email, phone, physical business address)
- ID data
- Professional life data
- Personal life data
- Connection data
- Localization data

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

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

Data exporter may submit special categories of data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which is for the sake of clarity Personal Data with information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

**Processing operations**

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

The objective of Processing of Personal Data by data importer is the performance of the Services pursuant to the Agreement.

**Signed and Agreed (Exporter)**

Name:

Position:

Company:

Date:

**Signed and Agreed (Importer)**

Name: Anthony Nemitz

Position: COO/CCO

Company: Close (Elastic Inc)

Date:

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

Data importer will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data uploaded to the Services, as described in the Security, Privacy and Architecture Documentation applicable to the specific Services purchased by data exporter, and accessible via <https://close.com> or otherwise made reasonably available by data importer. Data Importer will not materially decrease the overall security of the Services during a subscription term.

*GDPR Additions:*

Data will only be processed as long as it is needed for business and legal reasons as envisioned when the data was submitted by the relevant parties. All parties authorized to process the personal data covered by this contract are committed to protect the confidentiality of the data.

In the event of a request by a data subject, the processor will reasonably assist the controller to respond to the data subject in an accurate and timely manner. The Service provider will cooperate with the controller in the event of a personal data breach, to GDPR standards. Service provider will cooperate with controller in the event the controller initiates a data protection impact assessment. The processor is not permitted to engage in onward transfers to additional countries outside of the EEA, without the explicit permission of the data controller, in advance. The Processor must not use sub Processors without advanced notification or consent of the Controller, and such subprocessors must in all cases enforce privacy controls that meet GDPR requirements.

**Signed and Agreed (Exporter)**

Name:

Position:

Company:

Date:

**Signed and Agreed (Importer)**

Name: Anthony Nemitz

Position: COO/CCO

Company: Close (Elastic Inc)

Date: