



DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) forms part of the applicable subscription and services agreement (the “**Agreement**”), entered into by and between the Customer named below and Xactly Corporation (“**Xactly**”), pursuant to which Customer has purchased subscriptions to Xactly’s application services (“**Services**”). The purpose of this DPA is to reflect the parties’ agreement with regard to the Processing of Personal Data, in accordance with the requirements of Data Protection Laws and Regulations.

HOW TO EXECUTE THIS DPA:

- A. This DPA consists of two parts: the main body of the DPA, and the Standard Contractual Clauses in Attachment 1 (including Appendices 1 and 2). The DPA and the Standard Contractual Clauses have been pre-signed on behalf of Xactly.
- B. To complete this DPA, Customer must:
1. Complete the information in the signature box and sign on Page 7.
 2. Complete the information regarding the data exporter on Page 8 and 14.
 3. Complete the information in the signature box and sign on Page 14 and 16.
 4. Submit the completed and signed DPA, without changes to any printed terms, to Xactly at the following email address: legalcontracts@xactlycorp.com. Upon receipt of the validly completed DPA at the above email address, this DPA will become legally binding.

HOW THIS DPA APPLIES

If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement.

If the Customer entity signing this DPA has entered into an Order Form with Xactly pursuant to the Agreement (an “**Ordering Document**”), but is not itself a party to the Agreement, this DPA is an addendum to that Ordering Document and applicable renewal Ordering Documents. Each Customer Affiliate that enters into its own Ordering Document under the terms of the Customer’s Agreement shall likewise be entitled to the rights and obligations of this DPA, provided, however, each Customer Affiliate shall exercise its rights under this DPA through Customer, unless otherwise required by applicable law.

If the Customer entity signing this DPA is neither a party to an Ordering Document nor the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity that is a party to the Agreement executes this DPA, and Affiliates of such Customer entity will benefit under this DPA via Section 9.1.2 below.

DATA PROCESSING TERMS

For the duration of the Agreement and in the course of providing the Services to Customer pursuant to the Agreement, Xactly may Process Personal Data on behalf of Customer. Xactly and Customer each agree to comply with the following provisions with respect to any Personal Data submitted by or on behalf of Customer to the Services.

1. DEFINITIONS

In this DPA (including Schedules), the following terms have the meanings set out below:

“**CCPA**” means the California Consumer Privacy Act (Cal. Civ. Code § 1798.100 *et seq.*) as may be amended from time to time.

“**Controller**” means the entity which alone or jointly with others determines the purposes and means of the Processing of Personal Data.

“**Data Protection Laws and Regulations**” means all applicable local, state, national and/or foreign law, treaties, and/or regulations, including the GDPR and the CCPA, the laws and regulations of the European Union, the European



Economic Area and their member states, Switzerland, the United Kingdom, and the United States and its states, as amended, replaced or superseded from time to time, applicable to the Processing of Personal Data under the Agreement.

“**Data Subject**” means the individual to whom Personal Data relates.

“**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

“**Personal Data**” means any information that has been provided by or on behalf of Customer to the Services that (i) relates to an identified or identifiable natural person or (ii) identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, household, or device.

“**Processing**” (and related verb forms) means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

“**Processor**” means the entity that Processes Personal Data on behalf of the Controller, including as applicable any “service provider” as that term is defined by the CCPA.

“**Regulator**” means any Supervisory Authority or regulatory body with responsibility for ensuring compliance with Data Protection Laws and Regulations.

“**Standard Contractual Clauses**” or “**SCCs**” means the agreement pursuant to the European Commission’s decision of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, in the form set out in Attachment 1 hereto, as amended, superseded or replaced from time to time in accordance with Section 9.1.3 below.

“**Sub-processor**” means any entity engaged by Xactly to Process Personal Data under the Agreement and/or this DPA.

“**Supervisory Authority**” means an independent public authority which is established by a member state pursuant to Article 51 of the GDPR or, for the United Kingdom, the Information Commissioner’s Office (“**ICO**”).

All other capitalized definitions in this DPA not explicitly defined in this DPA, shall have the same meanings as defined in the Agreement, the GDPR or other Data Protection Laws and Regulations, in that order of precedence.

2. PROCESSING OF PERSONAL DATA

2.1 Roles of the Parties. The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller and determines the purposes for which and the manner in which the Personal Data is Processed, Xactly is the Processor of any Personal Data, acting on behalf of the Customer. Xactly may engage Sub-processors pursuant to the requirements set forth in Section 5 “Sub-processors” below. Each party, in respect of the Processing of the Personal Data acknowledges and agrees that each party has respective rights and obligations under applicable Data Protection Laws and Regulations.

2.2 Customer’s Processing of Personal Data. Customer shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Customer’s instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data. Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Xactly so that Xactly and its Sub-processors may lawfully use, process and transfer the Personal Data in accordance with this DPA and the Agreement on Customer’s and its Affiliates’ behalf. Customer specifically acknowledges that its use of the Services will not violate the rights of any Data Subject that has opted-out from sales or other disclosures of Personal Data, to the extent applicable under the CCPA.



2.3 Xactly's Processing of Personal Data. Xactly shall Process Personal Data on behalf of and in accordance with Customer's written instructions and shall treat Personal Data as Confidential Information. Customer instructs Xactly to Process Personal Data for the following purposes: (i) Processing in accordance with the Agreement and applicable Ordering Document, which includes updating the Services and preventing or addressing service or technical issues; (ii) Processing initiated by Customer's Subscribers in their use of the Services; (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 Agreement and Data Protection Laws and Regulations; and (iv) as otherwise required by applicable law. The Agreement and this DPA, along with Customer's configuration and use of the Services, are Customer's complete and final instructions to Xactly in relation to the Processing of Personal Data, including for purposes of the Standard Contractual Clauses, and any Processing required outside of the scope of these instructions (inclusive of the rights and obligations set forth under the Agreement) will require prior written agreement of the parties.

2.4 Data Residency. With respect to the Services, Xactly may store data in the European Union or the United States, provided that Customer may select, by indicating in the initial Order Form for the Services which region (European Union or United States) in which Personal Data shall be stored. Personal Data received through the Services may be disclosed to, transferred to, and/or allowed to be accessed by or otherwise Processed by Xactly's personnel or Sub-processors. Personal Data may be transferred to personnel of Xactly and/or its Affiliates located in European Union, United Kingdom, Australia, Canada, United States and India in the course of the Service. Any intragroup transfer is subject to an intragroup data processing agreement. Xactly will notify Customer if the foregoing list of countries changes (which notice may be provided through support channels, Xactly's Trust site available at : <https://trust.xactlycorp.com/>, Xactly's website, or such other reasonable means). In the event that a new country is added to the foregoing list of countries to which Personal Data may be transferred, the parties agree to cooperate in good faith in meeting any additional regulatory or legal requirements necessary to allow such transfers. Notwithstanding the foregoing, with the exception of Personal Data processed through the Services, certain Personal Data may be stored by Xactly or its Sub-processors in the U.S. for operational purposes.

3. RIGHTS OF DATA SUBJECTS

Taking into account the nature of the Processing and the information available to Xactly, Xactly assists the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in applicable Data Protection Laws and Regulations. Xactly shall, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject for access to, correction, amendment or deletion of that person's Personal Data. Xactly shall not respond to any such Data Subject request without Customer's prior written consent except to confirm that the request relates to Customer. To the extent Customer, in its use of the Services, does not have the ability to access, correct, amend, block or delete Personal Data as required by Data Protection Laws and Regulations, Xactly shall provide Customer with commercially reasonable cooperation and assistance in responding to such request, to the extent Xactly is legally permitted to do so. If legally permitted, Customer shall be responsible for any reasonable costs arising from Xactly's provision of such assistance.

4. XACTLY PERSONNEL

4.1 Confidentiality. Xactly shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements.

4.2 Limitation of Access. Xactly shall ensure that Xactly's access to Personal Data is limited to those personnel who require such access to perform the Agreement.

5. SUB-PROCESSORS

5.1 Appointment of Sub-processors. Customer acknowledges and agrees that Xactly's Affiliates may be retained as Sub-processors, and Xactly and Xactly's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services, in each case (a) anywhere in the world where Xactly, its Affiliates or its or their Sub-processors maintain data processing operations, and (b) subject to a written agreement requiring the Sub-



processor to comply with the requirements of applicable Data Protection Laws and Regulations and to abide by terms no less protective of the Customer Personal Data than those provided in this DPA to the extent applicable to the nature of the services provided by such Sub-processor.

5.2 Performance by Sub-processor. Xactly shall be liable for any such Sub-processor's performance of any obligation under this DPA.

5.3 Notification of New Sub-processors and Objection Right. Xactly's current list of Sub-processors for the applicable Services is available at <https://trust.xactlycorp.com/privacy-policy/> ("**Sub-processor List**"). Customer agrees to the appointment of those Sub-processors listed in the Sub-processor List. Customer may subscribe to updates to the relevant Sub-processor List. If Customer subscribes, Xactly shall provide such updates at least thirty (30) days prior to authorizing any new Sub-processor(s) to Process Personal Data in connection with the provision of the Services. If Customer has a reasonable basis to object to Xactly's use of a new Sub-processor, Customer shall notify Xactly in writing within ten (10) business days after receipt of Xactly's notice. In the event Customer objects to a new Sub-processor(s) on reasonable grounds, and Xactly chooses to retain the objected-to new Sub-processor, Xactly will notify the Customer in writing. Within ten (10) business days of such notification, Customer may provide written notice to terminate those Services in the applicable Ordering Document(s) in respect only to those Services which cannot be provided by Xactly and/or a mutually agreed upon Sub-Processor without the use of the objected-to new Sub-processor. Within thirty (30) days of receipt of such notice from Customer, Customer shall receive a refund of any prepaid fees for the period following the effective date of termination in respect of such terminated Services.

6. SECURITY

6.1 Controls for the Protection of Personal Data. Xactly shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Personal Data that are appropriate to (a) the size, scope and type of Xactly's business; (b) the amount of resources available to Xactly; (c) the type of information that Xactly will store; and (d) the need for security and confidentiality of such information. Xactly shall regularly monitor compliance with these safeguards. At a minimum, Xactly will implement and maintain the technical and organizational measures set forth at: <https://www.xactlycorp.com/current-security-policy>. Xactly reserves the right to update such measures provided that any updates shall not materially diminish the level of security applicable to the Services during a Subscription Term.

6.2 Third-Party Audits. At least once per year during the term of the Agreement, Xactly shall have an audit of its operations performed by an independent auditing firm. This audit will include an evaluation that tests and validates key controls relating to the security of Personal Data (currently a SSAE 18 SOC 2 report ("**SOC2 Report**")). Upon prior written request, and subject to the confidentiality provisions of the Agreement, Xactly shall make a summary of the then-current SOC2 Report available to Customer for evaluation.

6.3 Data Protection Impact Assessment and Prior Consultation. Xactly shall provide reasonable assistance to Customer with any data protection impact assessments and prior consultations with any Supervisory Authority or other competent data privacy authorities to the extent required by applicable Data Protection Laws and Regulations, in each case solely in relation to Processing of Personal Data, and taking into account the nature of the Processing and information available to Xactly.

7. SECURITY BREACH MANAGEMENT AND NOTIFICATION

Xactly maintains security incident management policies and procedures and shall, to the extent permitted by law, notify Customer's designated contact as set forth by Customer in the signature block below, without undue delay (and in any event within 72 hours of confirmation), of any breach of security leading to the actual or reasonably suspected unauthorized disclosure of Personal Data by Xactly or its Sub-processors of which Xactly becomes aware (a "**Security Breach**"). Any such notification is not an acknowledgement of fault or responsibility. To the extent such Security Breach is caused by a violation of the requirements of this DPA by Xactly, Xactly shall make reasonable efforts to identify and remediate the cause of such Security Breach. Xactly will reasonably assist the Customer to comply with its reporting obligations under applicable Data Protection Laws and Regulations in connection with the Security Breach, including by providing at least the following information to the extent available:

- a) a description of the nature of the Security Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- b) the name and contact details of the data protection officer or other contact point where more information can be obtained;
- c) a description of the likely consequences of the Security Breach;
- d) a description of the measures taken or proposed to be taken to address the Security Breach, including, where appropriate, measures to mitigate its possible adverse effects.

In case of a Security Breach and prior to making any required public statement or required notice, Customer agrees to timely provide Xactly with a draft for discussion on the content of its intended required public statements or required notices for the affected Data Subjects and/or required notices to the relevant Regulators regarding the Security Breach to the extent such public statements or notices identify Xactly by name or relate to Xactly's multi-tenant cloud software and/or Services. This draft shall be discussed in a timely fashion and in good faith between the parties. Notwithstanding the preceding sentence, Customer shall not be required to prejudice its obligations under Data Protection Laws and Regulations.

8. RETURN AND DELETION OF PERSONAL DATA

Xactly shall make Personal Data available for export by Customer upon written request made within thirty (30) days of the date of termination/expiration of the Agreement. Unless prohibited by applicable law, within one hundred twenty (120) days after the termination/expiration of the Agreement, Xactly shall securely destroy all Personal Data in its possession or control.

9. ADDITIONAL TERMS FOR EU PERSONAL DATA

9.1 Application of Standard Contractual Clauses. The Standard Contractual Clauses in Attachment 1 and the additional terms in this Section 9 will apply to the Processing of Personal Data by Xactly in the course of providing the Services as follows:

9.1.1 The Standard Contractual Clauses apply only to Personal Data that is transferred from the European Union, the European Economic Area and their member states, Switzerland, and the United Kingdom, either directly or via onward transfer, to (i) any country that does not ensure an adequate level of data protection within the meaning of applicable Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such applicable Data Protection Laws and Regulations (ii) to any recipient which is not subject to other binding obligations, code of conduct or certification as determined to be sufficient by the relevant data protection authority or (iii) any recipient not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to Binding Corporate Rules for Processors.

9.1.2 The Standard Contractual Clauses apply to (i) the legal entity that has executed the Standard Contractual Clauses as a Data Exporter and, (ii) all Affiliates of Customer established within the European Union, the European Economic Area and their member states, Switzerland, and the United Kingdom that have purchased Services on the basis of an Ordering Document. For the purpose of the Standard Contractual Clauses and this Section 9, the aforementioned entities shall be deemed "Data Exporters".

9.1.3 If Xactly adopts any new or successor version of the Standard Contractual Clauses issued pursuant to applicable Data Protection Laws and Regulations, such new version shall supersede and replace Attachment 1 as of the effective date of such updated Standard Contractual Clauses.

9.2 Details of the Processing. The subject matter of Processing of Personal Data by Xactly is the performance of the Services pursuant to the Agreement. The duration of the Processing is the term of the Agreement. The nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Appendix 1 to the Standard Contractual Clauses.

9.3 Sub-processors. Pursuant to Clause 5(h) of the Standard Contractual Clauses, the Data Exporter acknowledges and expressly agrees that Xactly's Affiliates may be retained as Sub-processors; and (b) Xactly and Xactly's Affiliates



respectively may engage third-party Sub-processors in connection with the provision of the Services. The parties agree that the copies of the Sub-processor agreements that must be sent by the Data Importer to the Data Exporter pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by the Data Importer beforehand, and that such copies will be provided by Data Importer only upon reasonable request by Data Exporter.

9.4 Audits. The parties agree that the audits described in Clause 5(f), Clause 11 and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications: Upon Data Exporter's request, and subject to the confidentiality obligations set forth in the Agreement or otherwise agreed by the parties, Data Importer shall make available to Data Exporter (or Data Exporter's independent, third-party auditor that is not a competitor of Xactly ("**Data Exporter's Auditor**")) information regarding Xactly's compliance with the obligations set forth in this DPA, and shall allow for and contribute to audits and inspections, by Data Exporter or Data Exporter's Auditor. The foregoing requirements may be satisfied by the provision of Xactly's most recent annual SOC2 Report. and, Customer may request, a reasonable assessment questionnaire, not more than once annually. In the event a Supervisory Authority requests access to Xactly's data processing facilities pursuant to Clause 12(2), Customer shall reimburse Data Importer for any reasonable time expended for any such on-site audit at Xactly's then-current Professional Services rates, which shall be made available to Data Exporter upon request. Before the commencement of any such on-site audit, Data Exporter and Data Importer shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Data Exporter shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Data Importer. Data Exporter shall promptly notify Data Importer with information regarding any non-compliance discovered during the course of an audit.

9.5 Certification of Deletion. Personal Data shall be returned or deleted in accordance with the applicable section of the Agreement. The certification of deletion of Personal Data that is described in Clause 12(1) will be provided by the Data Importer to the Data Exporter only upon Data Exporter's written request.

9.6 Data Exports from the United Kingdom under the Standard Contractual Clauses. In case of any transfers of Personal Data under this DPA under the Standard Contractual Clauses from the United Kingdom, to the extent such transfers are subject to Data Protection Laws and Regulations applicable in the United Kingdom ("**UK Data Protection Laws**"), (i) general and specific references in the Standard Contractual Clauses to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 shall hereby be deemed to have the same meaning as the equivalent reference in the UK Data Protection Laws; (ii) References in the Standard Contractual Clauses to "the law of the Member State in which the data exporter is established" shall hereby be deemed to mean "the law of the United Kingdom"; and (iii) any other obligation in the Standard Contractual Clauses determined by the Member State in which the data exporter is established shall hereby be deemed to refer to an obligation under UK Data Protection Laws.

9.7 Conflict. In the event of any conflict or inconsistency between the GDPR, this DPA and the Standard Contractual Clauses in Attachment 1, the conflict or inconsistency shall be resolved by giving precedence in the following order: (i) the terms of the GDPR; (ii) the Standard Contractual Clauses; and (iii) this DPA.

10. DO NOT SELL UNDER CCPA.

To the extent the Personal Data Processing activities are caught by the requirements of the CCPA, Xactly will comply with the obligations set forth in this Section 10. Xactly will not retain, use, sell or otherwise disclose Personal Data: (a) for any purposes other than as set forth in the Agreement and this DPA, unless otherwise required by law, or (b) outside of the direct business relationship between Customer and Xactly, except as permitted under applicable Data Protection Laws and Regulations. Xactly certifies that it understands these restrictions and obligations and will comply with them. For purposes of this Section 10, the term "sell" has the meaning given in the CCPA.

11. LEGAL EFFECT

This DPA shall only become legally binding between the eligible Customer and Xactly when each of the steps set out in the Section "HOW TO EXECUTE THIS DPA" above have been fully completed. The terms of this DPA will end simultaneously and automatically with the termination of the Agreement, provided however any obligation imposed on Xactly under this DPA in relation to the Processing of Personal Data shall survive any termination or expiration of



the Agreement for as long as Xactly maintains such Personal Data in its possession. This DPA is part of and subject to the terms of the Agreement. Customer's remedies (including those of its Affiliates) with respect to any breach by Xactly of the terms of this Agreement will be subject to any aggregate limitation of liability that applies to the Customer under the Agreement. With regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and the Agreement, the provisions of this DPA shall prevail with regard to the parties' data protection obligations.

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement:

CUSTOMER:	XACTLY CORPORATION
By:	By:
Name:	Name: Ron Rasmussen
Title:	Title: Chief Technology Officer
Date:	Date:
Customer's Email Contact (for breach notifications):	

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.:

E-mail:

Other information needed to identify the organisation:

(the data exporter)

And

Name of the data importing organisation: Xactly Corporation

Address: 505 S. Market Street, San Jose, CA 95113, USA

Tel.: +1 (408) 977-3132

E-mail:

Other information needed to identify the organisation: None

(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 sub-processor’ means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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 sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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 sub-processor agrees that the data subject may issue a claim against the data sub-processor 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 sub-processor 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 sub-processor, 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 sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, 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

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 sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor 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 sub-processor's obligations under such agreement.

2. The prior written contract between the data importer and the sub-processor 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 sub-processor 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 sub-processor 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 sub-processor 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: Xactly Corporation

Name (written out in full): Ron Rasmussen

Position: Chief Technology Officer

Address: 505 S. Market Street, San Jose, CA 95113

Other information necessary in order for the contract to be binding (if any): None

Signature _____

(stamp of organisation)

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 _____ and its Affiliates (as defined in the Agreement) established within the European Economic Area (EEA) and Switzerland that have purchased Services pursuant to one or more Ordering Documents.

Data Importer

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

The Data Importer is Xactly Corporation, a provider of hosted incentive compensation, performance management and territory optimization software applications, 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:

Data exporter's employees, agents, advisors, and contractors who are natural persons, and 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:

Names and contact details, e-mail and telephone details, job title, unit/department, location, supervisor(s) and subordinate(s), employee identification number, employment status and type, compensation information, including bonus and sales commission eligibility, quotas, commission rates and on target earnings, objectives, coaching and job performance information.

Special categories of data (if appropriate):

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

- None

Purposes of the transfer / 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. Data importer shall only Process Personal Data in accordance with the instructions as set out by section 2.3 of the DPA.

DATA EXPORTER

Name:

Authorised Signature

DATA IMPORTER: Xactly Corporation

Name: Ron Rasmussen

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):

Data Importer will implement and maintain the technical and organisational measures as set forth at: <https://www.xactlycorp.com/current-security-policy>. Data Importer reserves the right to update such measures at its sole discretion provided that any updates shall not materially diminish the level of security applicable to the Services during an existing Subscription Term.