



balena

BALENA DATA PROCESSING AND GDPR ADDENDUM (Global - Containing EU Processor Clauses)

1. Background

- 1.1 This GDPR Data Processing Addendum ("DPA") forms part of the Master Services Agreement or Terms of Service available at <https://Balena.io/terms-of-service/> or such other location as the Terms of Use may be posted from time to time (as applicable, the "Agreement"), entered into by and between the Customer and Balena Inc. ("Balena"), pursuant to which Customer has accessed Balena's Application Services as defined in the applicable Agreement.
- 1.2 On 25 May 2018, the General Data Protection Regulation (Regulation (EU 2016/679) (the "GDPR") comes into effect. The GDPR regulates the processing of personal data, and introduces significant changes compared with existing European data protection legislation.
- 1.3 In particular, Article 28 of the GDPR specifies certain provisions which must be included in contracts between "controllers" and "processors" (as such terms are defined in the GDPR).
- 1.4 The purpose of this Addendum is to provide that the Parties shall manage their operations and activities with respect to Personal Data in a confidential and secure manner, and in accordance with all applicable laws and regulations, including EU Data Protection Legislation.
- 1.5 Therefore, the Parties wish to enter into this Addendum in order to amend the Agreement, with effect from and including 25 May 2018 (the "**Variation Date**").

2. Variation

- 2.1 In consideration of the mutual promises set out in this Addendum, with effect from the Variation Date, the Parties agree to the following amendments to the Agreement:
 - (a) Annex 1 to this letter shall be inserted as a new Schedule to the Agreement and shall form a part of the Agreement.
 - (b) The provisions of Annex 1 shall replace any provisions in the Agreement which expressly conflict, or are inconsistent with, any provisions of Annex 1. If there is any ambiguity between the provisions of the Agreement (excluding this Addendum), and this Addendum, then the provisions of this Addendum shall prevail.
- 2.2 Except as set out in this paragraph 2, the provisions of the Agreement shall remain unchanged and shall continue in force.

3. Law and jurisdiction

- 3.1 This letter, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and interpreted in accordance with the laws of the State of Washington.

4. Your agreement to this Addendum

- 4.1 Please sign and return the enclosed copy of this letter to acknowledge your agreement to the Addendum and the variation of the Agreement.
- 4.2 If you do not sign and return the enclosed copy of this letter to us, or notify us in writing that you object to its terms, on or before June 1st 2018, we will proceed on the basis that you

accept the provisions of the Addendum, and the variation of the Agreement, and that you are continuing your business relationship with us with that intention.

4.3 We look forward to continuing our business relationship with you. If you have any questions in relation to this letter, please contact us at legal@balena.io.

Yours faithfully,

Alexandros Marinos

Name



Authorised Signature

For and on behalf of Balena Inc.

We agree to the provisions of the GDPR Addendum and the variation of the Agreement with effect from the Variation Date on the terms set out above.

Signed

For and on behalf of

Date

Annex 1

Data Protection Addendum

1. Definitions and interpretation

1.1 In this Addendum, unless the context otherwise requires:

"Affiliate(s)" has the same meaning ascribed to it in the Agreement and, if not defined in the Agreement, the term means any entity that directly or indirectly controls, is controlled by, or is under common control or ownership with a Party, where "control," "controlled by" and "under common control with" means the possession of the power to direct, cause or significantly influence the direction of the entity, whether through the ownership of voting securities, by contract, or otherwise.

"DP Regulator" means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws.

"EU Data Protection Legislation" and **"Applicable Law"** means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("General Data Protection Regulation" or "GDPR"), including any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR, (iii) the applicable data protection laws of Switzerland and the United Kingdom, and (iv) any guidance or codes of practice issued by a governmental or regulatory body or authority in relation to compliance with the foregoing; in each case, to the extent in force, and as such are updated, amended or replaced from time to time.

1.2 In this Addendum, the terms **"Data Subject"**, **"Personal Data"**, **"process"**, **"processing"**, **"transfer"** (in the context of transfers of Personal Data) and **"technical and organisational measures"** shall have the meanings and otherwise be interpreted in accordance with the GDPR and other applicable EU Data Protection Legislation.

2. Compliance with EU Data Protection Legislation

2.1 The Parties shall comply with the provisions and obligations imposed on them by the EU Data Protection Legislation at all times when processing Personal Data in connection with this Agreement, which processing shall be in respect of the types of Personal Data, categories of Data Subjects, nature and purposes, and duration, set out in Schedule 1 to this Addendum.

2.2 The Parties shall each maintain records of all processing operations under their respective responsibility that contain at least the minimum information required by the EU Data Protection Legislation, and shall make such information available to any DP Regulator on request.

3. Processing and security

3.1 In performing its obligations under the Agreement, Balena shall only process the types of Personal Data, and only in respect of the categories of Data Subjects, and only for the nature and purposes of processing and duration, as is set out in the Schedule 1 to this Addendum.

3.2 Customer shall:

(a) ensure that any instructions it issues to Balena shall comply with the EU Data Protection Legislation; and

(b) have sole responsibility for the accuracy, quality and legality of Personal Data and the means by which Customer acquired such Personal Data shall establish the legal basis for processing under EU Data Protection Legislation, including providing all notices and obtaining all consents as may be required under EU Data Protection Legislation in order for Balena to process the Personal Data as otherwise contemplated by this Agreement.

- 3.3 To the extent that Balena receives from, or processes any Personal Data on behalf of, Customer, Balena shall:
- (a) process Personal Data:
 - (i) only in accordance with Customer's written instructions from time to time (including those set out in this Agreement) provided such instructions are lawful and, unless it is otherwise required by any Applicable Law (in which case, unless such law prohibits such notification on important grounds of public interest, Balena shall notify Customer of the relevant legal requirement before processing the Personal Data); and
 - (ii) only for the duration of this Agreement;
 - (b) take commercially reasonable steps to ensure its personnel who are authorised to have access to such Personal Data, and ensure that any such personnel are committed to confidentiality, or are under an appropriate statutory obligation of confidentiality when processing such Personal Data;
 - (c) taking into account:
 - (i) the state of the art;
 - (ii) the nature, scope, context and purposes of the processing; and
 - (iii) the risk and severity of potential harm; implement appropriate technical and organisational measures and procedures to ensure a level of security for such Personal Data appropriate to the risk, including the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access; and
 - (d) inform Customer without undue delay upon becoming aware of any such Personal Data (while within Balena's or its subcontractors' or Affiliates' possession or control) being subject to a personal data breach (as defined in Article 4 of GDPR).
 - (e) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of Customer or as expressly provided for in this Agreement.

4. **Return or destruction of Personal Data**

- 4.1 Subject to paragraph 4.2, Balena shall take reasonable steps, at Customer's option, return or irretrievably delete all Personal Data in its control or possession when it no longer requires such Personal Data to exercise or perform its rights or obligations under this Agreement, and in any event upon Customer's instruction upon the expiry or termination of this Agreement. The Customer acknowledges and agrees that Balena shall retain IP addresses of the devices which it has processed in connection with the Services for a period of up to 90 days after termination of the Agreement before they are deleted.
- 4.2 To the extent that Balena is required by Applicable Law to retain all or part of the Personal Data ("**Retained Data**"), Balena shall:
- (a) cease all processing of the Retained Data other than as required by the Applicable Law;
 - (b) keep confidential all such Retained Data in accordance with the confidentiality provisions set out in the Agreement; and
 - (c) continue to comply with the provisions of this Addendum in respect of such Retained Data.

5. **Audit**

5.1 Balena shall permit Customer or its representatives to access any relevant premises, personnel or records of Balena on reasonable notice to audit and otherwise verify compliance with this Addendum, subject to the following requirements:

- (i) Customer may perform such audits no more than once per year or more frequently if required by EU Data Protection Legislation;
- (ii) Customer may use a third party to perform the audit on its behalf, provided such third party executes a confidentiality agreement acceptable to Balena before the audit;
- (iii) audits must be conducted during regular business hours, subject to Balena's policies, and may not unreasonably interfere with Balena's business activities;
- (iv) Customer must provide Balena with any audit reports generated in connection with any audit at no charge unless prohibited by Applicable Law. Customer may use the audit reports only for the purposes of meeting its audit requirements under EU Data Protection Legislation and/or confirming compliance with the requirements of this Addendum. The audit reports shall be confidential;
- (v) to request an audit, Customer must first submit a detailed audit plan to Balena at least 6 (six) weeks in advance of the proposed audit date. The audit must describe the proposed scope, duration and start date of the audit. Balena will review the audit plan and inform Customer of any concerns or questions (for example, any request for information that could compromise Balena's confidentiality obligations or its security, privacy, employment or other relevant policies). Balena will work cooperatively with Customer to agree a final audit plan;
- (vi) nothing in this paragraph 5 shall require Balena to breach any duties of confidentiality owed to any of its clients, employees or third party providers; and
- (vii) all audits are at Customer's sole cost and expense;

6. **Co-operation and assistance**

6.1 Balena shall:

- (a) take such steps as are reasonably required to assist Customer in ensuring compliance with its obligations under Articles 32 to 36 (inclusive) of GDPR;
- (b) notify Customer as soon as reasonably practicable if it receives a request from a Data Subject to exercise its rights under the EU Data Protection Legislation in relation to that person's Personal Data; and
- (c) provide Customer with reasonable co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the EU Data Protection Legislation in relation to that person's Personal Data provided that Customer shall be responsible for Balena's costs and expenses arising from such co-operation and assistance.

6.2 If either Party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by the other Party or to either Party's compliance with the EU Data Protection Legislation, it shall as soon as reasonably practicable notify the other Party and it shall provide the other Party with commercially reasonable co-operation and assistance in relation to any such complaint, notice or communication.

7. **Sub-processors**

- 7.1 Customer generally agrees that Balena may engage third party providers including any advisers, contractors, or auditors to process Personal Data ("**Sub-Processors**").
- 7.2 A list of Sub-Processors engaged by Balena is available at the following link: <https://balena.io/subprocessors/>, which Balena shall update from time to time.
- 7.3 If Balena engages a new Sub-Processor ("**New Sub-Processor**"), Balena shall inform Customer of the engagement by updating the link found at paragraph 7.2 above.
- 7.4 Customer may object to the engagement of such New Sub-Processor by notifying Balena within 5 Business Days of Balena's update to the link found at 7.2 above, provided that such objection must be on reasonable, substantial grounds, directly related to such New Sub-Processor's ability to comply with substantially similar obligations to those set out in this paragraph.
- 7.5 If Customer does not so object, the engagement of the New Sub-Processor shall be deemed accepted by Customer.
- 7.6 Balena shall ensure that its contract with each New Sub-Processor shall impose obligations on the New Sub-Processor that are materially equivalent to the obligations to which Balena is subject to under this Addendum.
- 7.7 Any sub-contracting or transfer of Personal Data pursuant to this paragraph 7 shall not relieve Balena any of its liabilities, responsibilities and obligations to Customer under this Addendum and Balena shall remain liable for the acts and omissions of its Sub-Processors.
- 7.8 If Customer wishes to be informed of Balena's engagement with New Sub-Processors by email, it shall request such notification in writing to Balena. Balena shall, upon written confirmation of receipt of any request under this paragraph 7.8, send Customer an updated list of Sub-Processors by email to an email address requested by Customer if it engages a new Sub-Processor.

8. **Transfer of Personal Data**

- 8.1 Unless the transfer is based on an "adequacy decision", is otherwise "subject to appropriate safeguards" or if a "derogation for specific situations" applies, each within the meanings given to them in Articles 45, 46 and 49 of the GDPR respectively, Balena shall not transfer, access or process such Personal Data outside the European Economic Area (EEA).
- 8.2 In connection with paragraph 8.1 above, Balena shall enter into the European Commission's Standard Contractual Clauses for controller to processor transfers (for the purposes of Article 46 of the GDPR), with Customer, as set out in Schedule 2, which shall apply only in respect of transfers of Personal Data to Balena from the EEA.
- 8.3 Balena will notify Customer if it intends to obtain and rely upon its then-current EU-US Privacy Shield certification in lieu of the Standard Contractual Clauses, in which case the parties shall adopt an amendment to revise this Agreement accordingly.

9. **Order of precedence**

If there is a conflict between the provisions of the main body of the Data Protection Addendum and the Standard Contractual Clauses, the main body of the Data Protection Addendum shall prevail.

Schedule 1 to Data Protection Addendum

Details of Processing Activities

The Personal Data processing activities carried out by Balena under this Agreement may be described as follows:

1. **Subject matter of processing**

Balena's provision of the Services to Customer.

2. **Nature and purpose of processing**

Balena will process Customer Personal Data for the purposes of providing the Services to Customer in accordance with the Terms.

3. **Categories of Personal Data**

Data relating to individuals provided to Balena via the Services, by (or at the direction of) Customer.

4. **Categories of data subjects**

Data subjects include the individuals about whom data is provided to Balena via the Services by (or at the direction of) Customer.

5. **Duration**

The Term plus the period from the expiry of the Term until deletion of all Customer Data by Balena in accordance with the Terms.

Schedule 2 to Data Protection Addendum

The Standard Contractual Clauses

Taken from the Annex to 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

Standard contractual clauses 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

The Customer as the data **exporter**

And

Balena Inc. as 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.

9. Definitions

For the purposes of the clauses:

- (1) **'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;
- (2) **'the data exporter'** means the controller who transfers the personal data;
- (3) **'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;
- (4) **'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;
- (5) **'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;

- (6) **‘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.

6. 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.

7. Third-party beneficiary clause

- 7.1 The data subject can enforce against the data exporter this clause, clause 8(2) to (9), clause 9(1) to (5), and (7) to (10), clause 10.1 and 10.2, clause 11, clause 12.2, and clauses 13 to 16 as third-party beneficiary.
- 7.2 The data subject can enforce against the data importer this clause, clause 9(1) to (5) and (7), clause 10, clause 11, clause 12.2, and clauses 13 to 16, 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.
- 7.3 The data subject can enforce against the sub-processor this clause, clause 9(1) to (5) and (7), clause 10, clause 11, clause 12.2, and clauses 13 to 16, 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.
- 7.4 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.

8. Obligations of the data exporter

The data exporter agrees and warrants:

- (1) 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;
- (2) 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;
- (3) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (4) 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;

- (5) that it will ensure compliance with the security measures;
- (6) 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;
- (7) to forward any notification received from the data importer or any sub-processor pursuant to clause 9(2) and clause 12.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (8) 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;
- (9) that, in the event of sub-processing, the processing activity is carried out in accordance with clause 15 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
- (10) that it will ensure compliance with clause 8(1) to (9).

9. Obligations of the data importer

The data importer agrees and warrants:

- (1) 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;
- (2) 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;
- (3) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (4) that it will promptly notify the data exporter about:
 - (a) 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;
 - (b) any accidental or unauthorised access; and
 - (c) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (5) 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;

- (6) 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;
- (7) 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;
- (8) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (9) that the processing services by the sub-processor will be carried out in accordance with clause 15;
- (10) to send promptly a copy of any sub-processor agreement it concludes under the clauses to the data exporter.

10. Liability

- 10.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in clause 7 or in clause 15 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 10.2 If a data subject is not able to bring a claim for compensation in accordance with clause 10.1 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 7 or in clause 15, 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.

- 10.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in clauses 10.1 and 10.2, arising out of a breach by the sub-processor of any of their obligations referred to in clause 7 or in clause 15 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.

11. Mediation and jurisdiction

- 11.1 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:
 - (1) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(2) to refer the dispute to the courts in the Member State in which the data exporter is established.

11.2 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.

12. Cooperation with supervisory authorities

12.1 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.

12.2 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.

12.3 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 clause 12.2. In such a case the data exporter shall be entitled to take the measures foreseen in clause 9(2).

13. Governing law

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

14. 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.

15. Sub-processing

15.1 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.

15.2 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 7 for cases where the data subject is not able to bring the claim for compensation referred to in clause 10.2 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.

15.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in clause 15.1 shall be governed by the law of the Member State in which the data exporter is established.

15.4 The data exporter shall keep a list of sub-processing agreements concluded under the clauses and notified by the data importer pursuant to clause 9(10), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

16. Obligation after the termination of personal data-processing services

- 16.1 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.
- 16.2 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 clause 16.1.

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):

The Customer. The data exporter has appointed the data exporter to provide the services set out in the Agreement.

.....

.....

Data importer

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

Balena Inc. The data importer is processing certain personal data in connection with the services.

.....

.....

Data subjects

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

Data subjects include the individuals about whom data is provided to the data importer via the Services by (or at the direction of) the data exporter.

.....

.....

Categories of data

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

Personal data relating to individuals provided to the data exporter via the Services, by (or at the direction of) the data importer.

Special categories of data (if appropriate)

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

N/A
.....
.....
.....

Processing operations

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

Data Importer may process personal data within normal operation of the Services as more fully set forth in the Agreement.

.....
.....
.....

Data Exporter

Name:

Authorised Signature:

Balena as agent for the Data Importer

Name:

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 8(4) and 9(3) (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. Balena may modify or update these practices at its discretion provided that such modification and update does not result in a material degradation in the protection offered by these practices.

TITLE	Balena DPA
FILE NAME	Balena - Customer DPA unsigned.pdf
DOCUMENT ID	8561b819d951f95892ac28fc92e66027e31ff391
STATUS	● Completed

Document History



SENT

11/16/2018
15:04:58 UTCSent for signature to Alexandros (alexandros@balena.io) from
eric@balena.io
IP: 90.193.170.124

VIEWED

11/17/2018
04:04:55 UTCViewed by Alexandros (alexandros@balena.io)
IP: 97.113.30.68

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11/17/2018
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