

ANNEX

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: _____ Email: _____

(the data **exporter**)

And

Name of the data importing organisation: PaySpace

Address:

Tel.: E-mail:

(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 ⁽¹⁾;
- 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;

⁽¹⁾ 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.

- 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 ⁽¹⁾

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;

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

- (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, namely _____

Clause 10

Variation of the contract

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

Clause 11

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⁽¹⁾. 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, namely _____

⁽¹⁾ This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.

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 _____

On behalf of the data importer:

Name (written out in full):

Position:

Address:

Signature

Appendix 1
to the Standard Contractual Clauses

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

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

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

Data importer

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

Provide a cloud-based payroll and human resource system that will allow the data exporter to capture employee related information necessary for calculating statutory taxes and deductions as well as tracking relevant leave information as per legislation. The data includes relevant biographical information with contact details as well as remuneration related information. The system allows email communication with employees in order to inform them of when their payslip is available as well as when they need to approve certain workflow items.

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 PaySpace 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):

Data relating to individuals provided to PaySpace via the Services by (or at the direction of) Data Exporter.

Special categories of data (if appropriate)

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

Data relating to individuals provided to PaySpace via the Services by (or at the direction of) Data Exporter.

Processing operations

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

- Scope of Processing. The Clauses reflect the parties' agreement with respect to the processing and transfer of personal data specified in this Appendix pursuant to the provision

of the Services. Personal data may be processed only to comply with Instructions (as defined in the Terms and Conditions of Use. The Data Exporter instructs the Data Importer to process personal data in countries in which the Data Importer or its Subprocessors maintain facilities.

- Term of Data Processing. Data processing will be for the term specified in the Terms and Conditions of Use and continues until termination.
- Data Deletion. After termination or expiry of the Services Agreement, the Data Importer will delete the Data Exporter's personal data in accordance with the Terms and Conditions of Use.
- Access to Data. During the term of the Services Agreement, the Data Importer will provide the Data Exporter with access to, and the ability to correct, block, and export the Data Exporter's personal data from the Services in accordance Terms and Conditions of Use.
- Subprocessors. The Data Importer may engage Subprocessors to provide parts of the Services. The Data Importer will ensure Subprocessors only access and use the Data Exporter's personal data to provide the Services and not for any other purpose.

DATA EXPORTER

Name: _____

Authorised Signature: _____

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 4(d) and 5(c) (or document/legislation attached):

ISO/IEC 27001

The Data Importer is ISO/IEC 27001 certified. ISO/IEC 27001 is an information security management system (ISMS) standard, part of the ISO/IEC 27000 family of standards that address privacy, confidentiality and technical security issues and have "established guidelines and general principles for initiating, implementing, maintaining, and improving information security management within an organization." The standards outline hundreds of potential controls and control mechanisms. ISO/IEC 27001 in particular is one of the most widely recognized certifications for a cloud service, and thus one of the most valued by our customers. ISO 27001 defines how to implement, monitor, maintain, and continually improve the ISMS. An organization may obtain an ISO 27001 certification on its ISMS, which is typically based on the ISO 27002 Information Security Standards. The PaySpace Security Policy aligns with ISO 27002, augmented with requirements specific to online services. ISO has been the foundation of the security approach for PaySpace and PaySpace have been certified by our independent auditor, the South African Bureau of Standards.

Data Centers

- **Infrastructure.** The Data Importer utilizes data centers owned and operated by Vodacom Business in Johannesburg and Cape Town, South Africa. All Vodacom Business data centers are ISO 27001 certified. The Data Importer stores all production data in these physically secure data centers.
- **Redundancy.** Infrastructure systems have been designed to eliminate single points of failure and minimize the impact of anticipated environmental risks. Dual circuits, switches, networks or other necessary devices help provide this redundancy.
- **Server Operating Systems.** The Data Importer servers use a Windows based implementation customized for the application environment. All servers have anti-virus software installed. The Data Importer employs a weekly vulnerability assessment process to increase the evaluate and report on the current state of products in production and pre-production environments.
- **Businesses Continuity.** The Data Importer replicates data over multiple systems to help to protect against accidental destruction or loss. The Data Importer has designed and plans and tests its business continuity planning/disaster recovery programs.

Networks & Transmission.

- **Data Transmission.** Data centers are typically connected via high-speed private links to provide secure and fast data transfer between data centers. The Data Importer transfers encrypted data via Internet standard protocols.
- **Intrusion Detection.** Intrusion detection is intended to provide insight into ongoing attack activities and provide adequate information to respond to incidents. The Data Importer intrusion detection involves:

- Tightly controlling the size and make-up of the Data Importer's attack surface through preventative measures;
- Employing intelligent detection controls at data entry points; and
- Employing technologies that automatically remedy certain dangerous situations.
- **Incident Response.** The Data Importer has a formal incident management process and monitors a variety of communication channels for security incidents, and The Data Importer's security personnel will react promptly to known incidents.
- **Encryption Technologies.** The Data Importer makes HTTPS encryption (also referred to as SSL or TLS connection) available. Sensitive data at rest is encrypted with AES.

Access and Site Controls.

Site Controls.

- **On-site Data Center Security Operation.** The Data Importer's data centers, hosted by Vodacom Business, maintain an on-site security operation responsible for all physical data center security functions 24 hours a day, 7 days a week. The on-site security operation personnel monitor Closed Circuit TV (CCTV) cameras and all alarm systems. On-site security operation personnel perform internal and external patrols of the data center regularly.
- **Data Center Access Procedures.** The Data Importer maintains formal access procedures for allowing physical access to the data centers. The data centers are housed in facilities that require electronic card key access, with alarms that are linked to the on-site security operation. All entrants to the data center are required to identify themselves as well as show proof of identity to on-site security operations. Only authorized employees, contractors and visitors are allowed entry to the data centers. Only authorized employees and contractors are permitted to request electronic card key access to these facilities. All other entrants requiring temporary data center access must:
 - obtain approval in advance from the data center managers for the specific data center and internal areas they wish to visit;
 - sign in at on-site security operations; and
 - reference an approved data center access record identifying the individual as approved.

Access Control.

- **Infrastructure Security Personnel.** The Data Importer has, and maintains, a security policy for its personnel, and requires security training as part of the training package for its personnel. The Data Importer's infrastructure security personnel are responsible for the ongoing monitoring of the Data Importer's security infrastructure, the review of the Services, and responding to security incidents.
- **Access Control and Privilege Management.** The Data Exporter's administrators must authenticate themselves via a central authentication system or via a single sign on system in order to administer the Services.

Personnel Security.

The Data Importer personnel are required to conduct themselves in a manner consistent with the company's guidelines regarding confidentiality, business ethics, appropriate usage, and professional standards. The Data Importer conducts reasonably appropriate background checks to the extent legally permissible and in accordance with applicable local labour law and statutory regulations.

Personnel are required to execute a confidentiality agreement and must acknowledge receipt of, and compliance with, the Data Importer's confidentiality and privacy policies. Personnel are provided with security training. The Data Importer's personnel will not process customer data without authorization.

Information Security Office.

The Information Security Office of the Data Importer can be contacted by the Data Exporter's administrators at security@payspace.com.