

## Data Processing Annex

This Data Processing Annex forms part of the existing written or electronic agreement(s) between the Customer and Blue Yonder (the "Agreement"), to reflect the parties' agreement with regard to the processing of personal data.

In the course of providing the Services to the Customer in accordance with the Agreement, Blue Yonder may process Customer Personal Data that is subject to GDPR or other Applicable Laws.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In this Data Processing Annex:

**"Affiliates"** shall mean any corporation or other business entity controlling, controlled by or under common control with Blue Yonder. A current list of Affiliates is available at <https://blueyonder.com/contact-us>;

**"Applicable Laws"** means all laws, regulations, orders, rules, judgments, directives, industry agreements or determinations in force from time to time applicable to a party and relevant to the Agreement or this Data Processing Annex, including, without limitation Data Protection Law;

**"Blue Yonder"** or **"JDA"** means Blue Yonder, Inc. (formerly JDA Software, Inc.) or the relevant Blue Yonder Affiliate which has entered into the Agreement with the Customer for the provision of Services;

**"Customer"** means the specific party which has entered into the Agreement with Blue Yonder;

**"Customer Personal Data"** means Personal Data in respect of which Customer is the Data Controller and Blue Yonder is the Data Processor;

**"Data Controller"** means the natural or legal person which alone or jointly with others determines the purposes and means of processing of Personal Data;

**"Data Processor"** means the natural or legal person which processes Personal Data on behalf of a Data Controller;

**"EEA"** means the European Economic Area;

**"Data Protection Law"** means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, the GDPR, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), any national laws or regulations implementing the foregoing Directives, the GDPR (when applicable), and any amendments to or replacements for such laws and regulations, applicable to processing of Personal Data under the Agreement or this Data Processing Annex;

**"GDPR"** means the General Data Protection 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, including as implemented or adopted under the laws of the United Kingdom;

**"Letter"** means the notice of variation letter sent to Customer incorporating this Data Processing Addendum into the Agreement;

**"Personal Data"** means any information relating to an identified or identifiable natural person (**"Data Subject"**) and an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online

## Customer Facing Online Terms

identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

“**processing**” has the meaning given to it in European Data Protection Law and “process”, “processes” and “processed” will be interpreted accordingly;

“**Relevant Country**” means all countries other than those within the EEA and countries in respect of which an adequacy finding under Article 45 of the GDPR has been given;

“**Services**” mean services provided by Blue Yonder under the Agreement;

“**Standard Contractual Clauses**” means the agreement executed by and between the Customer and Blue Yonder Inc. attached hereto as Attachment 1 (and as supplemented by Annex 1 of the Letter) pursuant to the European Commission's decision of 4 June 2021 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. These Standard Contractual Clauses have been presigned by Blue Yonder on its own behalf and on behalf of its Affiliates who are established outside of the EEA; and

“**Sub-Processor**” means any entity which is engaged by Blue Yonder or by any other sub-processor of Blue Yonder who receives Customer Personal Data for processing activities to be carried out on behalf of Customer. For the avoidance of doubt, Sub-processors do not include individual consultants which may be engaged by Blue Yonder to perform any of Blue Yonder's obligations under the Agreement. Such consultants shall be treated like Blue Yonder's employees and Blue Yonder shall be liable for their acts and omissions to the same extent as if the acts or omissions were performed by Blue Yonder.

1.2 In this Data Processing Annex:

1.2.1 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and

1.2.2 references to Clauses and Schedules are, unless otherwise stated, references to the clauses of, and schedules to, this Data Processing Annex; and

1.2.3 references to this Data Processing Annex or any other agreement or document are to this Data Processing Annex or such other agreement or document as it may be varied, amended, supplemented, restated, renewed, novated or replaced from time to time.

## 2. **DATA PROCESSING TERMS**

2.1 The Parties acknowledge that the Customer is the Data Controller and Blue Yonder is a Data Processor of Customer Personal Data. As between the Customer and Blue Yonder, the Customer remains the owner of all Customer Personal Data.

2.2 This Data Processing Annex only applies to the processing of Customer Personal Data by Blue Yonder in connection with the Services under the Agreement. The categories of Data Subjects and types of Customer Personal Data processed are set out in an Annex to the Letter. Customer Personal Data is processed for the purpose of providing the Services and other purposes as identified in the 'Processing activities' section of the Annex to the Letter. Blue Yonder shall process Customer Personal Data for the duration of the Agreement (or longer to the extent permitted by applicable law).

2.3 Each party warrants that in relation to this Data Processing Annex, it is compliant with and will remain compliant with all Applicable Laws.

## Customer Facing Online Terms

- 2.4 Notwithstanding anything to the contrary in the Agreement, in relation to Customer Personal Data, Blue Yonder shall:
- 2.4.1 process Customer Personal Data only in accordance with the Customer's instructions as established in the Agreement or as provided in writing by the Customer from time to time, provided such instructions are reasonable and subject to Blue Yonder's right to charge additional sums at its current rates should the scope of the agreed Services be exceeded. Notwithstanding the foregoing, Blue Yonder may process Customer Personal Data as required under Applicable Laws. In this situation, Blue Yonder will take reasonable steps to inform the Customer of such a requirement before Blue Yonder processes the data, unless the law prohibits this;
  - 2.4.2 ensure only its (or its Sub-Processors) personnel who are contractually bound to respect the confidentiality of Customer Personal Data shall have access to the same;
  - 2.4.3 implement appropriate technical and organizational measures to protect against unauthorized or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of Customer Personal Data and having regard to the nature of the Customer Personal Data which is to be protected and shall be as set forth in Schedule 1. Customer acknowledges that Blue Yonder may change the security measures through the adoption of new or enhanced security technologies and authorises Blue Yonder to make such changes provided that they do not materially diminish the level of protection. Blue Yonder shall make information about the most up to date security measures applicable to the Services available at <https://blueyonder.com/knowledge-center/gdpr/customer-security-measures;>
  - 2.4.4 at the Customer's reasonable request and at the Customer's cost, taking into account the nature of the processing, assist the Customer by implementing appropriate technical and organisational measures, insofar as this is possible, to assist with the Customer's obligation to respond to requests from Data Subjects of Customer Personal Data seeking to exercise their rights under European Data Protection Law (to the extent that the Customer Personal Data is not accessible to the Customer through the Services provided under the Agreement);
  - 2.4.5 at the Customer's reasonable request and at the Customer's cost, taking into account the nature of processing and the information available to Blue Yonder, assist the Customer with its obligations under Articles 32 to 36 of the GDPR. Blue Yonder's assistance under this Clause 2.4.5 and at Clauses 2.4.3 and 2.4.4 shall be chargeable, as incurred, at Blue Yonder's then current rates; and
  - 2.4.6 upon request by the Customer, delete or return to the Customer any such Customer Personal Data within the agreed period of time after the end of the provision of the Services as set out in the Agreement (or within a reasonable period of time if the Agreement is silent on this point), unless Applicable Laws require storage of the Customer Personal Data. Unless otherwise provided in the Agreement, Blue Yonder reserves the right to charge for such deletion or return of such Customer Personal Data.
- 2.5 The Customer agrees that Blue Yonder may transfer Customer Personal Data or give access to Customer Personal Data to Sub-Processors for the purposes of providing the Services or other purposes identified in the 'Processing activities' section of the Appendix named Data Processing Information to the Letter, provided that Blue Yonder complies with the provisions of this Clause 2.5. Blue Yonder shall remain responsible for its Sub-Processor's compliance with the obligations of this Data Processing Annex. Blue Yonder shall ensure that any Sub-Processors to whom Blue Yonder transfers Customer Personal Data enter into written agreements with Blue Yonder requiring that the subcontractor abide by terms no less protective, in any

## Customer Facing Online Terms

material respect, than this Data Processing Annex. A current list of Sub-Processors approved as at the date of this Data Processing Annex is available to Customer at <http://blueyonder.com/legal/sub-processor-list>. Blue Yonder can at any time and without justification make changes or additions to the Sub-Processor list provided that the Customer is given fifteen (15) days' prior notice and the Customer does not legitimately object to such changes within that timeframe. Blue Yonder shall provide notice through the current Sub-Processor list on the website or, alternatively, if Customer has subscribed to notifications of changes or additions to the Sub-Processor list by clicking this link <https://now.blueyonder.com/subprocessor-sign-up.html>, Blue Yonder will provide notice to Customer through e-mail. Legitimate objections must contain reasonable and documented grounds relating to a Sub-processor's non-compliance with applicable European Data Protection Law.

- 2.6 The Customer acknowledges that as part of the Services the Customer Personal Data may be located in or accessed from the US or another Relevant Country. Where this involves Blue Yonder or its Affiliates, the Standard Contractual Clauses in Attachment 1 of this Data Processing Annex (as supplemented by Annex 1 of the Letter) will apply in addition to the terms of this Data Processing Annex. For other Sub-Processors based in Relevant Countries, the parties shall take steps to ensure that there is adequate protection for any such transfers of Customer Personal Data as defined in European Data Protection Laws. Where the Standard Contractual Clauses apply, the Customer acknowledges the following:
- 2.6.1 **Instructions:** For the purposes of Clause 8.1 of the Standard Contractual Clauses, processing in accordance with the Agreement or as provided in writing by the Customer from time to time (subject to the data importer's right to charge additional sums at its current rates should the scope of the agreed Services be exceeded is deemed to be an instruction by the Customer to process Customer Personal Data);
- 2.6.2 **Sub-Processors:** Pursuant to Clause 9 of the Standard Contractual Clauses the Customer acknowledges that data importer may engage third party Sub-processors in connection with the provision of the Services and that Blue Yonder shall make available to the Customer the current list of all Sub-processors as set out in Clause 2.5 above. Blue Yonder will notify the Customer of any new Sub-processors engaged by the data importer as set out in Clause 2.5 above;
- 2.6.3 **Copies of Sub-Processor Agreements.** The Customer agrees that copies of any Sub-processor agreements that must be provided to the Customer pursuant to Clause 9(c) 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 the data importer in a manner to be determined in its discretion, only upon request by the Customer via email to [privacy@blueyonder.com](mailto:privacy@blueyonder.com);
- 2.6.4 **Audits:** The Customer agrees that the audits described in Clause 8.9 of the Standard Contractual Clauses shall be carried out in accordance with Clauses 2.8-2.10 below;
- 2.6.5 **Certification of Deletion:** To the extent applicable and required, the parties agree that the certification of deletion of personal data that is described in Clause 8.5 of the Standard Contractual Clauses shall be provided by the data importer only upon the Customer's written request via email to [privacy@blueyonder.com](mailto:privacy@blueyonder.com);
- 2.6.6 **Conflict:** In the event of any conflict or inconsistency between the body of this Data Processing Annex and any of its Schedules (not including the Standard Contractual Clauses) and the Standard Contractual Clauses in Attachment 1, the Standard Contractual Clauses will prevail (unless this would result in the

## Customer Facing Online Terms

invalidity of this Data Processing Annex under European Data Protection Laws (in which case the relevant term(s) of this Data Processing Annex shall prevail).

- 2.7 Blue Yonder shall notify the Customer, without undue delay, if Blue Yonder becomes aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed by Blue Yonder (“**Security Incident**”) and take such steps as the Customer may reasonably require, within the timescales reasonably required by the Customer, to remedy the Security Incident and provide such further information as the Customer may reasonably require. Blue Yonder's assistance under this Clause 2.7 shall be chargeable, as incurred, at Blue Yonder's then current rates unless and to the extent that the Customer demonstrates that such assistance is required because of a failure by Blue Yonder to comply with the obligations under this Data Processing Annex.
- 2.8 Blue Yonder shall audit the security of the computers and computing environments that it uses in processing Customer Personal Data and the physical locations from which it processes Customer Personal Data (including that of its Sub-Processors). This audit: (a) will be performed at least annually; and (b) may be performed by independent third-party security professionals at Blue Yonder's selection and expense.
- 2.9 Blue Yonder shall respond, no more frequently than annually, to any reasonable security questionnaire provided by Customer which seeks to assist Customer's assessment of Blue Yonder's compliance with the security obligations under this Data Processing Annex. Such security questionnaire may request copies of any third-party compliance certificates or SOC audit reports (or equivalent) held by Blue Yonder and which may be applicable to the Services. The responses to such questionnaire and any supporting evidence provided by Blue Yonder shall be considered confidential information of Blue Yonder.
- 2.10 If the Customer desires to change this instruction regarding exercising the audit right or the provision of information in order to demonstrate compliance with Article 28 of the GDPR, then the Customer has the right to change this instruction to the extent so required to ensure compliance, which shall be requested in writing via email to [privacy@blueyonder.com](mailto:privacy@blueyonder.com), provided that Blue Yonder shall have no obligation to provide commercially confidential information.

### 3. **LIMITATION OF LIABILITY**

- 3.1 To the maximum extent permitted under Applicable Laws, each party's (and in respect of Blue Yonder, all of its Affiliates) liability, taken together in the aggregate, arising out of or related to this Data Processing Annex (including Attachment 1) and the Letter (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) is subject to the limits and exclusions under the Agreement and in particular (subject always to paragraph 3.3) any cap on liability set out in the Agreement.
- 3.2 Any reference in this Data Processing Annex (including Attachment 1), the Letter, or the Agreement to the liability of a party means the aggregate liability of that party (and in respect of Blue Yonder all of its Affiliates) under the Agreement, this Data Processing Annex (including Attachment 1) and the Letter together. For the avoidance of doubt, Blue Yonder and its Affiliates' total liability for all claims from the Customer arising out of or related to the Agreement, this Data Processing Annex (including Attachment 1) and the Letter together shall apply in the aggregate for all claims under any of these mentioned agreements, and, in particular, shall not be understood to apply individually and severally to Customer.

## Customer Facing Online Terms

- 3.3 In no event will Blue Yonder or its Affiliates' aggregate liability in respect of Data Protection Losses arising under or in connection with this Data Processing Annex (including Attachment 1), the Letter or the Agreement exceed any of the following:
- (a) any cap specified in the Agreement;
  - (b) If Customer's primary establishment is within the EEA – €500,000; or
  - (c) If Customer's primary establishment is not within the EEA - \$600,000.
- 3.4 For the avoidance of doubt, to the extent there is an overall cap on Blue Yonder or its Affiliates' liability in the Agreement which is higher than the cap set out at clause 3.3(b) or (c) above, any amounts awarded or agreed to be paid under 3.3 above shall count towards the existing overall cap.
- 3.5 Nothing in this Data Processing Annex (including Attachment 1) or the Letter shall exclude or limit either party's liability which cannot be excluded or limited by Applicable Laws.

**Schedule 1**

**Security Measures**

The Security Measures are detailed at <https://blueyonder.com/knowledge-center/gdpr/customer-securitymeasures> as may be updated by Blue Yonder from time to time in accordance with clause 2.4.3.

**ATTACHMENT 1**

**STANDARD CONTRACTUAL CLAUSES (MODULE 2 - CONTROLLER TO PROCESSOR)**

**SECTION I**

***Clause 1***

**Purpose and scope**

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer') have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

***Clause 2***

**Effect and invariability of the Clauses**

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

***Clause 3***

**Third-party beneficiaries**

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions: (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
  - (ii) Clause 8.1(b), 8.9(a), (c), (d) and (e);
  - (iii) Clause 9(a), (c), (d) and (e);
  - (iv) Clause 12(a), (d) and (f);
  - (v) Clause 13;



- (vi) Clause 15.1(c), (d) and (e);
- (vii) Clause 16(e); and
- (viii) Clause 18(a) and (b).

(b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

#### **Clause 4**

##### **Interpretation**

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

#### **Clause 5**

##### **Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

#### **Clause 6**

##### **Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

#### **Clause 7**

##### **Docking clause**

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]

## **SECTION II – OBLIGATIONS OF THE PARTIES**

#### **Clause 8**

##### **Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

##### **8.1 Instructions**

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

## 8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

## 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

## 8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

## 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

## 8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

### **8.7 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

### **8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

### **8.9 Documentation and compliance**

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there

are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.

- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

### **Clause 9**

#### **Use of sub-processors**

- (a) The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the data exporter's prior specific written authorisation. The data importer shall submit the request for specific authorisation at least 30 days prior to the engagement of the sub-processor, together with the information necessary to enable the data exporter to decide on the authorisation. The list of sub-processors already authorised by the data exporter can be found in Annex III. The Parties shall keep Annex III up to date.
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of thirdparty beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the subprocessor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

### **Clause 10**

#### **Data subject rights**

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

**Clause 11**

**Redress**

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.
- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
  - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13; (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

**Clause 12**

**Liability**

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- (e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

**Clause 13**

**Supervision**

- (a) The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.
- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

**SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES**

**Clause 14**

**Local laws and practices affecting compliance with the Clauses**

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
  - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
  - (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;
  - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).

- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

## **Clause 15**

### **Obligations of the data importer in case of access by public authorities**

#### **15.1 Notification**

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
- (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
  - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

#### **15.2 Review of legality and data minimisation**

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

#### **SECTION IV – FINAL PROVISIONS**

##### ***Clause 16***

##### **Non-compliance with the Clauses and termination**

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
  - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
  - (ii) the data importer is in substantial or persistent breach of these Clauses; or
  - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.



**Clause 17**

**Governing law**

These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of Sweden.

**Clause 18**

**Choice of forum and jurisdiction**

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Sweden.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

## Customer Facing Online Terms

### **ANNEX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Annex 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 Annex.

#### **A. LIST OF PARTIES Data**

**exporter:**

**Name:**

**Address:**

**Contact person's name, position and contact details:**

**Activities relevant to the data transferred under these Clauses:** The data exporter is a user of the Services offered and operated by Blue Yonder as defined in the Agreement.

**Role (controller/processor):** controller

#### **Data importer**

Name: Blue Yonder, Inc.

**Address:** 15059 North Scottsdale Road., Suite 400  
Scottsdale, Arizona 85254

**Contact person's name, position and contact details:** Daniel J Maynard, President, 15059 North Scottsdale Road., Suite 400, Scottsdale, Arizona 85254; dan.maynard@blueyonder.com

**Activities relevant to the data transferred under these Clauses:** The data importer is the leading provider of end-to-end, integrated retail and supply chain planning and execution solutions for more than 4,000 customers worldwide.

**Role (controller/processor):** processor

#### **B. DESCRIPTION OF TRANSFER**

**Categories of data subjects whose personal data is transferred:**

*Users of Services offered and operated by Blue Yonder.*

**Categories of personal data transferred:**

*Contact details (such as name, telephone number, email address), physical location, user ID and IP address.*

*And any other personal data provided by the Customer or uploaded or transmitted by users into the Blue Yonder Services.*

## Customer Facing Online Terms

**Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures:**

*None*

**The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis) *Please see the Agreement***

**Nature of the processing:**

*Including but not limited to the provision of Services as defined in the Agreement.*

**Purpose(s) of the data transfer and further processing:**

*Including but not limited to the provision of support and maintenance services, testing, hosting services, development, consulting and education services.*

**The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:**

*Please see the Agreement*

**For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing:**

*Please see the Agreement as well as Annex 3 to the Standard Contractual Clauses*

### **C. COMPETENT SUPERVISORY AUTHORITY**

*If the data exporter is established in a European Economic Area (EEA) country, the competent EEA country's supervisory authority is the supervisory authority in that country.*

*If the data exporter is not established in an EEA country but falls within GDPR territorial scope and has appointed an EU representative, the competent supervisory authority is the supervisory authority in the EEA country in which the data exporter's representative is located.*

*If the data exporter is not established in an EEA country, but falls within GDPR territorial scope without being required to appoint an EU representative, the competent supervisory authority is the supervisory authority in one of the EEA countries in which the data subjects whose data are being transferred pursuant to these Clauses (in relation to the offering of goods or services to them or whose behaviour is monitored) are located*

## Customer Facing Online Terms

### **ANNEX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

Data importer has implemented and will maintain appropriate technical and organisational measures to protect Customer Personal Data (as defined in the Data Processing Annex) against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. The measures described in Schedule 1 of the Data Processing Annex are hereby incorporated into this Annex 2 by this reference and are binding on the data importer as if they were set forth in this Annex 2 in their entirety.

## Customer Facing Online Terms

### **ANNEX 3 TO THE STANDARD CONTRACTUAL CLAUSES**

#### **LIST OF SUB-PROCESSORS**

The controller has authorised the use of the following sub-processors as detailed here:

<https://blueyonder.com/legal/sub-processor-list>