

Data Processing Addendum

This Data Processing Addendum (“DPA”) forms a part of Customer Terms of Service found at <https://www.cliniko.com/policies/terms> (the “**Agreement**”).

By signing the DPA, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws, in the name and on behalf of its Controller Affiliates (defined below). For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and Controller Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

In the course of providing the Services under the Agreement, Red Guava Pty. Ltd. (“**Red Guava**”) may Process certain Personal Data (such terms defined below) on behalf of Customer and where Red Guava Processes such Personal Data on behalf of Customer the Parties agree to comply with the terms and conditions in this DPA in connection with such Personal Data.

How to execute this DPA:

1. This DPA consists of two parts: the main body of the DPA, and Exhibit A, B and C (including Appendices 1 and 2).
2. This DPA has been pre-signed on behalf of Red Guava.
3. To complete this DPA, Customer must:
 - a. Complete the information in the signature box and sign on Page 9.
 - b. Complete the information as the data exporter on Page 13.
 - c. Complete the information in the signature box and sign on Pages 20, 22 and 23.
4. Send the completed and signed DPA to Red Guava by email, indicating Customer’s Cliniko subdomain and business name, to dpa@cliniko.com.

Upon receipt of the validly completed DPA by Red Guava at this email address, this DPA will become legally binding.

How this DPA applies to the Customer and its affiliates

If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement. In such case, the Red Guava entity that is party to the Agreement is party to this DPA.

If the Customer entity signing this DPA is not a party to the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA.

1. Definitions

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Authorized User**” define as any person who is authorized by Red Guava to use the Services.

“**Controller**” means the entity which determines the purposes and means of the Processing of Personal Data.

“**Controller Affiliate**” means any of Customer's Affiliate(s) (a) (i) that are subject to applicable Data Protection Laws of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (ii) permitted to use the Services pursuant to the Agreement between Customer and Red Guava, but are not a “Customer” as defined under the Agreement, (b) if and to the extent Red Guava processes Personal Data for which such Affiliate(s) qualify as the Controller.

“**Customer Data**” means all data and information submitted by Authorized Users to the Services and includes message text, files, comments and links, but does not include Non-Red Guava Products or the Services.

“**Data Protection Laws**” means all laws and regulations, including laws and binding regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

“**Data Subject**” means the identified or identifiable person to whom Personal Data relates.

“**GDPR**” means the 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, and repealing Directive 95/46/EC (General Data Protection Regulation).

“**Personal Data**” means any Customer Data that relates to an identified or identifiable natural person, to the extent that such information is protected as personal data under applicable Data Protection Laws.

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

“**Processor**” means the entity which Processes Personal Data on behalf of the Controller.

“**Security Practices Datasheet**” means Red Guava’s Security Practices Datasheet, as updated from time to time, and currently available at <https://cliniko.com/security>.

“**Services**” means the provision of the Cliniko software application and related platform, and services related thereto (such as customer support).

“**Red Guava**” means Red Guava Pty. Ltd., a company incorporated in Melbourne, Australia, a company constituted under the laws of Australia.

“**Standard Contractual Clauses**” means the agreement executed by and between Customer and Red Guava and attached hereto as Exhibit C pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

“**Sub-processor**” means any entity engaged by Red Guava to Process Personal Data in connection with the Services.

“**Supervisory Authority**” means an independent public authority which is established by an EU Member State pursuant to the GDPR.

2. Processing of personal data

- 2.1. Roles of the Parties.** The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Red Guava is the Processor and that Red Guava will engage Sub-processors pursuant to the requirements set forth in Section 4 “Sub-processors” below.
- 2.2. Customer’s Processing of Personal Data.** Customer shall, in its use of the Services and provision of instructions, Process Personal Data in accordance with the requirements of applicable Data Protection Law. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.
- 2.3. Red Guava’s Processing of Personal Data.** As Customer’s Processor, Red Guava shall only Process Personal Data for the following purposes: (i) Processing in accordance with the Agreement; (ii) Processing initiated by Authorized Users in their use of the Services; and (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email or support tickets) that are consistent with the terms of the Agreement (individually and collectively, the “**Purpose**”). Red Guava acts on behalf of and on the instructions of Customer in carrying out the Purpose.
- 2.4. Details of the Processing.** The subject-matter of Processing of Personal Data by Red Guava is as described in the Purpose in Section 2.3. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data

and categories of Data Subjects Processed under this DPA are further specified in Exhibit B (Description of Processing Activities) to this DPA.

3. Rights of data subjects

- 3.1. Data Subject Requests.** Red Guava shall, to the extent legally permitted, promptly notify Customer if Red Guava receives any requests from a Data Subject to exercise the following Data Subject rights in relation to Personal Data: access, rectification, restriction of Processing, erasure (“right to be forgotten”), data portability, objection to the Processing, or to not be subject to an automated individual decision making (each, a “**Data Subject Request**”). Taking into account the nature of the Processing, Red Guava shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer’s obligation to respond to a Data Subject Request under applicable Data Protection Laws. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, Red Guava shall, upon Customer’s request, provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Red Guava is legally permitted to do so and the response to such Data Subject Request is required under applicable Data Protection Laws. To the extent legally permitted, Customer shall be responsible for any costs arising from Red Guava’s provision of such assistance, including any fees associated with provision of additional functionality.

4. Sub-processors

- 4.1. Appointment of Sub-processors.** Customer acknowledges and agrees that (a) Red Guava’s Affiliates may be retained as Sub-processors through written agreement with Red Guava and (b) Red Guava and Red Guava’s Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. As a condition to permitting a third-party Sub-processor to Process Personal Data, Red Guava or a Red Guava Affiliate will enter into a written agreement with each Sub-processor containing data protection obligations that provide at least the same level of protection for Personal Data as those in this DPA, to the extent applicable to the nature of the Services provided by such Sub-processor. Customer acknowledges that Red Guava is located in Australia and is involved in providing the Services to Customer directly. Customer agrees to enter into the Standard Contractual Clauses set out in Exhibit C and acknowledges that Sub-processors may be appointed by Red Guava in accordance with Clause 11 of Exhibit C.
- 4.2. List of Current Sub-processors and Notification of New Sub-processors.** A current list of Sub-processors for the Services, including the identities of those Sub-processors and their country of location, is accessible via <https://help.cliniko.com/privacy/data-processing/cliniko-subprocessors> (“Sub-processor Lists”). Customer may receive notifications of new Sub-processors by emailing to subprocessor+subscribe@redguava.com.au to "Subscribe", and if a

Customer contact subscribes, Red Guava shall provide the subscriber with notification of new Sub-processor(s) before authorizing such new Sub-processor(s) to Process Personal Data in connection with the provision of the applicable Services.

- 4.3. Objection Right for New Sub-processors.** Customer may reasonably object to Red Guava's use of a new Sub-processor (e.g., if making Personal Data available to the Sub-processor may violate applicable Data Protection Law or weaken the protections for such Personal Data) by notifying Red Guava promptly via email to dpa@redguava.com.au within ten (10) business days after receipt of Red Guava's notice in accordance with the mechanism set out in Section 4.2. Such notice shall explain the reasonable grounds for the objection. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Red Guava will use commercially reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening Customer. If Red Guava is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, either party may terminate without penalty the applicable Agreement with respect only to those Services which cannot be provided by Red Guava without the use of the objected-to new Sub-processor by providing written notice to Red Guava. Red Guava will refund Customer any prepaid fees covering the remainder of the term of such Agreement following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.
- 4.4. Liability.** Red Guava shall be liable for the acts and omissions of its Sub-processors to the same extent Red Guava would be liable if performing the Services of each Sub-processor directly under the terms of this DPA.

5. Security

- 5.1. Controls for the Protection of Personal Data.** Red Guava shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Personal Data), confidentiality and integrity of Personal Data, as set forth in the Security Practices Datasheet. Red Guava regularly monitors compliance with these measures. Red Guava will not materially decrease the overall security of the Services during a subscription term.
- 5.2. Third-Party Certifications and Audits.** Red Guava has access to the third-party certifications and audits set forth in the Security Practices Datasheet. Upon Customer's request, and subject to the confidentiality obligations set forth in the Agreement, Red Guava shall make available to Customer (or Customer's independent, third-party auditor) information regarding the Red Guava's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits set forth in the Security Practices Datasheet. Customer may contact Red Guava via email to dpa@cliniko.com to request an on-site audit of

Red Guava's procedures relevant to the protection of Personal Data, but only to the extent required under applicable Data Protection Law. Customer shall reimburse Red Guava for any time expended for any such on-site audit at Red Guava's then-current rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Red Guava shall mutually agree upon the scope, timing, and duration of the audit, in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Red Guava. Customer shall promptly notify Red Guava with information regarding any non-compliance discovered during the course of an audit, and Red Guava shall use commercially reasonable efforts to address any confirmed non-compliance.

6. Personal data incident management and notification

Red Guava maintains security incident management policies and procedures specified in the Security Practices Datasheet. Red Guava shall notify Customer without undue delay of any breach relating to Personal Data (within the meaning of applicable Data Protection Law) of which Red Guava becomes aware and which may require a notification to be made to a Supervisory Authority or Data Subject under applicable Data Protection Law or which Red Guava is required to notify to Customer under applicable Data Protection Law (a "**Personal Data Incident**"). Red Guava shall provide commercially reasonable cooperation and assistance in identifying the cause of such Personal Data Incident and take commercially reasonable steps to remediate the cause to the extent the remediation is within Red Guava's control. Except as required by applicable Data Protection Law, the obligations herein shall not apply to incidents that are caused by Customer, Authorized Users and/or any Non-Red Guava Products.

7. Return and deletion of personal data

Upon termination of the Services for which Red Guava is Processing Personal Data, Red Guava shall, upon Customer's request, and subject to the limitations described in the Agreement and the Security Practices Datasheet, return all Personal Data in Red Guava's possession to Customer or securely destroy such Personal Data and demonstrate to the satisfaction of Customer that it has taken such measures, unless applicable law prevents it from returning or destroying all or part of Personal Data.

8. Controller Affiliates

- 8.1. Contractual Relationship.** The parties acknowledge and agree that, by executing the DPA in accordance with "How to execute this DPA", Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Controller Affiliates, thereby establishing a separate DPA between Red Guava and each such Controller Affiliate subject to the provisions of the Agreement and this Section 8 and Section 9. Each Controller Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. For the avoidance of doubt, a Controller Affiliate is not and does not become a party to the

Agreement, and is only a party to the DPA. All access to and use of the Services by Controller Affiliates must comply with the terms and conditions of the Agreement and any violation of the terms and conditions of the Agreement by a Controller Affiliate shall be deemed a violation by Customer.

8.2. Communication. The Customer that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Red Guava under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Controller Affiliates.

8.3. Rights of Controller Affiliates. If a Controller Affiliate becomes a party to the DPA with Red Guava, it shall, to the extent required under applicable Data Protection Laws, also be entitled to exercise the rights and seek remedies under this DPA, subject to the following:

8.3.1. Except where applicable Data Protection Laws require the Controller Affiliate to exercise a right or seek any remedy under this DPA against Red Guava directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Controller Affiliate, and (ii) the Customer that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Controller Affiliate individually but in a combined manner for all of its Controller Affiliates together (as set forth, for example, in Section 8.3.2, below).

8.3.2. The parties agree that the Customer that is the contracting party to the Agreement shall, if carrying out an on-site audit of the Red Guava procedures relevant to the protection of Personal Data, take all reasonable measures to limit any impact on Red Guava by combining, to the extent reasonably possible, several audit requests carried out on behalf of different Controller Affiliates in one single audit.

9. Limitation of Liability

Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Controller Affiliates and Red Guava, whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together.

For the avoidance of doubt, Red Guava and its Affiliates' total liability for all claims from the Customer and all of its Controller Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under the Agreement, including by Customer and all Controller Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any Controller Affiliate that is a contractual party to any such DPA.

10. European Specific Provisions

10.1. GDPR. With effect from 25 May 2018, Red Guava will Process Personal Data in accordance with the GDPR requirements directly applicable to Red Guava's provisioning of the Services.

10.1.1. Data Protection Impact Assessment. Upon Customer's request, Red Guava shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Red Guava. Red Guava shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority, to the extent required under the GDPR.

11. Legal Effect

This DPA shall only become legally binding between Customer and Red Guava when the formalities steps set out in the Section "How to execute this DPA" above have been fully completed. If Customer has previously executed a data processing addendum with Red Guava, this DPA supersedes and replaces such prior Data Processing Addendum.

12. Governing Law

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

List of Exhibits

- Exhibit A: Additional Data Transfer Terms
- Exhibit B: Description of Processing Activities
- Exhibit C: Standard Contractual Clauses



The parties' authorized signatories have duly executed this DPA:

On behalf of Customer:

Name (written out in full): _____

Position: _____

Address: _____

Signature: _____

On behalf of Red Guava:

Name: Joel Friedlaender

Position: Director

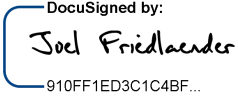
Signature:  _____
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EXHIBIT A Additional Data Transfer Terms

1. Additional terms to standard contractual clauses

- 1.1. Customers covered by the Standard Contractual Clauses.** The Standard Contractual Clauses and the additional terms specified in this Exhibit A apply to (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and its Controller Affiliates and, (ii) all Affiliates of Customer established within the European Economic Area, Switzerland and the United Kingdom, which have signed Order Forms for the Services. For the purpose of the Standard Contractual Clauses and this Section 1, the aforementioned entities shall be deemed “data exporters”.
- 1.2. Instructions.** This DPA and the Agreement are Customer’s complete and final instructions at the time of execution of the DPA for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the Standard Contractual Clauses, the following is deemed an instruction by the Customer to process Personal Data: (a) Processing in accordance with the Agreement and applicable Order Form(s); (b) Processing initiated by Authorized Users in their use of the Services; and (c) Processing to comply with other reasonable instructions provided by Customer (e.g., via email or support tickets) where such instructions are consistent with the terms of the Agreement.
- 1.3. Appointment of new Sub-processors and List of current Sub-processors.** Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that (a) Red Guava’s Affiliates may be retained as Sub-processors; and (b) Red Guava and Red Guava’s Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. Red Guava shall make available to Customer the current list of Sub-processors in accordance with Section 4.2 of this DPA.
- 1.4. Notification of New Sub-processors and Objection Right for new Sub-processors.** Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that Red Guava may engage new Sub-processors as described in Sections 4.2 and 4.3 of the DPA.
- 1.5. Copies of Sub-processor Agreements.** The parties agree that the copies of the Sub-processor agreements that must be provided by Red Guava to Customer pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by Red Guava beforehand; and, that such copies will be provided by Red Guava, in a manner to be determined in its discretion, only upon request by Customer.
- 1.6. Audits and Certifications.** The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications:
Upon Customer’s request, and subject to the confidentiality obligations set forth in the Agreement, Red Guava shall make available to Customer (or Customer’s

independent, third-party auditor) information regarding Red Guava's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits set forth in the Security Practices Datasheet. Customer may contact Red Guava in accordance with the "Notices" Section of the Agreement to request an on-site audit of Red Guava's procedures relevant to the protection of Personal Data, but only to the extent required under applicable Data Protection Law. Customer shall reimburse Red Guava for any time expended for any such on-site audit at Red Guava's then-current rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Red Guava shall mutually agree upon the scope, timing, and duration of the audit, in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Red Guava. Customer shall promptly notify Red Guava with information regarding any non-compliance discovered during the course of an audit, and Red Guava shall use commercially reasonable efforts to address any confirmed non-compliance.

- 1.7. Certification of Deletion.** The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by Red Guava to Customer only upon Customer's request.
- 1.8. Conflict.** In the event of any conflict or inconsistency between the body of this DPA and any of its Schedules (not including the Standard Contractual Clauses) and the Standard Contractual Clauses in Exhibit C, the Standard Contractual Clauses shall prevail.

EXHIBIT B

Description of Processing Activities

Data subjects

Customer may submit personal data to the Services, the extent of which is determined and controlled by Customer and which may include, but is not limited to, personal data relating to the following categories of data subject:

- Authorized Users;
- employees of Customer;
- consultants of Customer;
- contractors of Customer;
- agents of Customer; and/or
- third parties with whom the Customer conducts business, or about whom the Customer obtains information in the course of and for the purpose of conducting business.

Categories of data

The personal data transferred concern the following categories of data:

Any personal data comprised in Customer Data, as defined in the Agreement.

Special categories of data

Customer may submit personal data to Red Guava through the Services, the extent of which is determined and controlled by Customer in compliance with applicable Data Protection Law and which may concern the following special categories of data, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade-union membership;
- genetic or biometric data;
- health; and
- data concerning a person's sex life or sexual orientation.

Processing operations

The personal data transferred will be processed in accordance with the Agreement and any Order Form and may be subject to the following processing activities:

- storage and other processing necessary to provide, maintain, and update the Services provided to Customer;
- to provide customer and technical support to Customer; and
- disclosures in accordance with the Agreement, as compelled by law.



EXHIBIT C
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.:..... ; fax:..... ;

e-mail:.....

Other information needed to identify the organisation:

.....
(the data **exporter**)

And

Name of the data importing organisation: Red Guava

e-mail:dpa@redguava.com.au

Chat: <https://www.cliniko.com>

Other information needed to identify the organisation:

.....
(the data **importer**)
each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1
Definitions

For the purposes of the Clauses:

- A. 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- B. 'the data exporter' means the controller who transfers the personal data;

- C. 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- D. 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- E. 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- F. 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

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

Clause 3

Third-party beneficiary clause

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

Clause 4
Obligations of the data exporter

The data exporter agrees and warrants:

- A. that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- B. that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- C. that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- D. that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- E. that it will ensure compliance with the security measures;
- F. that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- G. to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- H. to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- I. that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- J. that it will ensure compliance with Clause 4(a) to (i).

Clause 5
Obligations of the data importer

The data importer agrees and warrants:

- A. to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- B. that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- C. that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- D. that it will promptly notify the data exporter about:
 - 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;
- E. to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- F. at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- G. to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- H. that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- I. that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- J. to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6 Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.
The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

Clause 7 Mediation and jurisdiction

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

Clause 8

Cooperation with supervisory authorities

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

Clause 9

Governing law

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

Clause 10

Variation of the contract

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

Clause 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at

least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

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



On behalf of the Data Exporter:

Name (written out in full): _____

Position: _____

Address: _____

Signature: _____

On behalf of the Data Importer:

Name: Joel Friedlaender

Position: Director

Signature:

DocuSigned by:
Joel Friedlaender
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Appendix 1 to the Standard Contractual Clauses

Data Exporter

The Data Exporter is a customer of the Data Importer's practice management software, services, systems and/or technologies.

Data Importer

The Data Importer is a provider of practice management software, services, systems and/or technologies.

Data subjects

Data Exporter may submit personal data to the Data Importer through the Services, the extent of which is determined and controlled by the Data Exporter in compliance with applicable Data Protection Law and which may include, but is not limited to, personal data relating to the following categories of data subject:

- Authorized Users;
- employees of the Data Exporter;
- consultants of the Data Exporter;
- contractors of the Data Exporter;
- agents of the Data Exporter; and/or
- third parties with whom the Customer conducts business, or about whom the Customer obtains information in the course of and for the purpose of conducting business.

Categories of data

The personal data transferred concern the following categories of data:

Any personal data comprised in Customer Data.

Special categories of data

Data Exporter may submit personal data to the Data Importer through the Services, the extent of which is determined and controlled by the Data Exporter in compliance with Applicable Data Protection Law and which may concern the following special categories of data, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade-union membership;
- genetic or biometric data;
- health; and
- data concerning a person's sex life or sexual orientation.

Processing operations

The personal data transferred will be processed in accordance with the Agreement and any Order Form and may be subject to the following processing activities:

- storage and other processing necessary to provide, maintain and update the Services provided to the Data Exporter;
- to provide customer and technical support to the Data Exporter; and
- disclosures in accordance with the Agreement, as compelled by law.

Data Exporter:

Name: _____

Authorised Signature: _____

Data Importer:

Name: Joel Friedlaender

Authorised Signature:  _____
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Appendix 2 to the Standard Contractual Clauses

Technical and organisational security measures implemented by the Data Importer in accordance with Clauses 4(d) and 5(c):

The Data Importer has implemented and will maintain appropriate technical and organisational measures to protect the personal data against misuse and accidental loss or destruction as set forth in Red Guava's Security Practices Datasheet.

Data Exporter:

Name: _____

Authorised Signature: _____

Data Importer:

Name: Joel Friedlaender

Authorised Signature:  _____
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