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Addressing GDPR Article 28 and Incorporating Standard Contractual Clauses for Controller to Processor Transfers of Personal Data from the EEA to a Third Country and Sub-Processing carried out in terms of Article 24(4).

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Addressing GDPR Article 28 and Incorporating Standard Contractual Clauses for Controller to Processor Transfers of Personal Data from the EEA to a Third Country and Sub-Processing carried out in terms of Article 28(4).

This Data Protection Addendum (DPA or "Addendum") forms part of the [BulkSMS Standard Terms and Conditions](#) (the "Standard Terms and Conditions") to be entered into between BulkSMS and its clients (the "Client") acting on its own behalf and as agent for each Client Affiliate, with effect from the date set out above or 25 May 2018, whichever is the latest.

The terms used in this Addendum shall have the meanings set forth below. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Standard Terms and Conditions. Except as modified below, the terms of the Standard Terms and Conditions shall remain in full force and effect.

In consideration of the mutual obligations set out herein, BulkSMS and the Client hereby agree that the terms and conditions set out below shall be added as an Addendum to the Standard Terms and Conditions. Except where the context requires otherwise, references in this Addendum to the Standard Terms and Conditions are to the Standard Terms and Conditions as amended by, and including, this Addendum.

1. Definitions

1.1. In this Addendum, the terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meanings as given to those terms in the GDPR and the following terms shall have the meanings set out below:

1.1.1. "Applicable Laws" means (a) European Union or Member State laws with respect to any Client Personal Data in respect of which any Client Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Client Personal Data in respect of which any Client Group Member is subject to any other Data Protection Laws;



- 1.1.3.** "Client Group Member" means Client or any Client Affiliate;
- 1.1.4.** "Client Personal Data" means any Personal Data Processed by a Contracted Processor on behalf of a Client Group Member pursuant to or in connection with the Standard Terms and Conditions;
- 1.1.5.** "Contracted Processor" means BulkSMS or a Subprocessor;
- 1.1.6.** "Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 1.1.7.** "EEA" means the European Economic Area;
- 1.1.8.** "EU Data Protection Laws" means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
- 1.1.9.** "GDPR" means EU General Data Protection Regulation 2016/679;
- 1.1.10.** "Restricted Transfer" means:
- 1.1.10.1.** a transfer of Client Personal Data from any Client Group Member to a Contracted Processor; or
- 1.1.10.2.** an onward transfer of Client Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,
- in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under section 6.4.3 or 12 below, as the case may be;
- 1.1.11.** "Services" means short messaging services and other service activities to be supplied to or carried out by or on behalf of BulkSMS for Client Group Members pursuant to the Standard Terms and Conditions;
- 1.1.12.** "Standard Contractual Clauses" means the contractual clauses set out in Annexure 2, amended as indicated (in square brackets and italics) in that Annexure and under section 13.4;
- 1.1.13.** "Subprocessor" means any person (including any third party and any BulkSMS Affiliate, but excluding an employee of BulkSMS or any of its sub-contractors) appointed by or on behalf of BulkSMS or any BulkSMS Affiliate to Process Personal Data on behalf of any Client Group Member in connection with the Standard Terms and Conditions; and
- 1.1.14.** "BulkSMS Affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with BulkSMS, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 1.2.** The word "include" shall be construed to mean include without limitation, and related words shall be construed accordingly.

2. Authority

- 2.1.** BulkSMS warrants and represents that, before any BulkSMS Affiliate Processes any Client Personal Data on behalf of any Client Group Member, BulkSMS's entry into this



Personal Data; and

3.1.2. not Process Client Personal Data other than as requested by Client Group Member unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case BulkSMS or the relevant BulkSMS Affiliate shall to the extent permitted by Applicable Laws inform the relevant Client Group Member of that legal requirement before the relevant Processing of that Personal Data.

3.2. Each Client Group Member:

3.2.1. instructs BulkSMS and each BulkSMS Affiliate (and authorises BulkSMS and each BulkSMS Affiliate to instruct each Subprocessor) to:

3.2.1.1. Process Client Personal Data; and

3.2.1.2. in particular, transfer Client Personal Data to any country or territory,

as reasonably necessary for the provision of the Services with due regard for, inter alia, the nature of global messaging services and telecommunications networks and consistent with the Standard Terms and Conditions; and

3.2.2. warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 3.2.1 on behalf of each relevant Client Affiliate.

3.3. Annexure 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Client Personal Data as required by article 28(3) of the GDPR. Client may make reasonable amendments to Annexure 1 by written notice to BulkSMS from time to time as Client reasonably considers necessary to meet those requirements. Nothing in Annexure 1 (including as amended pursuant to this section 3.3) confers any right or imposes any obligation on any party to this Addendum.

4. BulkSMS and BulkSMS Affiliate Personnel

4.1. BulkSMS and each BulkSMS Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Client Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Client Personal Data, as strictly necessary for the purposes of the Standard Terms and Conditions, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

5. Security

5.1. Taking into account relevant developments in technology including telecommunications and messaging services, technical limitations associated with different messaging and telecommunications protocols, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, BulkSMS and each BulkSMS Affiliate shall in relation to the Client Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

5.2. In assessing the appropriate level of security, BulkSMS and each BulkSMS Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

6. Subprocessing



Affiliate may continue to use those Subprocessors already engaged by BulkSMS or any BulkSMS Affiliate as at the date of this Addendum, subject to BulkSMS and each BulkSMS Affiliate in each case as soon as practicable meeting the obligations set out in section 6.4.

- 6.3.** Subject to section 6.6, BulkSMS shall give Client prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor and the date on which such appointment is anticipated to commence. If, following receipt of that notice, Client notifies BulkSMS in writing of any objections (on reasonable grounds) to the proposed appointment neither BulkSMS nor any BulkSMS Affiliate shall appoint (or disclose any Client Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address the objections raised by any Client Group Member and Client has been provided with a reasonable written explanation of the steps taken.
- 6.4.** With respect to each Subprocessor, BulkSMS or the relevant BulkSMS Affiliate shall:
- 6.4.1.** before the Subprocessor first Processes Client Personal Data (or, where relevant, in accordance with section 6.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Client Personal Data required by the Standard Terms and Conditions;
 - 6.4.2.** ensure that the arrangement between on the one hand (a) BulkSMS, or (b) the relevant BulkSMS Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Client Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;
 - 6.4.3.** if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) BulkSMS, or (b) the relevant BulkSMS Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, or before the Subprocessor first Processes Client Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the relevant Client Group Member(s) (and Client shall procure that each Client Affiliate party to any such Standard Contractual Clauses co-operates with their population and execution); and
 - 6.4.4.** provide to Client for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Client may request from time to time.
- 6.5.** BulkSMS and each BulkSMS Affiliate shall ensure that each Subprocessor performs the obligations under sections 3.1, 4, 5, 7.1, 8.2, 9 and 11.1, as they apply to Processing of Client Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of BulkSMS.
- 6.6.** Each Client Group Member acknowledges and agrees that, with regard to the transmission of short messaging services in particular, such services may involve the near instantaneous transmission of Personal Data across multiple networks from the point of the transmission of a message from message originator or message originating system to the ultimate recipient of that message and the obligations on BulkSMS in terms of clauses 6.2 to 6.5 shall not apply to all network operators and electronic communications services providers involved in the mere transmission of short message services.

7. Data Subject Rights



7.2. BulkSMS shall:

- 7.2.1.** promptly notify Client if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Client Personal Data; and
- 7.2.2.** ensure that the Contracted Processor does not respond to that request except on the documented instructions of Client or the relevant Client Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case BulkSMS shall to the extent permitted by Applicable Laws inform Client of that legal requirement before the Contracted Processor responds to the request.

8. Personal Data Breach

- 8.1.** BulkSMS shall notify Client without undue delay upon BulkSMS or any Subprocessor becoming aware of a Personal Data Breach affecting Client Personal Data, providing Client with sufficient information to allow each Client Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- 8.2.** BulkSMS shall co-operate with Client and each Client Group Member and take such reasonable commercial steps as are directed by Client to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

9. Data Protection Impact Assessment and Prior Consultation

- 9.1.** BulkSMS and each BulkSMS Affiliate shall provide reasonable assistance to each Client Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Client reasonably considers to be required of any Client Group Member by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Client Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

10. Deletion or return of Client Personal Data

- 10.1.** Subject to sections 10.2 and 10.3 BulkSMS and each BulkSMS Affiliate shall promptly on request of the Client or within 180 days of the date of cessation of any Services involving the Processing of Client Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Client Personal Data.
- 10.2.** Subject to section 10.3, Client may in its absolute discretion by written notice to BulkSMS within 7 days of the Cessation Date require BulkSMS and each BulkSMS Affiliate to (a) return a complete copy of all Client Personal Data to Client by such method and in such format as is reasonably determined by BulkSMS; and (b) delete and procure the deletion of all other copies of Client Personal Data Processed by any Contracted Processor. BulkSMS and each BulkSMS Affiliate shall comply with any such written request within 30 days of receipt thereof.
- 10.3.** Each Contracted Processor may retain Client Personal Data to the extent required by Applicable Laws and Industry Codes to which BulkSMS is subject to and only to the extent and for such period as required by Applicable Laws and Industry Codes and always provided that BulkSMS and each BulkSMS Affiliate shall ensure the confidentiality of all such Client Personal Data and shall ensure that such Client Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws and Industry Codes requiring its storage and for no other purpose.
- 10.4.** BulkSMS shall, on request, provide written certification to Client that it and each BulkSMS Affiliate has fully complied with this section 10 within 30 days of carrying out such request.



any Client Group Member in relation to the Processing of the Client Personal Data by the Contracted Processors.

- 11.2.** Information and audit rights of the Client Group Members only arise under section 11.1 to the extent that the Standard Terms and Conditions does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).
- 11.3.** A Client Group Member may only mandate an auditor for the purposes of section 11.1 if the auditor is identified in the list set out in **Annexure 3 to this Addendum**, as that list is amended by agreement between the parties in writing from time to time. BulkSMS shall not unreasonably withhold or delay agreement to the addition of a new auditor to that list.
- 11.4.** Client or the relevant Client Affiliate undertaking an audit shall give BulkSMS or the relevant BulkSMS Affiliate reasonable notice of any audit or inspection to be conducted under section 11.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:
- 11.4.1.** to any individual unless he or she produces reasonable evidence of identity and authority;
 - 11.4.2.** outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Client or the relevant Client Affiliate undertaking an audit has given notice to BulkSMS or the relevant BulkSMS Affiliate that this is the case before attendance outside those hours begins; or
 - 11.4.3.** for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any calendar year, except for any additional audits or inspections which:
 - 11.4.3.1.** Client or the relevant Client Affiliate undertaking an audit reasonably considers necessary because of genuine concerns as to BulkSMS's or the relevant BulkSMS Affiliate's compliance with this Addendum; or
 - 11.4.3.2.** A Client Group Member is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

where Client or the relevant Client Affiliate undertaking an audit has identified its concerns or the relevant requirement or request in its notice to BulkSMS or the relevant BulkSMS Affiliate of the audit or inspection.

12. Restricted Transfers

- 12.1.** Subject to section 12.3, each Client Group Member (as "data exporter") and each Contracted Processor, as appropriate, (as "data importer") hereby enter into the Standard Contractual Clauses, as set out in Annexure 2, in respect of any Restricted Transfer from that Client Group Member to that Contracted Processor.
- 12.2.** The Standard Contractual Clauses shall come into effect under section 12.1 on the later of:
- 12.2.1.** the data exporter becoming a party to them;



Transfer to take place without breach of applicable Data Protection Law.

- 12.4.** BulkSMS warrants and represents that, before the commencement of any Restricted Transfer to a Subprocessor which is not a BulkSMS Affiliate, BulkSMS's or the relevant BulkSMS Affiliate's entry into the Standard Contractual Clauses under section 12.1, and agreement to variations to those Standard Contractual Clauses made under section 13.4.1, as agent for and on behalf of that Subprocessor will have been duly and effectively authorised (or subsequently ratified) by that Subprocessor.

13. General Terms

Governing law and jurisdiction

- 13.1.** Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:

13.1.1. the parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Standard Terms and Conditions with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

13.1.2. this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Standard Terms and Conditions.

Order of precedence

- 13.2.** Nothing in this Addendum reduces BulkSMS's or any BulkSMS Affiliate's obligations under the Standard Terms and Conditions in relation to the protection of Personal Data or permits BulkSMS or any BulkSMS Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Standard Terms and Conditions. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

- 13.3.** Subject to section 13.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Standard Terms and Conditions and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

Changes in Data Protection Laws, etc.

- 13.4.** Client may:

13.4.1. by at least 30 (thirty) calendar days' written notice to BulkSMS from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under section 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are necessary, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and

13.4.2. propose any other variations to this Addendum which Client reasonably considers to be necessary to address the requirements of any Data Protection Law.

- 13.5.** If Client gives notice under section 13.4.1:



consequential variations to this Addendum proposed by BulkSMS to protect the Contracted Processors against additional risks associated with the variations made under section 13.4.1 and/or 13.5.1.

- 13.6.** If Client gives notice under section 13.4.2, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Client's notice as soon as is reasonably practicable but without prejudice to BulkSMS's right to decline to accept any variations which BulkSMS does not consider to be necessary to address the requirements of any Data Protection Law.
- 13.7.** Neither Client nor BulkSMS shall require the consent or approval of any Client Affiliate or BulkSMS Affiliate to amend this Addendum pursuant to this section 13.5 or otherwise.

Severance

- 13.8.** Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

ANNEXURE 1: DETAILS OF PROCESSING OF COMPANY PERSONAL DATA

This Annexure 1 includes certain details of the Processing of Client Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Client Personal Data

The subject matter and duration of the Processing of the Client Personal Data are set out in the Standard Terms and Conditions and this Addendum.

The nature and purpose of the Processing of Client Personal Data

The provision and support of Application-to-Person (A2P) SMS messaging services.

The types of Client Personal Data to be Processed

- Contact information (email, telephone number, mobile phone number, address, company)
- First and last name
- Title
- Account information (user id, username, password)
- Connection data (IP address)
- Message data (message recipient personal data processed on behalf of the client, identified by mobile phone number, and including recipient contact information in the message body)



terms and conditions and this Addendum.

ANNEXURE 2: STANDARD CONTRACTUAL CLAUSES

The **Data Exporter** (the Client) has entered into a **Data Processing Addendum** ("DPA") with the **Data Importer** (BulkSMS as the data processor).

Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer's execution of, and compliance with, the terms of these Clauses.

As such, the parties have agreed on the following **Standard Contractual Clauses** (the Clauses), available [here](#), 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 of the Standard Contractual Clauses.

Click [here](#) to request the **Standard Contractual Clauses** for your signature and records, if required.

ANNEXURE 3: LIST OF MANDATED AUDITORS

The Client may provide BulkSMS with a list of mandated auditors or the name of a mandated auditor at the time of agreeing to these terms, or at a subsequent date.

These details are to be sent to privacy@bulksms.com.



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