

## DATA PROCESSING AGREEMENT

### Background

- (A) [full legal name of the customer under the main agreement] (the “Customer”) and [full legal name of the supplier under the main agreement] (the “Supplier”) are parties to the [name of agreement] dated [date] (the “Main Agreement”).
  - (B) In providing its services under the Main Agreement, the Supplier processes personal data.
  - (C) This agreement addresses the obligations of the parties regarding the Supplier’s data processing under the Main Agreement.
  - (D) This agreement forms part of the Main Agreement.
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## Parties to this agreement

### Controller (and the Customer)

Name	[name of controller]
Address	[address of controller]
Contact (name)	[name of data protection manager]
Contact (role)	[data protection manager]
Contact (email address)	[email address of data protection manager]
Signature	_____ date:

### Controller

Name	[name of second controller – delete this table if not applicable or add further Controller tables for each additional controller]
Address	[address of second controller]
Contact (name)	[name of data protection manager]
Contact (role)	[data protection manager]
Contact (email address)	[email address of data protection manager]
Signature	_____ date:

### Processor (and the Supplier)

Name	[name of processor]
Address	[address of processor]
Contact (name)	[name of data protection manager]
Contact (role)	[data protection manager]
Contact (email address)	[email address of data protection manager]
Signature	_____ date:

## Processing Description

<b>Categories of data subjects</b> the categories of individuals whose data will be processed by the Supplier	• [tbc]	
	• [tbc]	
	• [tbc]	
	• [tbc]	
	• any other categories of data subjects which the Controller Party and the Supplier agree in writing	
<b>Categories of personal data</b> the categories of data about each individual that will be processed by the Supplier	• [tbc]	
	• [tbc]	
	• [tbc]	
	• [tbc]	
	• any other categories of personal data which the Controller Party and the Supplier agree in writing	
<b>Sensitive data</b> the categories of special category data and criminal offence data that will be processed by the Supplier	• [tbc]	
	• [tbc]	
	• any other categories of sensitive data which the Controller Party and the Supplier agree in writing	
<b>Purpose limitation</b> a description of the services provided by the Supplier under the Main Agreement, the data processing undertaken by the Supplier as part of those services, and the objective of the Supplier's processing	[tbc]	
<b>Retention periods</b> the points at which the Supplier will delete the processed data	<b>Data Categories</b> [specific categories of personal data to be deleted in specific situations]	<b>Deletion</b> [trigger for deletion]
	[All Customer Data]	[No later than 30 days after written request by Controller, but subject to clause 12.2 of this agreement]
	[All Customer Data]	[No later than 30 days after termination of the Main Agreement, but subject to clause 12.2 of this agreement]

## List of Sub-processors<sup>1</sup>

### Sub-processor

Name	[name of sub-processor]
Address	[address of sub-processor]
Contact (name)	[name of contact]
Contact (email address)	[email address of contact]
Categories of data subjects	[All categories processed by the Processor]
Categories of personal data	[All categories processed by the Processor]
Purpose limitation	[description of what data processing the sub-processor will do]
Retention periods	[Same retention periods as the Processor]

### Sub-processor

Name	[name of sub-processor]
Address	[address of sub-processor]
Contact (name)	[name of contact]
Contact (email address)	[email address of contact]
Categories of data subjects	[All categories processed by the Processor]
Categories of personal data	[All categories processed by the Processor]
Nature of data processing	[description of what data processing the sub-processor will do]
Retention periods	[Same retention periods as the Processor]

### Sub-processor

Name	[name of sub-processor]
Address	[address of sub-processor]
Contact (name)	[name of contact]
Contact (email address)	[email address of contact]
Categories of data subjects	[All categories processed by the Processor]
Categories of personal data	[All categories processed by the Processor]
Nature of data processing	[description of what data processing the sub-processor will do]
Retention periods	[Same retention periods as the Processor]

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<sup>1</sup> including all tiers of sub-processors below the Supplier

## The parties now agree:

### 1. Definitions

1.1 In this agreement, these terms have these meanings:

**“Controller Party”** means the controller identified in the tables under the heading ‘Parties to this agreement’ at the start of this agreement (or, if more than one controller is identified, then all the controllers jointly).

**“Customer”** has the meaning under the heading ‘Background’ at the start of this agreement.

**“Customer Data”** means personal data that either:

- (a) is provided by the Controller Party to the Supplier for processing by the Supplier and its sub-processors as processors under the Main Agreement; or
- (b) is collected from third parties (including data subjects) by the Supplier or its sub-processors for processing by the Supplier and its sub-processors as processors under the Main Agreement.

**“Data Protection Law”** means applicable law about the processing of personal data or the protection of privacy.

**“DSAR”** means a request by a data subject exercising their rights under Data Protection Law regarding Customer Data.

**“In Scope Data”** means the categories of personal data (including sensitive data) identified in the Processing Description about the categories of data subjects identified in the Processing Description.

**“Listed Sub-processors”** means the sub-processors identified in the tables under the heading ‘List of Sub-processors’ at the start of this agreement.

**“Main Agreement”** has the meaning under the heading ‘Background’ at the start of this agreement.

**“Processing Description”** means the processing described in the tables under the heading ‘Processing Description’ at the start of this agreement.

**“Supplier”** has the meaning under the heading ‘Background’ at the start of this agreement.

**“UK GDPR”** means EU Regulation 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

1.2 The terms ‘**controller**’, ‘**data subject**’, ‘**personal data**’, ‘**personal data breach**’, ‘**processor**’, ‘**processing**’ and ‘**supervisory authority**’ have the meanings in the UK GDPR.

1.3 The term ‘**sub-processor**’ is not limited to third parties that process Customer Data under direct contract with the Supplier, but includes all tiers of third parties below the Supplier that process Customer Data.

### 2. In Scope Data

2.1 The Controller Party and the Supplier intend:

- (a) the Supplier and its sub-processors to be processors in their processing of In Scope Data under the Main Agreement;
- (b) the Controller Party to be the controller of the data processed under clause 2.1(a).

2.2 The Controller Party shall not provide the Supplier with personal data for processing as a processor under the Main Agreement unless all these conditions are satisfied:

- (a) the personal data is In Scope Data;

- (b) the Controller Party has followed Data Protection Law in obtaining the personal data;
  - (c) the Controller Party is following Data Protection Law in transferring the personal data to the Supplier.
- 2.3 The Supplier shall not collect personal data from third parties (including data subjects) for processing as a processor under the Main Agreement unless the personal data is In Scope Data.
- 2.4 Where the Supplier becomes aware that personal data being processed by the Supplier or its sub-processors as processors under the Main Agreement is not In Scope Data, the Supplier shall promptly delete (and make sure its sub-processors promptly delete) the personal data that is not In Scope Data.
- 2.5 In processing personal data under the Main Agreement, the Supplier shall follow its obligations under Data Protection Law.
- 2.6 If the Supplier cannot comply with this agreement, it shall promptly notify details of the reasons for this to the Controller Party.

### 3. Instructions

- 3.1 As a processor under the Main Agreement, the Supplier shall not process Customer Data other than:
- (a) for the purposes identified in the Processing Description;
  - (b) to follow written instructions from the Controller Party;
  - (c) to comply with law (but before processing on this ground, the Supplier shall notify to the Controller Party details of the processing including reasons for the processing unless informing the Controller Party is prohibited by law).
- 3.2 The Supplier shall promptly inform the Controller Party if it believes a written instruction under clause 3.1(b) infringes Data Protection Law.

### 4. Security

- 4.1 The Supplier shall maintain appropriate technical and organisational measures to protect Customer Data against accidental or unlawful destruction, loss, or alteration and against unauthorised disclosure or access (the appropriateness of the measures being determined by reference to the nature of the Customer Data, the risks presented by the processing, the harm that could result to the relevant data subjects, the available technology, and the cost of the technology). The Supplier's current technical and organisational measures are set out in Schedule 1.
- 4.2 The Supplier shall make sure that:
- (a) no individual working for the Supplier has access to Customer Data other than individuals who require access to enable the Supplier to perform its obligations under the Main Agreement (these individuals being "**Relevant Staff**");
  - (b) Relevant Staff are subject to appropriate obligations of confidentiality to the Supplier;
  - (c) Relevant Staff are aware of the Supplier's obligations under this agreement;
  - (d) Relevant Staff undertake appropriate training on handling personal data before first handling Customer Data, and repeat this training annually.

### 5. Sub-processors

- 5.1 The Controller Party now consents to the Supplier using the Listed Sub-processors as sub-processors of Customer Data.

- 5.2 The Supplier shall ensure no third party processes Customer Data as a sub-processor unless one of these conditions is satisfied:
- (a) the third party is a Listed Sub-processor;
  - (b) the third party is deemed approved as a sub-processor under clause 5.4;
  - (c) the parties have resolved an objection made by the Controller Party under clause 5.4.
- 5.3 For a third party to become a new sub-processor of Customer Data, the Supplier must first notify to the Controller Party these details:
- (a) the identity and location of the new sub-processor;
  - (b) the categories of data subjects and personal data to be processed by the new sub-processor;
  - (c) the nature of the processing by the new sub-processor;
  - (d) the circumstances in which the new sub-processor will delete Customer Data in its possession or control;
  - (e) the due diligence conducted by the Supplier on the new sub-processor's technical and organisational measures for keeping Customer Data secure.
- 5.4 If within 14 days of receiving notice under clause 5.4 the Controller Party does not give the Supplier written reasons for objecting to the proposed appointment, then the new sub-processor is deemed approved by the Controller Party. If within 14 days of receiving notice under clause 5.3, the Controller Party gives the Supplier written reasons for objecting to the proposed appointment, then the parties shall try to resolve the Controller Party's objections.
- 5.5 If the parties cannot resolve an objection made by the Controller Party under clause 5.4 within 30 days of the Supplier receiving the objection, then either of the Customer and the Supplier may terminate the Main Agreement by giving 90 days' written notice to the other. If the Main Agreement is terminated under this clause 5.5, the Customer will not be liable for fees under the Main Agreement for the period after termination takes effect and the Supplier shall return any fees paid by the Customer for the period after termination takes effect.
- 5.6 Regarding sub-processors allowed to process Customer Data under clause 5.2:
- (a) the Supplier shall make sure that, before each sub-processor begins processing Customer Data, it is subject to obligations in a written contract equivalent to those imposed on the Supplier under this agreement;
  - (b) the Supplier shall not consent to a sub-processor appointing its own sub-processors without the written consent of the Controller Party;
  - (c) the Supplier is liable to the Controller Party for the performance of each sub-processor under its processing agreement with the Supplier;
  - (d) the Supplier shall notify to the Controller Party details of each non-trivial breach by a sub-processor of its processing agreement with the Supplier.

## **6. International Transfers**

- 6.1 The Supplier shall not transfer Customer Data outside the UK unless it must do so by law or it has the written consent of the Controller Party.
- 6.2 The Controller Party's consent under clause 6.1 is deemed given where the Supplier transfers Customer Data to sub-processors outside the UK that are sub-processors allowed under clause 5.2.
- 6.3 In transferring Customer Data outside the UK, the Supplier must follow its obligations under Data Protection Law.

## 7. Assistance

- 7.1 The Supplier shall promptly notify to the Controller Party details of each DSAR received by the Supplier.
- 7.2 The Supplier shall help the Controller Party to meet its obligations under Data Protection Law regarding Customer Data, including the Controller Party's obligations to:
- (a) help data subjects exercise their rights under Data Protection Law regarding Customer Data;
  - (b) conduct data protection impact assessments regarding the processing of Customer Data;
  - (c) consult with supervisory authorities regarding the processing of Customer Data;
  - (d) keep Customer Data secure;
  - (e) provide privacy notices to data subject regarding the processing of Customer Data;
  - (f) ensure Customer Data is accurate and up to date.
- 7.3 The Controller Party acknowledges that the Supplier's performance under clauses 7.1 and 7.2 is subject to the nature of the Supplier's processing under the Main Agreement and the information available to the Supplier.

## 8. Compliance

- 8.1 Where the Controller Party requests evidence of the Supplier's compliance with this agreement, the Supplier shall promptly give the Controller Party all relevant information and documents.
- 8.2 At the Controller Party's request, the Supplier shall arrange for representatives of the Controller Party to have access to the records, systems, staff, and premises of the Supplier to verify the Supplier's compliance with this agreement ("**Compliance Verification**"). Access for Compliance Verification will be limited to the ordinary business hours of the staff and premises.
- 8.3 The Controller Party shall not use or disclose the information obtained under Compliance Verification other than to enforce its rights under this agreement, to respond to DSARs, or to respond to requests from supervisory authorities.
- 8.4 Each party is liable for the costs it incurs in connection with Compliance Verification.
- 8.5 If the Controller Party notifies written details to the Supplier of how the Supplier does not comply with this agreement, the Supplier shall promptly take steps to achieve compliance.

## 9. Personal Data Breach

- 9.1 Where the Supplier becomes aware of a personal data breach by the Supplier or its sub-processors regarding Customer Data, the Supplier shall promptly notify this to the Controller Party. For each personal data breach, the Supplier shall also:
- (a) promptly bring the breach to an end (if it is continuing);
  - (b) investigate the breach;
  - (c) make changes to its technical and organisational measures to prevent a reoccurrence of the breach;
  - (d) give the Controller Party all relevant information as it becomes available to the Supplier, including information regarding the nature of the breach, the likely consequences of the breach, and the measures taken or proposed to be taken by the Supplier to address the breach and mitigate its effects;
  - (e) help the Controller Party to meet its obligations under Data Protection Law to notify the breach to supervisory authorities and data subjects;



- (f) reimburse the Controller Party for its reasonable costs in assessing the breach, in taking reasonable steps to notify details of the breach to third parties, and in taking reasonable steps to mitigate the effects of the breach on data subjects.

## 10. Suspension

- 10.1 Where the Supplier is in breach of this agreement, the Controller Party may instruct the Supplier to stop using Customer Data to provide services under the Main Agreement until the breach has been remedied to the satisfaction of the Controller Party (acting reasonably).
- 10.2 The Supplier shall promptly comply (and shall make sure its sub-processors promptly comply) with a written instruction issued under clause 10.2.

## 11. Termination of Main Agreement

- 11.1 The Customer may terminate the Main Agreement where either of the following occur:
  - (a) the Supplier breaches this agreement and either (i) the consequences of the breach cannot be remedied, or (ii) the consequences can be remedied but the Supplier fails to remedy the breach to the satisfaction of the Customer (acting reasonably) within 14 days of being sent a written notice to do so;
  - (b) a sub-processor does something that would entitle the Customer to terminate under clause 11.1(a) if the act and any failure to remedy the act were by the Supplier.
- 11.2 To exercise its right of termination under clause 11.1, the Customer must send a written notice of termination to the Supplier by email and by post giving a date of termination that is 7 days or more after the sending date. The Main Agreement will then terminate at the end of the termination date specified in the written notice.

## 12. Deletion of Customer Data

- 12.1 The Supplier shall delete all Customer Data in its possession or control as required by the retention periods table in the Processing Description. The Supplier shall make sure each sub-processor deletes all Customer Data in its possession or control as required by the retention periods set for them in the sub-processor table at the start of this agreement or under clause 5.
- 12.2 If the Supplier or its sub-processors must retain Customer Data to follow applicable law and the Supplier notifies to the Customer details of this law (the “**Retention Law**”) and the retained Customer Data, the Supplier's obligation under clause 12.1 will be suspended until the Retention Law stops applying to the retained Customer Data.
- 12.3 During any required retention under clause 12.2, the Supplier shall not process (and shall make sure its sub-processors do not process) the retained Customer Data other than to follow the Retention Law.

## 13. Termination of this agreement

- 13.1 This agreement will end when both these conditions are satisfied:
  - (a) the Main Agreement has ended;
  - (b) the Supplier and its sub-processors no longer have possession or control of Customer Data.

#### **14. Controller Party**

- 14.1 The Customer acts on behalf of all other controllers identified in the tables under the heading 'List of Parties' at the start of this agreement with the effect that:
- (a) instructions, consents, objections, and confirmations given under this agreement to the Supplier by the Customer will be deemed given to the Supplier by each relevant controller;
  - (b) notices or information given under this agreement to the Customer by the Supplier will be deemed given to each relevant controller by the Supplier.

#### **15. Miscellaneous**

- 15.1 An assignment by the Supplier of this agreement, or of rights or obligations under this agreement, will be void unless made with the written consent of the Controller Party.
- 15.2 If conflict occurs between this agreement and the Main Agreement, this agreement will prevail.
- 15.3 A remedy provided by this agreement does not exclude other remedies unless the remedy is stated to be a sole remedy.
- 15.4 This agreement is not enforceable by anyone other than the parties to this agreement and their allowed assignees.

#### **16. Law and Jurisdiction**

- 16.1 The terms in the Main Agreement regarding applicable law and the means and jurisdiction for settling disputes also apply to this agreement.

## Schedule 1 Technical and Organisational Measures

[tbc]