**THIS DATA PROCESSING AGREEMENT** (the **Agreement**) is dated 2021

**BETWEEN:**

1. **[INSERT]** incorporated and registered in England and Wales with company number [INSERT] whose registered office is at [INSERT] (the **Customer**); and
2. **[SUPPLIER]** incorporated and registered in [England and Wales] with company number [NUMBER] whose registered office is at [ADDRESS] (the Supplier).

**RECITALS:**

1. The Customer is a [INSERT]. The Supplier agreed in writing on [DATE] to [INSERT] (the **Main Contract**).
2. In connection with the Main Contract, the Supplier may process Personal Data on behalf of the Customer and the parties wish to set out the scope of such processing in this Agreement.

**IT IS AGREED THAT:**

1. Definitions and interpretation
	1. The definitions and rules of interpretation in this clause apply in this Agreement.

|  |  |
| --- | --- |
| **Commencement Date** | means the date this Agreement is signed by both parties; |
| **Data Protection Legislation** | means the Data Protection Act 2018, the GDPR, the UK GDPR and any other data protection legislation applicable in the UK and/or the European Union from time to time, and the terms **appropriate safeguards**, **appropriate technical and organisational measures**, **controller**, **data portability**, **processor**, **data subject**, **personal data breach**, **restriction of processing** and **supervisory authority** shall, unless the context otherwise requires, each have the respective meanings given to them in the Data Protection Legislation; |
| **GDPR** | the General Data Protection Regulation (Regulation (EU) 2016/679); |
| **Main Contract** | means the agreement described in Recital (A); |
| **Personal Data** | means personal data (as defined in the Data Protection Legislation) processed by the Supplier on behalf of the Customer in connection with the Main Contract; |
| **Restricted Transfer** | has the meaning given in clause 5.1; |
| **Security Breach** | any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; |
| **Sub-Processor** | has the meaning given in clause 4.1; and |
| **UK GDPR** | the GDPR 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 of 2018. |

* 1. Clause and schedule headings do not affect the interpretation of this Agreement.
	2. References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this Agreement.
	3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
	4. A reference to a statute or statutory provision is a reference to it as amended, updated, re-enacted or replaced from time to time and shall include all subordinate legislation made from time to time under or giving effect to that statute or statutory provision.
	5. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
	6. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
	7. A reference to **writing** or **written** includes email.
1. Commencement and term
	1. This Agreement shall commence on the Commencement Date and shall continue until its termination in accordance with clause 12.
	2. Where and to the extent that any provision of this Agreement conflicts with or is otherwise incompatible with any provisions of the Main Contract, this Agreement shall prevail and such conflicting or incompatible provisions of the Main Contract shall not apply from the Commencement Date.
2. Data processing
	1. Both parties will (and will procure that any of their respective directors, officers, employees, permitted agents, licensees and contractors will) comply with all applicable requirements of the Data Protection Legislation. This Agreement is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation.
	2. The parties acknowledge that, in respect of Personal Data, the Customer is the controller and the Supplier is a processor acting on behalf of the Customer. Schedule 1 sets out the permitted scope of the processing by the Supplier under this Agreement.
	3. The Supplier will only process Personal Data in accordance with the written instructions of the Customer unless required to do so by law. Where the Supplier intends to rely on a requirement of law as the basis for processing the Personal Data, the Supplier will promptly notify the Customer of this before performing the processing required unless the requirement of law relied upon prohibits the Supplier from so notifying the Customer.
	4. The Supplier shall inform the Customer immediately if, in the Supplier’s opinion, an instruction given by the Customer infringes the Data Protection Legislation.
	5. The Supplier shall not knowingly or negligently do or omit to do anything which places the Customer in breach of its obligations under the Data Protection Legislation.
	6. Without prejudice to the generality of clause 3.1, the Customer will use reasonable endeavours to ensure that the Personal Data is and is kept accurate and up-to-date.
3. Sub-processors
	1. The Supplier will not transfer Personal Data to any third party, or engage any third party to process Personal Data on its behalf (a “**Sub-Processor**”), without prior specific or general written authorisation from the Customer (including any authorisation given under this Agreement).
	2. If the Customer gives prior specific or general written authorisation for the Supplier to use a Sub-Processor, the following will apply:
		1. the Supplier must notify the Customer of any changes to Sub-Processors made under prior general written authorisation and must allow the Customer a reasonable time to object to those changes;
		2. the Supplier must ensure that the processing of Personal Data by any Sub-Processor is subject to terms substantially similar to, and no less restrictive than, the terms of this Agreement; and
		3. the Supplier will remain fully liable to the Customer for any acts or omissions of the Sub-Processor.
4. Restricted Transfers
	1. For the purposes of this clause 5, a **Restricted Transfer** means a transfer of personal data which is subject to the restrictions in:
		1. Chapter V of the GDPR, except where such transfer is based on an adequacy decision adopted by the European Commission pursuant to Article 45 GDPR; and/or
		2. Chapter V of the UK GDPR, except where such transfer is based on adequacy regulations issued by the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 (if and to the extent that such section is in force as at the time of transfer).
	2. The Supplier shall not carry out a Restricted Transfer of Personal Data to any third party unless it obtains the Customer’s prior written approval and ensures that such transfer can be lawfully carried out under the Data Protection Legislation, such as where:
		1. there are appropriate safeguards in place pursuant to Article 46 of the GDPR (or Article 46 of the UK GDPR) which may include a contract incorporating the standard contractual clauses adopted by the European Commission; or
		2. one of the derogations for specific situations in Article 49 of the GDPR (or Article 49 of the UK GDPR) applies to the transfer.
5. Security measures
	1. The Supplier will put in place appropriate technical and organisational measures, having regard to the state of the art and technological development, the costs of implementation (where applicable) 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, to ensure the security of Personal Data and to protect against Security Breaches.
	2. In the event of an actual or suspected Security Breach, the Supplier shall:
		1. take action immediately, at the Supplier’s expense, to investigate the Security Breach and to identify, prevent and mitigate effects of the Security Breach and to remedy the Security Breach;
		2. notify the Customer immediately upon becoming aware of the Security Breach and provide the Customer with a detailed description of the Security Breach including:
			1. the likely impact of the Security Breach;
			2. the categories and approximate number of data subjects affected and their country of residence and the categories and approximate number of records affected;
			3. the risk posed by the Security Breach to individuals; and
			4. the measures taken or proposed by the Supplier to address the Security Breach and to mitigate its adverse effects;
		3. provide timely updates to the information listed in clause 6.2.2 and any other information the Customer may reasonably request relating to the Security Breach; and
		4. not release or publish any filing, communication, notice, press release or report concerning the Security Breach without the Customer’s prior written approval (except where required to do so by law).
6. Data Subjects’ Rights
	1. The Supplier shall put in place appropriate technical and organisational measures to enable and assist the Customer to meet its obligations to data subjects, including:
		1. rectification or erasure of Personal Data;
		2. restriction of processing of Personal Data;
		3. data portability; and
		4. prompt response to subject access requests.
7. Confidentiality
	1. The Supplier will obtain a commitment of confidentiality from anyone it allows to process the Personal Data, including but not limited to:
		1. the Supplier’s employees, agents, officers and affiliates;
		2. agency or temporary workers; and
		3. processors or Sub-Processors,

and shall take reasonable steps to ensure the reliability and competence of the Supplier’s personnel who have access to the Personal Data.

* 1. The Supplier shall ensure that none of the Supplier’s personnel publish, disclose or divulge any of the Personal Data to any third party unless directed to do so by the Customer.
1. Assistance
	1. The Supplier will assist the Customer, so far as possible and taking into account the nature of the processing under this Agreement and the information available to the Supplier, in meeting the Customer’s obligations under the Data Protection Legislation, including but not limited to:
		1. the obligation to keep Personal Data secure;
		2. the obligation to notify personal data breaches to the supervisory authority;
		3. the obligation to advise data subjects where there has been a personal data breach;
		4. the obligation to carry out data protection impact assessments; and
		5. the obligation to consult with the supervisory authority where a data protection impact assessments indicates an unmitigated high risk to the processing activities under this Agreement.
2. Records and audits
	1. The Supplier will:
		1. maintain a record of its processing activities in accordance with the requirements of the Data Protection Legislation; and
		2. retain all other information required to demonstrate that the Supplier has met its obligations under the Data Protection Legislation and under this Agreement.
	2. The Supplier will submit and contribute to audits and inspections carried out by the Customer or a third-party appointed by the Customer to carry out such audits or inspections. The Customer will provide reasonable written notice of the date of inspections or audits.
3. Indemnity
	1. The Supplier shall indemnify the Customer (to the fullest extent permitted by law) against any claim, loss, damage, expense or fine suffered or incurred by the Customer arising:
		1. as a result of the Supplier’s breach of any provision of this Agreement; and/or
		2. under or in connection with the Data Protection Legislation and caused by any action or omission of the Supplier (or its directors, officers, employees, permitted agents, licensees and contractors), unless such action or omission is specifically requested by the Customer.
4. Termination
	1. Neither party may terminate this Agreement prior to the expiration or termination (howsoever caused) of the Main Contract.
	2. Subject to clause 12.1, either party may terminate this Agreement by giving not less than 30 days’ prior written notice to the other.
	3. On termination or expiry of this Agreement, the Supplier shall, at the choice of the Customer, delete or return to the Customer all Personal Data and copies thereof that it has within its power, ownership or control, and ensure that any such return or deletion is carried out securely and in accordance with current best practice.
5. General
	1. Each party agrees to perform its obligations under this Agreement in consideration of the obligations upon the other party under this Agreement.
	2. Any notices given or required to be given under this Agreement shall be in writing and delivered to the receiving party:
		1. by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
		2. by email at the addresses below:

**to the Customer:** [EMAIL ADDRESS]; and

**to the Supplier:** [EMAIL ADDRESS].

* 1. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
	2. Either party may unilaterally vary the terms of this Agreement, by giving written notice to the other party, where and to the extent only that such variation is necessary to reflect any change in the Data Protection Legislation. No other variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
	3. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
	4. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	5. This Agreement 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 law of England.
	6. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**This Agreement has been entered into on the date stated at the beginning of it.**

1.

Processing under this Agreement

* + 1. Processing under this Agreement shall be limited to such processing activities as the Supplier is reasonably required to undertake in connection with the Supplier’s supply of Services to the Customer and its performance under the Main Contract.
		2. Personal Data will be collected and processed for the following **Purpose**:
			1. [Insert brief description of the purpose for which personal data will be used]
		3. The **Nature** of the processing will be:
			1. collection, recording, storage, access and retrieval;
			2. structuring and filing including in an organised database;
			3. combination with other data; and
			4. disclosure by transmission to the Customer and its authorised agents, employees, workers and suppliers.
		4. The **Duration** of the Processing under this Agreement will be for the duration of the Supplier’s supply of Services to the Customer and the term of the Main Contract.
		5. The **Types of Personal Data** processed under this Agreement will be:
			1. [for example…identity and contact details, including name, title, gender, marital status, postal address, email address, phone numbers and social media accounts;
			2. ……]
		6. The **Categories of Data Subject** whose Personal Data will be processed under this Agreement will be:
			1. [Insert brief description of the types of individuals whose data will be processed (e.g. customers, employees , members etc.)]

|  |  |
| --- | --- |
| SIGNED by [INSERT]for and on behalf of **the CUSTOMER**  | ))) |
| SIGNED by [INSERT]for and on behalf of **[SUPPLIER]** | ))) |