|  |  |
| --- | --- |
| **PARTIES AND EXECUTION** | |
| Entity details: [INSERT] | Entity details: [INSERT] |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

|  |  |  |
| --- | --- | --- |
| **VARIABLES** | | |
| **Parties’ relationship** | [Controller to Processor]  [Processor to Sub-Processor]  [Independent Controller to Controller] | |
| **Parties’ roles** | [Legal name] will act as the [Controller/Processor] [and Business] (as defined in Section 1 of the Terms)  [Legal name] will act as the [Processor [and Service Provider]/Sub-Processor/Controller] (as defined in Section 1 of the Terms) | |
| **Contacts** | [Controller/Processor] | [Processor/Sub-Processor/Controller] |
| Name:  Email:  [INSERT ADDITIONAL DETAILS] | Name:  Email:  [INSERT ADDITIONAL DETAILS] |
| **Main Agreement** | [INSERT] | |
| **Term** | This DPA will commence on the final date of signature and will continue for [INSERT] | |
| **Breach Notification Period** | [Without undue delay] [24 hours] [48 hours] [72 hours] after becoming aware of a personal data breach | |
| **Sub-processor Notification Period** | [A reasonable timeframe] [14 days] [30 days] before the new sub-processor is granted access to Personal Data | |
| [**Liability Cap**] | [Each party’s aggregate liability under this DPA will not exceed [INSERT] / [the liability caps as per the Main Agreement]] | |
| **Governing Law and Jurisdiction** | [INSERT] [As per the Main Agreement] | |
| **Data Protection Laws** | All laws, regulations and court orders which apply to the processing of Personal Data in:   * [the European Economic Area (**EEA**)] * [the United Kingdom (**UK**)] * [the United States (**US**)] * [Australia] * [INSERT]   This includes the [European Union Regulation (EU) 2016/679,] [the Data Protection Act 2018], [California Consumer Privacy Act of 2018 (**CCPA**)/California Privacy Rights Act of 2020 (**CPRA**)], [the Privacy Act 1998] and [INSERT], [each] as amended from time to time. | |
| **Services related to processing** | [INSERT] [As described in the Main Agreement] | |
| **Duration of processing** | [For the Term of this DPA] [INSERT] | |
| **Nature and purpose of processing** | [INSERT] | |
| **Personal Data** | The types of personal data processed are [INSERT] | |
| **Data subjects** | The individuals whose Personal Data will be processed are[INSERT] | |
| **Special provisions** | [INSERT] | |
| **Transfer Mechanism** | [N/A]  [Standard Contractual Clauses approved by the European Commission Decision of 4 June 2021 (as amended from time to time), for the transfer of personal data from the EEA or adequate country to a third country]  [International Data Transfer Agreement issued by the Information Commissioner’s Office under Section 119A of the Data Protection Act 2018, effective from 21 March 2022]  [International Data Transfer Addendum issued by the Information Commissioner’s Office under Section 119A of the Data Protection Act 2018, effective from 21 March 2022]  [The Binding Corporate Rules of [INSERT DETAILS]] | |

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| **ANNEX 1** | |
| **Security measures.** Technical and organisational measures to ensure the security of Personal Data | [Insert Processor’s/Sub-Processor’s security measures, either in full or as a link to relevant webpage] |

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| **ANNEX 2** | |
| **Sub-processors.** Current sub-processors | [Insert Processor’s/Sub-Processor’s list of sub-processors, either in full or as a link to relevant webpage] |

**TERMS**

1. **What is this agreement about?**
2. **Purpose**. The parties are entering into this Data Processing Agreement (**DPA**) for the purpose of processing Personal Data (as defined above).
3. **Definitions.** Under this DPA:
4. **adequate country** means a country or territory that is recognised under Data Protection Laws from time to time as providing adequate protection for processing Personal Data, [and]
5. **Controller**, **data subject**, **personal data breach**, **process/processing,** **Processor** and **supervisory authority** have the same meanings as in the Data Protection Laws[. / , [and]
6. [**Business** and **Service Provider** have the same meanings as in the [CCPA/CPRA]][. / , [and]
7. [**Sub-Processor** means another processor engaged by the Processor to carry out specific processing activities with Personal Data.]

***[CONTROLLER-PROCESSOR AND PROCESSOR-SUB-PROCESSOR RELATIONSHIPS]***

1. **What are each party’s obligations?**
2. **[Controller obligations.** Controller instructs Processor to process Personal Data in accordance with this DPA, and is responsible for providing all notices and obtaining all consents, licences and legal bases required to allow Processor to process Personal Data.] [**Processor obligations.** Processor instructs Sub-Processor to process Personal Data in accordance with this DPA, and is responsible for sharing Controller’s instructions with Sub-Processor prior to the processing of Personal Data.]
3. [**Processor/Sub-Processor**] **obligations.** [Processor/Sub-Processor] will:
4. only process Personal Data in accordance with this DPA and Controller’s [and Processor’s] instructions (unless legally required to do otherwise),
5. not sell, retain or use any Personal Data for any purpose other than as permitted by this DPA and the Main Agreement,
6. inform [Controller/Processor] immediately if (in its opinion) any instructions infringe Data Protection Laws,
7. use the technical and organisational measures described in Annex 1 when processing Personal Data to ensure a level of security appropriate to the risk involved,
8. notify [Controller/Processor] of a personal data breach within the Breach Notification Period and provide assistance to [Controller/Processor] as required under Data Protection Laws in responding to it,
9. ensure that anyone authorised to process Personal Data is committed to confidentiality obligations,
10. without undue delay, provide [Controller/Processor] with reasonable assistance with:
    1. data protection impact assessments,
    2. responses to data subjects’ requests to exercise their rights under Data Protection Laws, and
    3. engagement with supervisory authorities,
11. if requested, provide [Controller/Processor] with information necessary to demonstrate its compliance with obligations under Data Protection Laws and this DPA,
12. allow for audits at [Controller/Processor]’s reasonable request, provided that audits are limited to once a year and during business hours except in the event of a personal data breach, and
13. return Personal Data upon [Controller/Processor]’s written request or delete Personal Data by the end of the Term, unless retention is legally required.
14. **Warranties**. The parties warrant that they and any staff and/or subcontractors will comply with their respective obligations under Data Protection Laws for the Term.

1. **Sub-processing**
2. **Use of sub-processors.** [Controller/Processor] authorises [Processor/Sub-Processor] engage other processors (referred to in this section as **sub-processors**) when processing Personal Data. [Processor/Sub-Processor]’s existing sub-processors are listed in Annex 2.
3. **Sub-processor requirements.** [Processor/Sub-Processor] will:
4. require its sub-processors to comply with equivalent terms as [Processor/Sub-Processor]’s obligations in this DPA,
5. ensure appropriate safeguards are in place before internationally transferring Personal Data to its sub-processor, and
6. be liable for any acts, errors or omissions of its sub-processors as if they were a party to this DPA.
7. **Approvals.** [Processor/Sub-Processor] may appoint new sub-processors provided that they notify [Controller/Processor] in writing in accordance with the Sub-processor Notification Period.
8. **Objections.** [Controller/Processor] may reasonably object in writing to any future sub-processor. If the parties cannot agree on a solution within a reasonable time, either party may terminate this DPA.
9. **International personal data transfers**
10. **Instructions.** [Processor/Sub-Processor] will transfer Personal Data outside the UK, the EEA or an adequate country only on documented instructions from [Controller/Processor], unless otherwise required by law.
11. **Transfer mechanism.** Where a party is located outside the UK, the EEA or an adequate country and receives Personal Data:
12. that party will act as the **data importer**,
13. the other party is the **data exporter**, and
14. the relevant Transfer Mechanism will apply.
15. **Additional measures.** If the Transfer Mechanism is insufficient to safeguard the transferred Personal Data, the data importer will promptly implement supplementary measures to ensure Personal Data is protected to the same standard as required under Data Protection Laws.
16. **Disclosures.** Subject to terms of the relevant Transfer Mechanism, if the data importer receives a request from a public authority to access Personal Data, it will (if legally allowed):
17. challenge the request and promptly notify the data exporter about it, and
18. only disclose to the public authority the minimum amount of Personal Data required and keep a record of the disclosure.

***[INDEPENDENT CONTROLLER-CONTROLLER RELATIONSHIPS]***

1. **What are each party’s obligations?**
2. **Mutual obligations.** Each party will:
3. only process Personal Data in accordance with this DPA (unless legally required to do otherwise),
4. use the technical and organisational measures described in Annex 1 when processing Personal Data to ensure a level of security appropriate to the risk involved for each of the parties, and
5. without undue delay, provide the other party with reasonable assistance with responses to data subjects’ requests to exercise their rights under Data Protection Laws.
6. **Warranties**. The parties warrant that they and any staff and/or subcontractors will comply with their respective obligations under Data Protection Laws for the Term.
7. **International personal data transfers**
8. **Transfer mechanism.** Where a party processes Personal Data outside the UK, the EEA or an adequate country:
9. that party will act as the **data importer**,
10. the other party is the **data exporter**, and
11. the relevant Transfer Mechanism will apply.
12. **Additional measures.** If the Transfer Mechanism is insufficient to safeguard the transferred Personal Data, the data importer will promptly implement supplementary measures to ensure Personal Data is protected to the same standard as required under Data Protection Laws.
13. **Disclosures.** Subject to the terms of the relevant Transfer Mechanism, If the data importer receives a request from a public authority to access Personal Data, it will (if legally allowed):
14. challenge the request and notify the data exporter about it, and
15. only disclose to the public authority the minimum amount of Personal Data required and keep a record of the disclosure.
16. **Other important information**
17. **Survival.** Any provision of this DPA which is intended to survive the Term will remain in full force.
18. **Order of precedence.** In case of a conflict between this DPA and other relevant agreements, they will take priority in this order:
19. Transfer Mechanism,
20. DPA,
21. Main Agreement.
22. **Notices.** Formal notices under this DPA must be in writing and sent to the Contact on the DPA’s front page as may be updated by a party to the other in writing.
23. **Third parties.** Except for affiliates, no one other than a party to this DPA has the right to enforce any of its terms.
24. **Entire agreement.** This DPA supersedes all prior discussions and agreements and constitutes the entire agreement between the parties with respect to its subject matter and neither party has relied on any statement or representation of any person in entering into this DPA.
25. **Amendments.** Any amendments to this DPA must be agreed in writing.
26. **Assignment.** Neither party can assign this DPA to anyone else without the other party's consent.
27. **Waiver.** If a party fails to enforce a right under this DPA, that is not a waiver of that right at any time.
28. **Governing law and jurisdiction.** The Governing Law applies to this DPA and all disputes will only be litigated in the courts of the Jurisdiction.