

1. "DATA PROTECTION"

Definitions

The following words and phrases used in this [Agreement] and the Schedules shall have the following meanings except where the context otherwise requires:

"Data Controller"	the party who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any Personal Data are, or are to be, processed;
"Data Processor"	a person or entity who processes Personal Data on behalf of the Data Controller on the basis of a formal, written contract, but who is not an employee of the Data Controller;
"Data Subject"	an individual who is the subject of Personal Data, i.e. to whom the data relates either directly or indirectly;
"Data Protection Legislation"	all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in Ireland relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC);
"Personal Data"	any information relating to an identified or identifiable natural person that is processed by the Provider as a result of, or in connection with, the provision of the Services. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
"Processing, and process"	processes either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties;
"SCC"	the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to data processors established in third countries (controller-to-processor transfers), as set out in the annex to Commission Decision 2010/87/EU; and
"Services"	refers to the services to be carried out by the Data Processor under the terms of the Master Agreement.

The Parties acknowledge that for the purposes of Data Protection Legislation, in performing its obligations under this Agreement, the Supplier, to the extent that it processes Personal Data received from the Provider, is a "Data Processor" and the Provider is the "Data Controller"; as defined in the Data Protection Legislation.

1.1. Data Controller Obligations

- (a) The Data Controller retains control of the Personal Data and remains responsible for its compliance obligations under the Data Protection Legislation, including for the processing instructions it gives to the Data Processor.*
- (b) The Data Controller shall authorise the Data Processor to process the Personal Data in any manner that may reasonably be required in order to provide the Services and Annex A describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types in respect thereof.*

1.2. Data Processor Obligations

- (a) The Data Processor shall comply with the Data Protection Legislation when processing Personal Data.*
- (b) The Data Processor shall act only on the written instructions of the Data Controller in relation to the processing of the Personal Data under this Agreement and shall promptly comply with any request or instruction from the Data Controller requiring the Data Processor to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.*
- (c) Without prejudice to other legal provisions concerning the Data Subject's right to compensation and liability of the Parties generally, as well as legal provisions concerning fines and penalties, the Data Processor will carry full liability in the instance where it is found to have infringed Data Protection Legislation, by determining the purposes and means of processing.*

1.2.1 Use and Processing of Data

The Data Processor shall:

- (a) only use such Personal Data for the purposes of performing its obligations under this Agreement;*
- (b) only process the Personal Data to the extent, and in such a manner, as is necessary in order to deliver the Services under this Agreement and in accordance with the Data Controller's written instructions from time to time. The Data Processor will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Data Processor must promptly notify the Data Controller if, in its opinion, the Data Controller's instruction or performance by the Data Processor of this Agreement would not comply with the Data Protection Legislation;*
- (c) maintain the confidentiality of all Personal Data and shall not disclose Personal Data to any third party or allow any third party to use such data in any circumstances other than:
 - I. at the specific written request of the Data Controller;*
 - II. where this Agreement specifically authorises the disclosure in order to deliver the Services;*
 - III. in strict compliance with clause 1.2.6 of this Agreement; or*
 - IV. where such disclosure is required by law. If a law, court, regulator or supervisory authority requires the Data Processor to process or disclose Personal Data, the Data Processor must first inform the Data Controller of the legal or regulatory requirement and give the Data Controller an opportunity to object or challenge the requirement, unless the law prohibits such notice;**
- (d) assist the Data Controller with undertaking an assessment of the impact of processing any Personal Data, and with any consultations with the Data Protection Commissioner or any other data protection or regulatory authority, if and to the extent an assessment or consultation is required to be carried under Data Protection Legislation; and*

- (e) *comply with any further written instructions with respect to processing by the Data Controller and any such further instructions shall be incorporated into Annex A.*

1.2.2 Access to Information

The Data Processor shall:

- (a) *upon the request of a Data Subject, inform such Data Subject that it is a Data Processor and that the other Party is a Data Controller;*
- (b) *inform the Data Controller immediately in the event of:*
- I. the exercise by any Data Subject of any rights under Data Protection Legislation in relation to any Personal Data;*
 - II. a request to rectify, block or erase any Personal Data;*
 - III. a request, complaint or communication relating to either Party's obligations under the Data Protection legislation;*
 - IV. receiving any request from the Data Protection Commissioner or any other data protection or regulatory authority in connection with the Personal Data processed under this Agreement;*
 - V. receiving any request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law.*
- (c) *co-operate with the Data Controller and provide assistance to deal with all requests and communications from Data Subjects and the Data Protection Commissioner or any other data protection or regulatory authority;*
- (d) *co-operate with and provide such information and access to any facilities, premises or equipment from or on which Personal Data is, has been, or is to be processed pursuant to this Agreement as the Data Controller may reasonably require to enable it to monitor compliance by the Data Processor with the obligations in this clause 1.2 of the Agreement;*
- (e) *maintain, and make available upon request by the Data Controller, acting reasonably, and/or the Data Protection Commissioner or any other competent data protection or privacy authority, a central register, in the form set out in Annex A below, which describes the processing for which the Data Processor is responsible and shall include:*
- I. the nature, duration and purpose(s) for which such Personal Data is processed;*
 - II. a description of such Personal Data that it processes (including the categories of personal data and data subjects types);*
 - III. any recipients of such Personal Data; and*
 - IV. the location(s) of any overseas processing of such Personal Data;*

1.2.3 Disclosure and Data Sharing

The Data Processor (or any subcontractor) shall:

- (a) *only disclose such Personal Data to, or allow access by, its employees, agents and delegates who have had appropriate training in data protection matters and whose use of such Personal Data is strictly necessary for the performance of the Services;*
- (b) *ensure all such employees, agents and delegates of the Data Processor who can/or do access such Personal Data are informed of its confidential nature and are bound by confidentiality obligations and use restrictions in respect of the Personal Data, including but not limited to a restriction on copying, publishing, disclosing or divulging such Personal Data to any third party without the prior written consent of the Data Controller;*
- (c) *not divulge such Personal Data whether directly or indirectly to any person or firm without the prior written consent of the Data Controller except, subject to clause 1.2.6 of the Agreement, to those of its employees, agents and delegates who are engaged in the processing of the Personal Data or except as may be required by any applicable laws or any court to which the data processor or its Affiliates are subject; and*

- (d) *not transfer or otherwise process any Personal Data to a third party outside the European Economic Area (EEA) except with the express prior written consent of the Data Controller.*
- (e) *Where such consent is granted, the Data Processor may only process, or permit the processing, of Personal Data outside the EEA under the following conditions:*
 - I. the Data Processor is processing Personal Data in a territory which is subject to a current finding by the European Commission under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. The Data Processor must identify in Annex A the territory that is subject to such an adequacy finding; or*
 - II. the Data Processor participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Data Processor (and, where appropriate, the Data Controller) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of Data Subjects as required by Article 46 of the General Data Protection Regulation ((EU) 2016/679). The Data Processor must identify in Annex A the transfer mechanism that enables the Parties to comply with these cross-border data transfer provisions and the Data Processor must immediately inform the Data Controller of any change to that status; or*
 - III. the transfer otherwise complies with the Data Protection Legislation for the reasons set out in Annex A.*
- (f) *If any Personal Data transfer between the Data Controller and the Data Processor requires execution of SCC in order to comply with the Data Protection Legislation (where the Data Controller is the entity exporting Personal Data to the Data Processor outside the EEA), the Parties will complete all relevant details in, and execute, the SCC, and take all other actions required to legitimise the transfer.*
- (g) *If the Data Controller consents to appointment by the Data Processor located within the EEA of a subcontractor located outside the EEA in compliance with the provisions of this Clause 1.2.3, then the Data Processor must identify valid cross-border transfer mechanism which may include the entry into of a SCC with such subcontractor, which shall be put in place prior to any such transfers.*

1.2.4 Security Systems

The Data Processor shall:

- (a) *at all times during the term of this Agreement, implement appropriate technical and organisational measures to protect such Personal Data held or processed by it against unauthorised or unlawful processing and against accidental and unlawful loss, destruction, alteration, disclosure or damage.*
- (b) *promptly upon becoming aware of the above, notify the Data Controller of any actual or suspected incident of unauthorised or unlawful processing or accidental loss, destruction or damage to Personal Data and provide all co-operation and information reasonably required by the Data Controller in relation to the incident; including corrective action unless such action is contrary to the law.*

1.2.5 Data Retention and Disposal

The Data Processor shall:

- (a) *promptly upon termination or expiry of this Agreement and, at any other time, on request by the Data Controller, return to the Data Controller or delete all Personal Data, including that of employees of the Data Controller, together with all copies thereof in any media in*

- its power, possession or control, except to the extent the Data Processor is required to retain a copy of such Personal Data to comply with Data Protection Legislation.*
- (b) promptly upon becoming aware of the same and without undue delay, notify the Data Controller of any actual or suspected incident of accidental, unauthorised, or unlawful destruction or disclosure of or access to Personal Data, including where Personal Data is lost or destroyed, becomes damaged, corrupted or unusable and shall provide all co-operation and information reasonably required by the Data Controller in relation to the incident; including:*
- I. description of the nature of such incident, including the categories and approximate number of both Data Subjects and Personal Data records concerned;*
 - II. the likely consequences; and*
 - III. description of the measures taken and corrective action, or proposed to be taken to address such incident, including measures to mitigate its possible adverse effects, unless such action or measures are contrary to the law. The Data Processor shall provide such corrective action and measures at its own expense.*
- (c) immediately following any accidental, unauthorised, or unlawful incident, the Parties will co-ordinate with each other to investigate the matter. The Data Processor will co-operate with the Data Controller in the Data Controller's handling of the matter, including:*
- I. assisting with any investigation;*
 - II. providing the Data Controller with physical access to any facilities and operations affected;*
 - III. facilitating interviews with the Data Processor's employees, former employees and others involved in the matter;*
 - IV. making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Data Controller; and*
 - V. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from such incident or unlawful Personal Data processing.*
- (d) The Data Processor will not inform any third party of any such incident without first obtaining the Data Controller's prior written consent, except when required to do so by law.*
- (e) The Data Processor agrees that the Data Controller has the sole right to determine:*
- I. whether to provide notice of such incident to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the Data Controller's discretion, including the contents and delivery method of the notice; and*
 - II. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.*
- (f) The Data Processor will cover all reasonable expenses associated with the performance of the obligations under clause 1.2.5 of this Agreement unless the matter arose from the Data Controller's negligence, wilful default or breach of this Agreement.*
- (g) The Data Processor will also reimburse the Data Controller for actual reasonable expenses that the Data Controller incurs when responding to such incident to the extent that the Data Processor caused such incident, including all costs of notice and any remedy.*

1.2.6 Third Parties

The Data Processor shall:

- (a) not engage any sub-contractor to assist it in the fulfilment of its obligations under the Agreement without the prior written consent of the Data Controller and unless there is a written contract in place between the Data Processor and the sub-contractor which requires the sub-contractor to:*

- I. *only carry out processing as may be necessary from time to time for the purposes of its engagement by the Data Processor in connection with the Agreement;*
- II. *comply with obligations equivalent to those imposed on the Data Processor in this Clause 1.2 of the Agreement;*
- III. *notify the Data Controller of any changes to the sub-contractor or the written contract;*
- IV. *ensure that, in the event of delegation to an affiliate or other delegate, or the appointment of an agent, such affiliate, delegate or agent shall comply with obligations equivalent to those imposed on the Data Processor in this Clause 1.2 of the Agreement; and*
- V. *remain fully liable for all acts or omissions of any sub-contractor and/or affiliate.*

1.2.7 Right of Audit

The Data Processor shall:

- (a) *without unreasonable delay, provide a copy of all data and data-related activity logs maintained by the Data Processor and other related information to the Data Controller upon receipt of a written request by the Data Controller or a request in the course of an audit or inspection. Such data shall be provided in the format and on media as reasonably specified by the Data Controller; and*
- (b) *agree that where a sub-contractor has been engaged by the Data processor, the Data Controller may, upon giving reasonable notice and within normal business hours, carry out similar compliance and information security audits and checks of the sub-contractor to ensure adherence to the terms of this Agreement, in the manner as set out in clause 1.2.2 of this Agreement.*

PROCESSING ACTIVITY LOG*

DESCRIPTION	DETAILS
<p><i>Name and contact details of:</i> <i>(i) the Data Processor or Data Processors;</i> <i>(ii) of each Data Controller on behalf of which the processor is acting; and</i> <i>(iii) where applicable, the data protection officer</i></p>	
<p><i>Categories of processing carried out on behalf of each Data Controller</i></p>	<p><i>[This should be a high level description of what the processing is about i.e. its subject matter]</i></p>
<p>Where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation</p>	<p><i>[Clearly set out the nature of any applicable overseas transfers of personal data]</i></p>
<p>Where applicable, transfer of Personal Data outside the EEA</p>	<p><i>[Identify the territory that is subject to such an adequacy finding; or the cross-border transfer mechanism being relied upon.]</i></p>
<p>Where possible, a general description of the technical and organisational security measures</p>	<p><i>[High level description – there is no requirement to divulge specific detail with regard to security arrangements]</i></p>

- To be maintained by the Data Processor and revised accordingly.