

CUSTOMER DATA PROCESSING TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The following terms shall have the following meanings hereunder:

Customer: means any individual, firm, partnership, company or organisation or any other undertaking, which orders or receives from the Supplier any services pursuant to the Main Agreement.

Customer Data: means any information or data, in whatever form, which is held on, entered into, processed by, or retrievable from computer, communication or other systems or equipment of the Customer including Customer Personal Data and data processed by the Customer in providing services to its customers.

Customer Personal Data: means any Personal Data of which the Customer is the Data Controller or which the Customer is processing on behalf of another Data Controller (such as another company in the Customer's group, or a customer of the Customer, or any of their customers or group companies) and which is processed by the Supplier as Data Processor on behalf of the Customer under or in connection with the Main Agreement, including the information more particularly described in the Schedule.

Data Protection Legislation: means (i) until the GDPR is directly applicable in the United Kingdom, the Data Protection Act 1998; (ii) once the GDPR is directly applicable in the United Kingdom, the GDPR and any national implementing laws, regulations and secondary legislation in the United Kingdom relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time; and then (iii) any successor legislation to the GDPR or the Data Protection Act 1998.

GDPR: means the General Data Protection Regulation 2016/679.

Main Agreement: means any contract entered into between the Supplier and the Customer to provide services to the Customer.

Supplier: means Epix Systems Limited.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 Any reference to **parties** shall refer to the Supplier and the Customer and **party** shall be interpreted accordingly.
- 1.5 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.

2. PRELIMINARY INFORMATION

- 2.1 The parties acknowledge that for the purposes of the Data Protection Legislation, to the extent the Supplier is processing Customer Personal Data, the Customer is the Data Controller (or is processing on behalf of the Data Controller), the Supplier is a Data Processor (for the Customer or, through the Customer, for another Data Controller) (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation) and the Customer appoints the Supplier to process the Customer Personal Data.
- 2.2 The GDPR requires that a written agreement be entered into between a Data Controller and a Data Processor in order to allow the processing of personal data by the Data Processor on behalf of the Data Controller. These data processing terms constitute a supplementary written agreement to the Main Agreement for the purposes of the GDPR. This supplementary agreement (this **Processing Agreement**) shall govern the processing of personal data by the Data Processor on behalf of the Data Controller. For the avoidance of doubt, this Processing Agreement is expressly incorporated into the Main Agreement.
- 2.3 The Schedule to this Processing Agreement sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data (as defined in the Data Protection Legislation, **Personal Data**) and categories of data subject (as defined in the Data Protection

Legislation, **Data Subject**).

2.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 2.4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

3. OBLIGATIONS OF THE CUSTOMER

3.1 Without prejudice to the generality of clause 2.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data and Customer Data to the Supplier for the duration and purposes of the Main Agreement and this Processing Agreement. As such, the Customer confirms that it is entitled to transfer the Customer Personal Data and Customer Data to the Supplier so that the Supplier may lawfully use, process and transfer the Customer Personal Data and Customer Data on the Customer's behalf in accordance with this Processing Agreement.

3.2 Without prejudice to the generality of clause 2.4, the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Customer Personal Data and Customer Data provided for processing.

4. OBLIGATIONS OF THE SUPPLIER

4.1 The Supplier shall, in relation to any Customer Personal Data processed in connection with the performance by the Supplier of its obligations under the Main Agreement and this Processing Agreement:

(a) process that Customer Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier (**Applicable Laws**) to process the Customer Personal Data;

(b) ensure that it has in place appropriate technical and

organisational measures to protect against unauthorised or unlawful processing of the Customer Personal Data and against accidental loss or destruction of, or damage to, the Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting the Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to the Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process the Customer Personal Data are obliged to keep the Customer Personal Data confidential; and
- (d) not transfer any Customer Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained;
- (e) reasonably and timeously assist the Customer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach, provided that notification of such a Personal Data breach as aforesaid shall not be construed as an acknowledgement by the Supplier of any fault or liability with respect to said breach;
- (g) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Main Agreement unless required by Applicable Law to store the Customer Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 4.1 and allow for audits by the Customer or the Customer's designated auditor.

4.2 The Supplier may charge the Customer at its standard time-based charging rates for any work undertaken or time expended by the Supplier pursuant to clause 4.1 and may also charge the Customer for any other costs, charges or expenses incurred in connection therewith.

5. THIRD PARTY PROCESSORS

5.1 The Customer consents to the Supplier appointing a third party processor of the Customer Personal Data and the Customer Data under this Processing Agreement.

5.2 If the Supplier appoints a third-party processor of the Customer Personal Data or the Customer Data, the Supplier confirms that it will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this Processing Agreement.

6. LIABILITY

6.1 In the event of any loss or damage to any Customer Personal Data or Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Personal Data or Customer Data from the latest back-up of such Customer Personal Data or Customer Data maintained by the Supplier.

6.2 The Supplier shall have no liability under this Processing Agreement for anything other than acts or omissions which are directly attributable to the Supplier or to third-party processors appointed by the Supplier. The Customer agrees to indemnify and hold the Supplier harmless against any liability arising directly or indirectly from any act or omission of the Customer or the Customer's subcontractors, agents, business partners, suppliers (other than the Supplier), customers, or anyone acting on the Customer's behalf.

6.3 Without limiting the generality of clauses 6.1 and 6.2, any

liability of the Supplier under this Processing Agreement shall be subject to any exclusions and limitations set out in the Main Agreement.

7. AMENDMENTS

- 7.1** If an amendment is required to this Processing Agreement in order to comply with the Data Protection Legislation, Applicable Laws or any requirements stipulated by the Customer, the Customer will provide an amendment with the required changes to the Supplier.
- 7.2** Both parties will work together in good faith to promptly agree a mutually acceptable amendment to this Processing Agreement reflecting the required changes.

8. MISCELLANEOUS

- 8.1** No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Processing Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Processing Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 8.2** In the event of any conflict, the terms of this Processing Agreement shall prevail over the terms of the Main Agreement.
- 8.3** This Processing Agreement and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and Wales.
- 8.4** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Processing Agreement, its subject matter or formation (including non-contractual disputes or claims).

Schedule - Processing, Personal Data and Data Subjects

A1. Processing by the Supplier

A1.1 Scope, nature and purpose of processing

The scope, nature and purpose of the processing activities required for the provision of services by the Supplier to the Customer under the Main Agreement.

A1.2 Duration of the processing

The duration of the processing corresponds to the duration of the Main Agreement.

A2. Types of Personal Data

- **Identity Data** including first name, last name, username or similar identifier.
- **Contact Data** including billing address, delivery address, email address and telephone numbers.
- **Financial Data** including bank account and payment card details.
- **Transaction Data** including details about payments to and from the Data Subject.
- **Technical Data** including internet protocol (IP) address, the Data Subject's login data, browser type and version, time zone setting and location, browser plug-in types and versions, operating system and platform.
- **Profile Data** including the Data Subject's username and password, or orders made by the Data Subject.
- **Usage Data** including information about how the Data Subject uses the website of the Customer.
- **Communications Data** including the Data Subject's communication preferences.

A3. Categories of Data Subject

- The Customer's employees (including temporary or casual workers).
- The Customer's group companies' employees (including temporary or casual workers).
- The Customer's customers and potential customers.
- The Customer's business partners.
- The Customer's suppliers and sub-contractors.
- The Customer's agents.

- Individuals identified in documents processed by the Customer in providing goods and / or services to its customers.