

## **GDPR AMENDMENT**

### **Data Processing Agreement**

This Data Processing Agreement is made on the Agreement Date (as defined below) between:

- (1) **Potential Plus Ltd**, company registration number 4266073 whose registered office is at Ivy House, 49 Harewood Gardens, Bournemouth BH7 7RH, acting on its own behalf, hereinafter referred to as the “**Data Controller**”; and
- (2) The **Data Processor**, as defined below,

each a party and together the parties.

#### **Recitals**

- (A) The Services Agreement (as defined below) was entered into between the Data Controller and / or its relevant Group Companies and the Data Processor and / or its relevant Group Companies specified therein.
- (B) The Data Controller receives and / or is granted access to certain Personal Data, in respect of which the Data Controller are controller(s), in order to supply the Data Controller and / or its Group Companies with the Services pursuant to the Services Agreement (as defined below).
- (C) This Data Processing Agreement shall vary the existing data protection provisions that apply to the processing of Personal Data in the manner and to the extent specified in this Data Processing Agreement.
- (D) The Data Processor shall be provided with access to the Personal Data (as defined below) and shall process the Personal Data on behalf of the Data Controller and / or its Group Companies in accordance with and subject to the terms and conditions of this Data Processing Agreement.

#### **Definitions**

For the purposes of this Data Processing Agreement:

“**Agreement Date**” means the date on which the Data Controller signifies its acceptance of this Data Processing Agreement or the Effective Date, whichever is earlier;

“**Applicable Law**” means any applicable: (i) statute, regulation, regulatory requirement, by law, ordinance, subordinate legislation or other law (regardless of its source) or mandatory guidance or code of practice (including in each case any judicial or administrative interpretation of it), in force from time to time in any applicable jurisdiction; and (ii) judgment of a relevant court of law, or sanction, directive, order or requirement of any regulatory authority;

“**Data Processor**” means your organisation, on behalf of the relevant Data Processor / supplier entities under the Existing Data Protection Terms and the Services Agreement;

“**Data Protection Legislation**” means all Applicable Laws and policies or codes of practice applicable to the processing, privacy and use of personal data as in force and applicable to the Data Controller and / or Data Processor as may be amended, supplemented or replaced from time to time, including Regulation (EU) 2016/679 (the “**GDPR**”), and any judicial or administrative interpretation of it and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;

“**Data Subject Request**” means a request from or on behalf of a data subject of Personal Data to exercise any rights of data subjects under Data Protection Legislation;

“**DP Losses**” means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material and non-material damage); and
- (b) to the extent permitted by Applicable Law:
  - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a court, a supervisory authority or other relevant regulatory authority;
  - (ii) compensation to a data subject ordered by a court or supervisory authority; and

- (iii) the costs of compliance with investigations by a supervisory authority or other relevant regulatory authority.

**“Effective Date”** means when the GDPR becomes fully applicable on 25 May 2018;

**“Existing Data Protection Terms”** means the existing data protection provisions that apply to the processing of Personal Data, including any contained in the Services Agreement or a separate data processing agreement or any other relevant document(s);

**“Group Company”** means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a party, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;

**“Model Clauses”** means the standard contractual clauses annex to the EU Commission Decision 2010/87/EU of 5 February 2010 for the transfer of personal data to processors established in Third Countries (and any successor or new similar clauses);

**“Personal Data”** means personal data provided or made available to the Data Processor by or on behalf of the Data Controller, or otherwise obtained or created in connection with the performance of the Data Processor’s obligations under the Services Agreement and / or this Data Processing Agreement, and includes but is not limited to the personal data set out in Appendix 1;

**“Processing Instructions”** means the instructions for processing Personal Data, as set out in this Data Processing Agreement and the Services Agreement, and otherwise as provided in writing by or on behalf of the Data Controller to the Data Processor (or any of its relevant Group Companies) from time to time;

**“Services”** means any and all services provided and/or to be provided (as the context dictates) by or on behalf of the Data Processor under the Services Agreement;

**“Services Agreement”** means the agreement(s) for provision of the Services entered into between the Data Processor and / or its relevant Group Companies as supplier, and the Data Controller and / or its relevant Group Companies specified therein as customer / service recipient, and includes all related purchase orders; and

**“Sub-contractor”** means another processor engaged by the Data Processor for carrying out processing activities in respect of the Personal Data.

The terms **“controller”**, **“data subject”**, **“personal data”**, **“personal data breach”**, **“processing”**, **“processor”** and **“supervisory authority”** shall have the meanings given to them in Data Protection Legislation (and related terms such as **“process”** shall have corresponding meanings).

- a. This Data Processing Agreement includes the Appendices.
- b. Any words following the word “including” or similar words are illustrative only and do not limit the generality of any preceding words where a wider construction is possible.
- c. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision from time to time, and is a reference to it amended, extended or re-enacted from time to time.
- d. A reference to a document is a reference to it as validly varied from time to time. “Variation” includes a novation, re-enactment, supplement or amendment (and “vary” and “varied” shall be construed accordingly).
- e. In case of any conflict or inconsistency between the provisions of this Data Processing Agreement and the Services Agreement, unless otherwise indicated in this Data Processing Agreement, the provisions contained in this Data Processing Agreement shall prevail to the extent of the inconsistency, provided always that nothing in this Data Processing Agreement shall permit the Data Processor (or any Sub-contractor) to process Personal Data in a manner which is prohibited by the Services Agreement.

In order to protect the data subjects’ legal rights and to comply with the requirements of Data Protection Legislation, the parties agree as follows:

## **1. Consideration**

- a. In consideration of: (i) the mutual benefit to the parties in ensuring that their obligations under Data Protection Legislation are agreed in writing, including in particular that the Processing Instructions, and each party's status as controller(s) and processor respectively, are clearly and properly documented; and (ii) the Data Controller paying to the Data Processor the sum of £1.00 in total, and the Data Processor paying to the Data Controller the sum of £1.00 in total, with such sums to be paid by mutual set-off, the parties agree to amend the Existing Data Protection Terms as set out below and each party shall perform their respective obligations under this Data Processing Agreement.

## **2. Replacement of Existing data protection terms**

- a. With effect from the Effective Date, this Data Processing Agreement shall take effect as a valid variation of the Existing Data Protection Terms despite any specific variation formalities specified in any document containing such Existing Data Protection Terms ("**Other Document**").
- b. Nothing in this Data Processing Agreement is intended to reduce the Data Processor's or any of its Group Company's obligations under the Other Document and, in all other respects, the terms of the Other Document shall remain in full force and effect.

## **3. Term**

- a. This Data Processing Agreement shall commence on the Effective Date and shall continue in force until: (i) terminated pursuant to the provisions of Clause 15 (Termination); or (ii) the termination or expiry of the Services Agreement (and all purchase orders under it).

## **4. Status of the parties and context of data processing**

- a. The parties agree that for Personal Data, the Data Controller is the controller and the Data Processor is the processor.
- b. Each party shall comply with Data Protection Legislation and with their respective obligations under this Data Processing Agreement in connection with the processing of Personal Data and, in the case of the Data Processor, the provision of the Services.
- c. Personal Data shall be provided by or on behalf of the Data Controller to the Data Processor for the purpose of enabling the Data Processor to provide the Services contemplated by the Services Agreement or access to Personal Data shall be granted to the Data Processor in the course of the provision of the Services.

## **5. Processing Instructions**

- a. The Data Processor shall (and will procure that all Sub-contractors will) only process the Personal Data in accordance with the Processing Instructions.
- b. If the Data Processor is ever required by applicable EU or EU member state laws to process Personal Data otherwise than on the Processing Instructions, the Data Processor will promptly notify the Data Controller and, where possible, prior to commencing the relevant Services involving Personal Data processing.

## **6. Details of Processing**

- a. Processing of the Personal Data by the Data Processor under this Data Processing Agreement shall be for: (i) the subject-matter; (ii) the duration; (iii) the nature and purpose; and (iv) the type of Personal Data and categories of data subjects, set out in Appendix 1.
- b. The obligations and rights of the Data Controller as controller are as set out in this Data Processing Agreement and in the Services Agreement (to the extent that the Data Controller benefits from that agreement).

## **7. Required Measures**

- a. The Data Processor will (and will procure that all Sub-contractors will) implement and maintain appropriate technical and organizational measures to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access and, in

- particular, where the processing involves the transmission of Personal Data over a network, against all other unlawful forms of processing, which shall at all times be:
- (i) of at least the minimum standard required by Data Protection Legislation;
  - (ii) so as to ensure a level of security for the Personal Data appropriate to the risk (including the relevant security measures set out in Appendix 1); and
  - (iii) so as to assist the Data Controller in ensuring compliance with the requirements for the security of processing as set out in Data Protection Legislation.
- b. The Data Processor will (and will procure that all persons processing Personal Data on its behalf, including its personnel and Sub-contractors (and their personnel) will) treat all Personal Data as confidential information and shall disclose such Personal Data only:
- (i) to those personnel of the Data Processor and Sub-contractors who need to know that Personal Data in order to carry out the Services, and implement technical and organisational measures for this purpose; and
  - (ii) where the Data Processor is required by a court to disclose the Personal Data, or there is a statutory obligation to do so, but only after (unless prohibited by law) it has informed the Data Controller, and even then only to the minimum extent necessary to comply with such court order or statutory obligation.
- c. The Data Processor will ensure that all personnel involved in the processing of Personal Data (including the personnel of any Sub-contractors):
- (i) are subject to binding obligations to keep such Personal Data confidential;
  - (ii) are aware of, and receive adequate training on, the Data Processor's duties and obligations under this Data Processing Agreement and under Data Protection Legislation; and
  - (iii) do not process Personal Data other than in accordance with Data Protection Legislation and the Processing Instructions.
- d. The Data Processor will take all reasonable steps to ensure the reliability of its personnel (and the personnel or any Sub-contractors) who have access to the Personal Data.
- e. The Data Processor will promptly notify the Data Controller if it or a Sub-contractor receives:
- (i) any Data Subject Request; or
  - (ii) any complaint, communication or request relating to the Data Processor's or the Data Controller's obligations under Data Protection Legislation (including requests from a supervisory authority) ("**Complaint**"),
- and in any event within 3 calendar days of receipt of the Data Subject Request or Complaint without the Data Processor or any Sub-contractor responding in any case unless the Data Controller has authorised the Data Processor or Sub-contractor in writing to do so.
- f. The Data Processor will (and will procure that all Sub-contractors will), provide the Data Controller with such information, cooperation and assistance as the Data Controller reasonably requests in relation to any Data Subject Request, including by (within the timescales reasonably required by the Data Controller):
- (i) implementing appropriate technical and organisational measures for this purpose;
  - (ii) providing the Data Controller with full details of the Data Subject Request;
  - (iii) where authorised by the Data Controller, complying with a Data Subject Request within the relevant timescales set out in the GDPR and in accordance with the Data Controller's written instructions;
  - (iv) where relevant providing the Data Controller with any Personal Data it holds in relation to a data subject;
  - (v) providing the Data Controller with any information reasonably requested by the Data Controller relating to the processing of Personal Data for this purpose; and
  - (vi) performing corrections, deletions or blockings of Personal Data as requested by the Data Controller.
- g. The Data Processor will promptly notify the Data Controller:
- (i) of any legally binding request (whether made to the Data Processor or a Sub-contractor) for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited from doing so by law;
  - (ii) of any actual or suspected personal data breach, such notification to be made without undue delay and no later than twenty four [24] hours after the Data Processor or (as applicable) Sub-contractor, becomes aware of, is notified of, or reasonably suspects a personal data breach;
  - (iii) if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable;
  - (iv) if the Data Processor or a Sub-contractor believes that any instruction given by the Data Controller (whether in this Data Processing Agreement or otherwise provided in writing from time to time) infringes Data Protection Legislation; and

- (v) if the Data Processor or a Sub-contractor becomes aware or has reasonable grounds to believe that it or its employees or Sub-contractors have failed to comply with any provisions of this Data Processing Agreement or Data Protection Legislation.

Where the Data Processor notifies the Data Controller of an actual or suspected Personal Data breach, the Data Processor shall also promptly (and in any event within forty eight [48] hours of becoming aware of the personal data breach) supply details of the breach that are as complete as possible, including: (i) the categories and approximate number of data subjects and Personal Data records concerned; (ii) the likely consequences of the breach; and (iii) the steps the Data Processor has taken, and is intending to take, to address the breach. Where necessary, the Data Processor may provide such information to the Data Controller in a phased manner as such information becomes available to the Data Processor.

The Data Processor shall (in consultation with the Data Controller) take such steps as reasonably required to mitigate the effects and to minimise any damage resulting from any personal data breach and to prevent a recurrence of such breach.

- h. The Data Processor will (and will procure that all Sub-contractors will) provide all reasonable assistance, information and cooperation as the Data Controller requests to ensure the Data Controller's compliance with its obligations under Data Protection Legislation, in particular with respect to:
  - (i) security of processing;
  - (ii) any remedial actions or notifications to be made in response to any Personal Data breach including regarding any notifications to supervisory authorities and affected data subjects;
  - (iii) data protection impact assessments in relation to any processing of Personal Data; and
  - (iv) consultations with supervisory authorities in relation to high risk processing.

## **8. International Transfers**

- a. The Data Processor may only transfer Personal Data in the circumstances set out in Clauses 5 and 12.
- b. Except as provided for above, or as the Data Controller may otherwise authorise, the Data Processor will not transfer to any third party (not even for storage purposes) any Personal Data.
- c. The Data Processor (or any Sub-contractor) shall only transfer Personal Data to a country outside the EEA where the Data Controller has provided its written approval to such transfer in accordance with this clause.
- d. Approved transfers as at the Effective Date are as set out in the Services Agreement or any related agreement governing transfers of Personal Data (or as subsequently approved by the data controller in accordance with the terms of such agreement).
- e. The Data Processor shall ensure that any other transfers outside the EEA that the Data Processor wishes to continue after the Effective Date are notified to the Data Controller in writing by the Effective Date and the Data Controller is given the opportunity to object to such transfers, which the Data Controller shall not do so unreasonably provided that Clause 8.g is complied with.
- f. After the Effective Date, the Data Processor shall (and shall procure that Sub-contractors shall) only transfer Personal Data to a country outside the EEA where the Data Controller has provided its prior written consent to such transfer as part of the Processing Instructions.
- g. Transfers pursuant to clauses 8.a to 8.f shall only be permissible where such transfer (and any onward transfer) and any subsequent processing is carried out:
  - (i) pursuant to a written contract including equivalent obligations on the recipient in respect of Personal Data (in particular relating to security and confidentiality) as apply to the Data Processor under this Data Processing Agreement;
  - (ii) where Personal Data is to be transferred to a country, territory or specified sector with a country which is not subject to a current finding by the European Commission under applicable Data Protection Legislation that it provides adequate protection for Personal Data, using a transfer mechanism which ensures an adequate level of protection for the Personal Data transferred (such as Model Clauses (or an alternative approved and valid transfer mechanism), where practicable, pre-approved by the Data Controller), and shall provide the Data Controller with a copy of such transfer mechanism on request; and
  - (iii) in compliance with Data Protection Legislation, and ensuring that the necessary statutory approvals required to be obtained by the Data Processor (or Sub-contractor) as a processor (or sub-processor), if any, have all been obtained to enable the transfer of Personal Data.

## **9. Limitation of Purpose**

- a. The Data Processor will (and will procure that all Sub-contractors will):
  - (i) not assume any responsibility for determining the purposes and the means of the processing of the Personal Data;
  - (ii) not process the Personal Data for their own purposes;
  - (iii) not carry out any further research, analysis or profiling activity which involves the use of any element of the Personal Data (including in aggregate or anonymised form) or any information derived from any processing of such Personal Data outside the scope of this Data Processing Agreement; and
  - (iv) not perform its obligations under this Data Processing Agreement (or allow its personnel or Sub-contractors to perform) in such a way as to cause the Data Controller to breach any of its obligations under Data Protection Legislation.

## **10. Records**

- a. The Processor shall maintain records of all categories of Personal Data processing carried out by the Processor on behalf of the Data Controller containing as a minimum the information required under Data Protection Legislation and shall provide the Data Controller with access to and copies of such records promptly on request.

## **11. Information and inspection Rights of the Data Controller**

- a. The Data Processor shall make available to the Data Controller promptly on request all information necessary to demonstrate compliance with the obligations of the Data Processor and the Data Controller under Data Protection Legislation and this Data Processing Agreement.
- b. On request by the Data Controller (acting reasonably), the Data Processor shall (and shall procure that any Sub-contractors shall) allow for and contribute to inspections and audits and grant the Data Controller or a representative acting on the Data Controller's behalf access (to the extent reasonably necessary to accomplish the inspection or audit) to all data processing facilities, data files and any other documentation or information needed to demonstrate the Data Processor's compliance with this Data Processing Agreement and Data Protection Legislation.
- c. Such audits or inspections shall be conducted on reasonable advance notice to the Data Processor or Sub-contractor, within normal working hours and no more than once per year, unless the Data Controller reasonably suspects non-compliance with this Data Processing Agreement or Data Protection Legislation; or such audit or inspection is mandated by a supervisory authority or other regulator.
- d. If any such inspection or audit reveals non-compliance by the Data Processor of this Data Processing Agreement, the Data Processor shall pay the costs the Data Controller incurred in carrying out that inspection or audit and also to resolve the issues identified at its own cost.
- e. Information and audit rights only arise under this Clause 11 to the extent that the Services Agreement does not otherwise give the Data Controller information and audit rights meeting the relevant requirements of Data Protection Legislation.

## **12. Use of Sub-contractors**

- a. The Data Processor shall not permit subcontractors to process Personal Data without the authorisation of the Data Controller in accordance with this clause.
- b. Those subcontractors formally approved to process Personal Data as at the Effective Date are as set out in the Services Agreement or any related agreement governing processing of Personal Data (or as subsequently approved by the Data Controller in accordance with the terms of such agreement), subject to compliance with Clauses 12.e and 12.f.
- c. The Data Processor shall ensure that any other subcontractors it wishes to continue use to process Personal Data after the Effective Date are notified to the Data Controller in writing by the Effective Date and the Data Controller is given the opportunity to object to the use of such other subcontractors, which the Data Controller shall not do so unreasonably provided that Clauses 12.e and 12.f are complied with.
- d. Any changes to the subcontractors involved in any processing pursuant to this Data Processing Agreement (including any change in the scope or nature of the Personal Data involved or any addition or replacement of subcontractors approved by the Data Controller) must:
  - (i) be pre-approved in writing by the Data Controller;
  - (ii) be conditional on compliance with Clauses 12.e and 12.f; and

- (iii) comply with the requirements of the Services Agreement regarding the use of subcontractors.
- e. The Data Processor shall ensure that Sub-contractors shall be under a written agreement that imposes the same obligations on the Sub-contractor as are imposed on the Data Processor under this Data Processing Agreement relating to confidentiality, security, audit, transfer of data and otherwise (including that each such Sub-contractor has given sufficient guarantees that they will implement appropriate technical and organisational measures to ensure that any processing of Personal Data it carries out will meet the requirements of the Data Protection Legislation and protect the rights of data subjects), and the Data Processor shall promptly provide copies of documentation to evidence its compliance with this provision to the Data Controller on request.
- f. Any authorisation by the Data Controller to use a Sub-contractor is on the condition that the Data Processor shall remain fully liable to the Data Controller for the Sub-contractor's performance, as well as for any acts or omissions of the Sub-contractor as regards the processing of Personal Data.

### **13. Data Protection Officer / Contact Point**

- a. The Data Processor must have in place a data protection officer where required by applicable Data Protection Legislation and, where this is the case, the Data Processor acknowledges and agrees that: (i) it has duly appointed a data protection officer in writing; (ii) its data protection officer is not a member of the management and has the relevant expertise; and (iii) it shall provide the Data Controller with proof of this expertise and the data protection officer's name and contact details upon request.
- b. The Data Processor will appoint and identify to the Data Controller an individual to act as point of contact to the Data Controller in relation to this Data Processing Agreement (which may be its data protection officer or another appropriately qualified and experienced individual). The Data Processor shall ensure that this individual shall actively respond to the enquiries from the Data Controller or, where authorised by the Data Controller in writing, to enquiries from a relevant supervisory authority or from a data subject of Personal Data.

### **14. Deletion or return of Personal Data**

- a. At the end of the provision of the relevant Services related to Personal Data processing, (or earlier if required by the Data Controller), the Data Processor shall in accordance with the Data Controller's written instructions:
  - (i) either:
    - (A) return all Personal Data (including archive copies) to the Data Controller, ensuring the integrity and security of such Personal Data during its return and using such methods of secure data transfer (whether physical or electronic) and such formats as reasonably requested by the Data Controller; or
    - (B) delete all records of the Personal Data and certify to the Data Controller that the same have been destroyed; and
  - (ii) delete any copies of the Personal Data unless Applicable Law requires their storage (in which case the Data Processor shall notify the Data Controller of this requirement).

### **15. Termination**

- a. Either party may terminate this Data Processing Agreement with immediate effect by giving written notice to the other party at any time after the happening of any of the following events:
  - (i) the other party commits a material breach of any of the terms set out in this Data Processing Agreement provided that where such breach is capable of remedy the other party has been advised in writing of the breach and has not rectified it within 30 days of receipt of such advice;
  - (ii) in the Data Controller's opinion, the operation of this Data Processor Agreement or any act or omission of Supplier or a Sub-contractor in any way contravenes or is likely to lead to the contravention of the Data Protection Legislation.
- b. The Data Controller may terminate this Data Processing Agreement at its absolute discretion at any time on giving 30 days' written notice to the Data Processor.
- c. Termination of this Data Processing Agreement shall be without prejudice to and shall not affect the rights, remedies or obligations accrued under this Data Processing Agreement prior to termination or expiration or affect the coming into force or the continuation in force of any

provision which is expressly or by implication intended to come into force or continue in force on or after termination or expiry, and nothing in this Data Processing Agreement shall prejudice the rights of either party to recover any amount outstanding on the termination date.

## **16. Indemnity and liability**

- a. The Data Processor agrees to indemnify and keep indemnified and defend at its own expense the Data Controller in respect of all DP Losses suffered or incurred by, awarded against, or agreed to be paid by, the Data Controller arising from or in connection with:
  - (i) any breach by the Data Processor of its obligations under this Data Processing Agreement or Data Protection Legislation; or
  - (ii) the Data Processor (or any person acting on its behalf) acting outside or contrary to the Processing Instructions in respect of the processing of Personal Data.For the avoidance of doubt, the Data Processor may not rely on a breach by a Sub-contractor of its obligations in order to avoid its own liabilities.
- b. Each party's liability shall be subject to any limitations and exclusions of liability applicable to breaches of the data protection provisions as set out in the Services Agreement.

## **17. Entire Agreement**

- a. This Data Processing Agreement and any documents referred to in it (including the Services Agreement) sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Data Processing Agreement and the parties agree that the terms of this Data Processing Agreement shall prevail over any purchase order, order acceptance, or terms and conditions, which may be supplied by one party to the other in the course of fulfilling the parties' obligations under this Data Processing Agreement after the date hereof.
- b. Each party acknowledges that it has entered into this Data Processing Agreement in reliance only on the representations, warranties promises and terms contained or expressly referred to in this Data Processing Agreement and, save as expressly set out in this Data Processing Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Data Processing Agreement unless it was made fraudulently.

## **18. General Provisions**

- a. Any subsequent amendments to this Data Processing Agreement shall be in writing duly signed by authorized representatives of the parties hereto.
- b. If any term or provision of this Data Processing Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Data Processing Agreement but the enforceability of the remainder of this Data Processing Agreement shall not be affected provided, however, that if any term or provision or part of this Data Processing Agreement is severed as illegal or unenforceable, the parties shall seek to agree to modify this Data Processing Agreement to the extent necessary to render it lawful and enforceable and as nearly as possible to reflect the parties' intentions embodied in this Data Processing Agreement including without limitation the illegal or unenforceable term or provision or part.
- c. Save as expressly provided in this Data Processing Agreement, no express term of this Data Processing Agreement or any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it, but this does not affect any right or remedy of a third party which exists, or is available, apart from pursuant to that Act. This Data Processing Agreement is agreed between the Data Controller and the Data Processor for the benefit of the Data Controller and for the benefit of its Group Companies, on behalf of whom the Data Controller shall be entitled to enforce any and all of the provisions of this Data Processing Agreement. For purposes hereof the Data Controller shall also mean each of its Group Companies, unless explicitly provided otherwise. The Data Controller Group Companies shall be entitled to enforce the provisions of this Data Processing Agreement as though those entities were the Data Controller.
- d. This Data Processing Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at



least one counterpart. Each counterpart, when executed, shall be an original of this Data Processing Agreement and all counterparts shall together constitute one instrument.

**19. Governing law, jurisdiction and injunctive relief**

- a. This Data Processing 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 interpreted in accordance with the laws as set out in the Services Agreement.
- b. Jurisdiction to settle any dispute or claim arising out of or in connection with this Data Processing Agreement or its subject matter or formation (including non-contractual disputes or claims), shall be governed as set out in the Services Agreement.
- c. Notwithstanding the foregoing, nothing in this Data Processing Agreement shall prevent either party from seeking injunctive relief in any court of competent jurisdiction.

In witness whereof the Data Controller and Data Processor have executed this Data Processing Agreement by their authorized representatives on the day and year first written.

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**On behalf of .....**

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**On behalf of Potential Plus Ltd**

## Appendix 1

### Details of data processing

#### **1. Operations/subject matter of processing**

The context for the processing of Personal Data is the Data Processor's provision of the Services under the Services Agreement, which shall involve performance on behalf of the Data Controller of the tasks and activities set out in the Services Agreement for the purpose of providing those Services.

#### **2. Duration of processing**

Processing of the Personal Data by the Data Processor shall be for the term of the Services Agreement for the purpose of and only to the extent required to provide the Services set out in the Services Agreement, provided that Personal Data shall not be Processed for longer than is necessary for the purpose for which it was collected or is being processed (except where a statutory exception applies).

#### **3. Nature and purpose of processing**

The nature and purposes of the Personal Data processing carried out by the Data Processor on behalf of the Data Controller shall be as set out in the Services Agreement, which in particular shall be for the Data Controller and / or any relevant Group Company to receive the Services under the Services Agreement, and not for any new purpose other than those previously approved.

#### **4. Categories of data subjects**

The personal data transferred concern any or all of the following categories of data subjects:

- Data Controller Group Company customers and clients
- Data Controller Group Company advisers, consultants and other professional experts
- Data Controller Group Company employees and staff
- Data Controller Group Company suppliers and services providers
- complainants and enquirers who contact Data Controller Group Companies, and / or
- individuals captured by CCTV images, including staff, customers and clients, offenders and suspected offenders, members of the public and those inside, entering or in the immediate vicinity of the area under surveillance.

#### **5. Type of Personal Data**

The Data Processor may process any or all of the following types / categories of Personal Data, and any additional types of Personal Data, as set out in the Services Agreement and as relevant in the context of the Services (but no more than was processed previously unless otherwise agreed):

- Personal Data, including personal details; family details; lifestyle and social circumstances; financial details; employment and education details; goods or services; visual images; personal appearance and behaviour;
- Sensitive Personal Data / other categories of Personal Data, including information relating to physical or mental health data, genetic data or biometric data; criminal offences and alleged offences and proceedings; racial or ethnic origin; religious or philosophical beliefs; trade union membership; sex life or sexual orientation.

#### **6. Specific Restrictions**

Without prejudice to any other restrictions imposed on the Data Processor by the Data Controller, a Data Controller Group Company or law, the Data Processor shall comply with any specific additional restrictions imposed on it by the Services Agreement that affect the processing of Personal Data, including, for example, any requirements as to the location where processing must occur or the form in which Personal Data is to be used (e.g. anonymised / pseudonymised).

#### **7. Security Measures**

Taking into account the nature of the Services and good practice for similar organisations to Data Processor, the security measures for the Personal Data are as follows: