

DATA PROCESSING AGREEMENT

PLASTICA LIMITED

and

[]

AGREEMENT DATED [*insert date*]

BETWEEN:

- (1) **PLASTICA LIMITED** of Perimeter House, Napier Road, St Leonards on Sea, TN38 9NY ("Plastica"); and
- (2) [], having its registered office at [] (the "Processor").

BACKGROUND

- (A) This Agreement is to ensure there is in place proper arrangements relating to personal data passed from Plastica to the Processor.
- (B) This Agreement is compliant with the requirements of Article 28 of the General Data Protection Regulation.
- (C) The parties wish to record their commitments under this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

"Data Protection Laws" means the Data Protection Act 1998, together with successor legislation incorporating GDPR;

"Data" means personal data passed under this Agreement, being in particular [*describe personal data being passed*];

"GDPR" means the General Data Protection Regulation;

"Services" means [*describe the services provided by the Processor to Plastica*].

2. DATA PROCESSING

Plastica is the data controller for the Data and the Processor is the data processor for the Data. The Data Processor agrees to process the Data only in accordance with Data Protection Laws and in particular on the following conditions:

- a. the Processor shall only process the Data (i) on the written instructions from Plastica (ii) only process the Data for completing the Services and (iii) only process the Data within the EU with no transfer of the Data outside of the EU (Article 28, para 3(a) GDPR);
- b. ensure that all employees and other representatives accessing the Data are (i) aware of the terms of this Agreement and (ii) have received comprehensive training on Data Protection Laws and related good practice, and (iii) are bound by a commitment of confidentiality (Article 28, para 3(b) GDPR);
- c. Plastica and the Processor have agreed to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, complying with Article 32 of GDPR, details of those measures are set out under Part A of the Annex to this Agreement (Article 28, para 3(c) GDPR);

- d. the Processor shall not involve any third party in the processing of the Data without the consent of Plastica. Such consent may be withheld without reason. If consent is given a further processing agreement will be required (Article 28, para 3(d) GDPR);
- e. taking into account the nature of the processing, assist Plastica by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of Plastica's obligation to respond to requests from individuals exercising their rights laid down in Chapter III of GDPR – rights to erasure, rectification, access, restriction, portability, object and right not to be subject to automated decision making etc (Article 28, para 3(e) GDPR);
- f. assist Plastica in ensuring compliance with the obligations pursuant to Articles 32 to 36 of GDPR – security, notification of data breaches, communication of data breaches to individuals, data protection impact assessments and when necessary consultation with the ICO etc, taking into account the nature of processing and the information available to the Processor (Article 28, para 3(f) GDPR);
- g. at Plastica's choice safely delete or return the Data at any time. [It has been agreed that the Processor will in any event securely delete the Data at the end of the Services]. Where the Processor is to delete the Data, deletion shall include destruction of all existing copies, any physical copies should be treated as Controlled Waste under The Environmental Protection Act 1990, including section 34 Duty of Care, and subsequent legislation. The waste should be treated as confidential and therefore securely destroyed in line with BS EN 15713: 2009. Unless otherwise a legal requirement to retain the Data. Where there is a legal requirement the Processor will prior to entering into this Agreement confirm such an obligation in writing to Plastica. Upon request by Plastica the Processor shall provide certification of destruction of all Data (Article 28, para 3(g) GDPR);
- h. make immediately available to Plastica all information necessary to demonstrate compliance with the obligations laid down under this Agreement and allow for and contribute to any audits, inspections or other verification exercises required by Plastica from time to time (Article 28, para 3(h) GDPR);
- i. arrangements relating to the secure transfer of the Data from Plastica to the Processor and the safe keeping of the Data by the Processor are detailed under Part A of the Annex.
- j. maintain the integrity of the Data, without alteration, ensuring that the Data can be separated from any other information created; and
- k. immediately contact Plastica if there is any personal data breach or incident where the Data may have been compromised by emailing databreach@plasticapools.net
- l. employ a data protection officer if required in accordance with Article 37 and appoint [in writing] a representative within the European Union if required in accordance with Article 27 of the GDPR.

3. Termination

Plastica may immediately terminate this Agreement on written notice to the Processor. The Processor may not terminate this Agreement without the written consent of Plastica.

4. General

- a. This Agreement may only be varied with the written consent of both parties.

- b. For the purposes of this Agreement the representatives of each party are detailed under Part B of the Annex.
- c. This Agreement represents the entire understanding of the parties relating to necessary legal protections arising out of their data controller/processor relationship under Data Protection Laws.
- d. This Agreement is subject to English law and the exclusive jurisdiction of the English Courts.
- e. All Parties may be subject to investigative and corrective powers of supervisory authorities such as the ICO under Article 58 of the GDPR.
- f. Failure to meet the obligations of the agreement the processor may be subject to an administrative fine under Article 83 of the GDPR.
- g. Failure to meet GDPR obligations; the processor may be subject to a penalty under Article 84 of the GDPR and may have to pay compensation to Plastica under Article 82 of the GDPR.

For and on behalf of Plastica Limited

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For and on behalf of []

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ANNEX

Part A

Compliance with Article 32, para 1 of GDPR

1. Consideration of anonymisation, pseudonymisation and encryption.
Is the above possible? If not, please explain why. If possible please insert details.
2. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and related services.
Please explain how the above will be delivered.
3. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
Please confirm the above is possible and description of process in place to deliver the above.
4. A process for regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing.
Please confirm the above process is in place and broadly what that process is.

Compliance with Article 32, para 2 of GDPR

5. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to data transmitted, stored or otherwise processed.
Please describe secure transfer process from Plastica to the Processor and levels of security to be applied by the Processor when the Data is in their possession.

Compliance with Article 32, para 3 of GDPR

6. Adherence to an approved code of conduct referred to in Article 40 (GDPR) or an approved certification mechanism as referred to in Article 42 (GDPR) may be used as an element by which to demonstrate compliance with the requirements set out in para 1 of GDPR – see above.
Please describe any relevant code of practice relied upon.

Compliance with Article 32, para 4 of GDPR

7. The Processor to ensure that anyone acting on their behalf does not process any of the Data unless following instructions from Plastica unless they are required to do so under English law.

ANNEX

Part B

Plastica Representative shall be *[insert details]* or such other person as shall be notified by Plastica *[insert details]*.

The Processor Representative shall be *[insert details]* or such other person as shall be notified by the Processor *[insert details]*.