

Data Processor Agreement

Land Development Agency

AND

xxxx

DATA PROCESSOR CONTRACT

THIS AGREEMENT {herein defined as the "Agreement") is

dated xxxx and entered into between:

1. **Land Development Agency** having its registered office at 2nd Floor Ashford House, Tara Street Dublin 2, D02 VX67 {hereinafter "**Data Controller**")

-and-

2. **xxx** having its registered office at xxxx {hereinafter "**Data Processor**")

BACKGROUND:

The Data Controller and the Data Processor are parties to a Customer service level agreement dated xxxx the "Service Agreement" for the provision of xxxx from the Data Processor to the Data Controller. In connection with the Service Agreement, certain Personal Data concerning Data Subjects (both as defined below) may be transferred from the Data Controller to the Data Processor. This Agreement is intended to govern such transfers.

DEFINITIONS:

For the purposes of this Agreement:

"Applicable Data Protection law" means any EU and Irish law which may apply to the terms of this Agreement and which may vary from time to time;

"Data Controller" and "Data Processor" shall have the meanings as set out in Article 4(7) and (8) respectively of EU General Data Protection Regulation 2016/679 (the "GDPR");

"Data Protection Commissioner" (DPC or other supervisory authority where appropriate) is the supervisory authority for the purposes of Article 51 of the GDPR;

"Data Subject" means an individual who is the subject of Personal Data;

"Personal Data" shall have the meaning set out in Article 4(1) of the GDPR;

"Prompt Notice" shall mean 24 hours unless otherwise expressly stated in this agreement;

"Special Category Data" shall have the meaning set out in Article 9(1) of the GDPR;

"Third Country" shall mean a location outside of the European Economic Area (EEA), the EEA being: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

This Agreement, including these definitions and its recitals and schedules, is a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the data processing (as well as the Personal Data covered) are specified in Schedule 1 hereto.

WHEREAS:

Under the GDPR, a written Data Processor Agreement must be in place between the Data Controller and any organisation which processes personal data on its behalf, governing the processing of the data. This Agreement is intended to satisfy that obligation.

TERMS

The parties agree that:

- 1.1 The Data Controller and the Data Processor acknowledge that for the purposes of the Applicable Data Protection Law (as amended) **Land Development Agency** is the Data Controller and **xxxx** is the Data Processor in respect of any Personal Data.
- 1.2 The Data Processor shall process Personal Data only for the purposes of carrying out their obligations arising under the Service Agreement.
- 1.3 The Data Controller shall instruct the Data Processor to process the Personal Data in any manner that may reasonably be required in order for the Data Processor to carry out the processing in compliance with this Agreement and in compliance with Applicable Data Protection law.
- 1.4 The Data Controller shall refrain from providing instructions which are not in accordance with applicable laws including Applicable Data Protection law, and, in the event that such instructions are given, the Data Processor is entitled to resist carrying out such instructions.
- 1.5 The details of the transfer and of the Personal Data are specified in Schedule 1. The parties agree that Schedule 1 may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required by law. The parties may execute additional annexes/schedules to cover additional transfers, or may include multiple transfers in Schedule 1, which will be submitted to the DPC or other supervisory authority where appropriate where required.
- 1.6 This Agreement shall continue for no less a term than the term of the Service Agreement.
- 1.7 The rights and obligations of the parties with respect to each other under this Clause 1 shall survive any termination of the Agreement.

2. REGULATORY COMPLIANCE

- 2.1 To the extent required by law or regulation:
 - 2.1.1 The Data Processor shall co-operate with the in connection with any activities performed by the Data Processor;
 - 2.1.2 The Data Controller, its auditors and the DPC or other supervisory authority where appropriate shall have effective access to data related to such activities, as well as effective access to the Data Processor's business premises;
 - 2.1.3 The DPC or other supervisory authority where appropriate shall have without notice the right of access to the Data Processor's business premises for purposes for this Clause 2; and
 - 2.1.4 The Data Processor shall give prompt notice to the Data Controller of any development that may have a material impact on the Data Processor's ability to perform services effectively under this Agreement and in compliance with applicable laws and regulatory requirements.

3. OBLIGATIONS OF THE DATA CONTROLLER

The Data Controller warrants and undertakes that:

- 3.1 The Personal Data has been collected, processed and transferred in accordance with the GDPR and all Applicable Data Protection law.
- 3.2 It has used reasonable efforts to determine that the Data Processor is able to satisfy its legal obligations under this Agreement.
- 3.3 It will respond to enquiries from Data Subjects and the DPC or other supervisory authority where appropriate concerning processing of the Personal Data by the Data Controller, unless the parties have agreed that the Data Processor will so respond, in which case the Data Controller will still respond to the extent reasonably possible and with the information reasonably available to it if the Data Processor is unwilling or unable to respond. Responses will be made within a reasonable time and in accordance with the Applicable Data Protection law.
- 3.4 It will make available, upon request, a copy of this Agreement to Data Subjects who are relevant to the processing, the subject matter of this Agreement, unless this Agreement contains confidential information, in which case it may redact such information. The Data Controller shall abide by a decision of the DPC or other supervisory authority where appropriate regarding access to the full text of this Agreement by Data Subjects, as long as Data Subjects have agreed to respect the confidentiality of the confidential information removed. The Data Controller shall also provide a copy of this Agreement to the DPC or other supervisory authority where appropriate where required.

4. OBLIGATIONS OF THE DATA PROCESSOR

The Data Processor warrants and undertakes that:

- 4.1 It will comply with all applicable law including Applicable Data Protection law in its performance of this Agreement.
- 4.2 It will only process the Personal Data on the instructions of the Data Controller.
- 4.3 It will not transfer Personal Data to a Third Country without the prior written approval of the Data Controller and only then once the transfer to the Third Country has been legitimised and the Data Controller and the Data Processor are satisfied that an adequate Data Protection regime exists in the Third Country.
- 4.4 It will not appoint sub-processors to process the Personal Data on its behalf without the prior written approval of the Data Controller.
- 4.5 Once approved by the Data Controllers, sub-processors will only process the Personal Data on the instructions of the Data Processor and the Data Processor will put in place a legal agreement in writing to govern the sub-processing.

- 4.6 It will have in place appropriate technical and organisational measures, and all measures pursuant to Article 32 of the GDPR, to protect the confidentiality of the Personal Data and to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 4.7 It will obtain guarantees from any sub-processors processing the Personal Data, that they will have in place appropriate technical and organisational measures, and all measures pursuant to Article 32 of the GDPR, to protect the confidentiality of the Personal Data and to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 4.8 It will have in place procedures so that any individual party it authorises to have access to the Personal Data, including employees of the Data Processor, will respect and maintain the confidentiality and security of the Personal Data. Any person acting under the authority of the Data Processor shall be obligated to process the Personal Data only on instructions from the Data Processor. This provision does not apply to persons authorised or required by law or regulation to have access to the Personal Data.
- 4.9 It will not disclose any Personal Data to a third party in any circumstances other than at the specific written request of the Data Controller, unless such disclosure is necessary in order to fulfil the obligations of the Services Agreement, or is required by applicable law.
- 4.10 It will notify the Data Controller of any request for information by the DPC or other supervisory authority where appropriate and will not disclose any Personal Data without the prior consent of the Data Controller.
- 4.11 It will notify the Data Controller of any complaint, notice or communication received which relates directly or indirectly to the processing of the Personal Data, or other connected activities, or which relates directly or indirectly to the compliance of the Data Processor and/or the Data Controller with relevant applicable law including Applicable Data Protection law.
- 4.12 It will give the Data Controller prompt notice of a Personal Data breach or a potential data breach, once becoming aware of same, and the Data Processor will cooperate with the Data Controller in implementing any appropriate action concerning the breach or the potential breach as the case may be, including corrective actions.
- 4.13 It will delete from its systems all soft copies of any Personal Data and return all soft and hard copy documentation on the completion of the Service Agreement or on request from the Data Controller and will do so in a timely manner, giving a written confirmation of same having been done. The only exception to this Clause 4.13 shall be where the Data Processor shall have a legitimate reason, which is confirmed by the Data Controller, to continue to process particular data or where it is legally required to maintain data records.
- 4.14 Without prejudice to other legal provisions concerning the Data Subject's right to compensation and the 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 or its sub-processor is found to have

infringed applicable law including Applicable Data Protection law through his processing of the Personal Data.

- 4.15 It has no reason to believe, at the time of entering into this Agreement, of the existence of any reason that would have a substantial adverse effect on the guarantees provided for under this Agreement, and it will inform the Data Controller (which will pass such notification on to the DPC or other supervisory authority where appropriate where required) if it becomes aware of any such reason.
- 4.16 It will process the Personal Data for purposes described in Schedule 1, and has the legal authority to give the warranties and fulfil the undertakings set out in this Agreement.
- 4.17 It will identify to the Data Controller a contact person within its organisation authorised to respond to enquiries concerning processing of the Personal Data, and will cooperate in good faith with the Data Controller, the Data Subject and the DPC or other supervisory authority where appropriate concerning all such enquiries within a reasonable time.
- 4.18 It will register with the DPC or other supervisory authority where appropriate in accordance with the Applicable Data Protection law and do all things necessary to comply with the Applicable Data Protection law and be responsible in accordance with law, both statutory and common law to Data Subjects for any infringement of privacy or disclosure arising from its negligence, howsoever caused.
- 4.19 It will be capable of demonstrating its compliance with the obligations of Applicable Data Protection law.

5. RIGHT OF AUDIT

- 5.1. Upon reasonable request of the Data Controller, the Data Processor will submit it, and/or as appropriate its sub-processors will submit, data processing facilities, data files and documentation used for processing, reviewing, auditing and/or certifying by the Data Controller (or any independent or impartial inspection agents or auditors, selected by the Data Controller and not reasonably objected to by the Data Processor) to ascertain compliance with the warranties and undertakings in this Agreement, with reasonable notice and during regular business hours. approval The request will be subject to any necessary consent or from a regulatory or supervisory authority within the country of the Data Controller

6. DATA SUBJECTS' RIGHTS

- 6.1. The Data Processor will assist the Data Controller, whenever reasonably required, in so far as possible, to fulfil the Data Controller's obligation to respond to requests for exercising the Data Subject's rights as provided under Applicable Data Protection law and the Data Processor will have the appropriate organisational and technical measures in place to deal with Data Subject requests.

7. LIABILITY AND INDEMNITY

- 7.1 The Data Processor will not be liable for any claim brought by a Data Subject arising from any action by the Data Processor to the extent that such action resulted directly from the Data Controller's instructions.
- 7.2 Except as provided for in Clause 7.1, the Data Processor shall indemnify the Data Controller for any monetary fine or penalty imposed on the Data Controller by the DPC or other supervisory authority where appropriate that results from the Data Processor's breach of its obligations under this Agreement.
- 7.3 In the event that any claim is brought against the Data Controller by a Data Subject arising from any action by the Data Processor, to the extent that such action did not result directly from the Data Controller's instructions, the Data Processor shall indemnify and keep indemnified and defend at its own expense the Data Controller against all costs, claims, damages or expenses incurred by the Data Controller or for which the Data Controller may become liable due to any failure by the Data Processor or its directors, officers, employees, agents or contractors to comply with any of its obligations under this Agreement.
- 7.4 In the event that any claim is brought against the Data Processor by a Data Subject arising from any action or omission by the Data Processor to the extent that such action or omission resulted directly from the Data Controller's instructions, the Data Controller shall indemnify and keep indemnified and defend at its own expense the Data Processor against all costs, claims, damages or expenses incurred by the Data Processor for which the Data Processor may become liable due to any failure by the Data Controller or its directors, officers, employees, agents or contractors to comply with any of its obligations under this Agreement.
- 7.5 Either party will provide the other party with evidence of financial resources to confirm it has sufficient such resources to fulfil its responsibilities under Clause 7.3 and 7.4 as appropriate {which may include proof of insurance cover}.

8. LAW APPLICABLE TO THIS AGREEMENT

This Agreement shall in all respects be governed by and interpreted in accordance with the laws of the Republic of Ireland. The parties hereto hereby submit to the exclusive jurisdiction of the Irish Courts for all the purposes of this Agreement.

9. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE DPC OR OTHER SUPERVISORY AUTHORITY WHERE APPROPRIATE

- 9.1 In the event of a dispute or claim brought by a Data Subject or the DPC or other supervisory authority where appropriate concerning the processing of the Personal Data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 9.2 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the DPC or other supervisory authority where appropriate. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 9.3 Each party shall abide by a decision of the DPC or other supervisory authority where appropriate which is final and against which no further appeal is possible.

10. TERMINATION

- 10.1 In the event that either the Data Processor or the Data Controller is in breach of its obligations under this Agreement, then either the Data Processor or the Data Controller may temporarily suspend the transfer of Personal Data to the Data Processor until the breach is repaired or the Agreement is terminated.
- 10.2 In the event that:
- 10.2.1 the transfer of Personal Data to the Data Processor has been temporarily suspended by the Data Controller for longer than one month pursuant to paragraph 10.1;
 - 10.2.2 compliance by the Data Controller with this Agreement would put it in breach of its legal or regulatory obligations in the country of import;
 - 10.2.3 the Data Processor or Data Controller are in substantial or persistent breach of any warranties or undertakings given by it under this Agreement;
 - 10.2.4 a final decision against which no further appeal is possible of a competent court or of the DPC or other supervisory authority where appropriate rules that there has been a breach of this Agreement by the Data Controller or the Data Processor; or
 - 10.2.5 a petition is presented for the administration or winding up of the Data Controller, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the Data Processor is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs, then the Data Controller, without prejudice to any other rights which it may have against the Data Processor, shall be entitled to terminate this Agreement, in

which case the DPC or other supervisory authority where appropriate shall be informed where required.

- 10.3 The parties agree that the termination of this Agreement at any time, in any circumstances and for whatever reason (except for termination under Clause 10.2) does not exempt them from the obligations and/or conditions under this Agreement as regards the processing of the Personal Data transferred.

11. VARIATION OF THIS AGREEMENT

The parties may not modify this Agreement except to update any information in Schedule 1, in which case they will inform the DPC or other supervisory authority where appropriate where required. This does not preclude the parties from adding additional commercial clauses where required and does not affect the Services Agreement between the Data Controller and the Data Processor. In cases where any conflict arises in the interpretation of these agreements, this Agreement shall take precedence.

SCHEDULE 1

DESCRIPTION OF THE TRANSFER

Data Subjects

The Personal Data transferred concern the following categories of Data

Subjects: Employees and Directors of **Land Development Agency**
Contractors to the Agency
Member of the Public

Purposes of the transfer(s)

The transfer is made for the following purposes:

To assist with the fulfilment of **xxxxxx**

Categories of data

The Personal Data transferred concern the following categories of data:

Personal Data and Sensitive Personal Data of Employees, including without limitation names, addresses, HR records, customer delivery details
Personal data of their parties such as member of the General Public

Recipients

The Personal Data transferred may be disclosed only to the following recipients or categories of recipients:

The Data Subject exercising their rights and the Data Controllers outsourced compliance services (where applicable - Eg. External accountants, HR consultants etc)

Sensitive Data (if appropriate)

The Personal Data transferred concern the following categories of Sensitive Data:

It is envisaged that HR files may contain medical, criminal screenings and trade union membership

EXECUTED by the parties on the date appearing at the top of page 1.

SIGNED

By:

Duly authorised for and on behalf of **Land Development**

Agency

The Data Controller

SIGNED

By,

Duly authorised for and on behalf of **xxxxxx**

The Data Processor

