

APPENDIX A to the Foresight Cyber Sales and Services Terms and Conditions

DATA PROCESSOR AGREEMENT (the "Agreement")

1. INTERPRETATION

1.1 In this Agreement, capitalised words shall unless varied below have the meaning given to them in the Terms and Conditions. In addition, the following definitions apply to this Agreement:

"Contract" means any contract between Foresight Cyber and the Customer for the sale or supply of Equipment and/or Software and/or Services in accordance with these Conditions;

"Data Controller" means the Customer;

"Data Processor" means Foresight Cyber;

"Personal Data" means personal data supplied by the Data Controller to the Data Processor;

"Privacy and Data Protection Requirements" means the Data Protection Act 1998 (until repealed), the Data Protection Directive (95/46/EC) (until repealed) and, the General Data Protection Regulation 2016/679 (the **"GDPR"**) or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom of Great Britain and Northern Ireland from the European Union, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations which may be in force from time to time relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction;

"Security Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

"Term" means duration of any rights and obligation between the Data Processor and Data Controller arising from or relating to the Contract;

“**Terms and Conditions**” means Foresight Cyber’s Sales and Services Terms and Conditions applicable to the Contract; and

“**Working Days**” means Monday to Friday excluding Bank and other public holidays in England.

- 1.2 “Data subject”, “personal data”, “processing” and “appropriate technical and organisational measures” shall bear the meanings given to those terms in the GDPR.

2. DATA PROCESSING

- 2.1 The Data Processor shall process the Personal Data in compliance with the Data Controller’s documented instructions (with regard to transfers of Personal Data to a third country) from time to time unless the Data Processor is required to do otherwise by law in which case the Data Processor shall inform the Data Controller about that legal requirement before processing, unless the Data Processor is prohibited by law to do so on grounds of public interest.
- 2.2 The parties agree that the subject matter, duration, nature and purpose of processing, the type of Personal Data and the categories of data subject are set out in Schedule 1.

3. AUDIT

- 3.1 The Data Processor shall keep at its normal place of business records relating to the processing of the Personal Data insofar as it is necessary to demonstrate compliance with the Data Processor’s obligations under this Agreement (the “**Records**”).
- 3.2 The Data Processor shall permit the Data Controller, on reasonable notice, to gain access to and take copies of the Records at the Data Processor’s premises and inspect those Records provided that:
- a) such Records shall only be made available to the extent the same is necessary for the Data Processor to discharge the Data Processor’s obligations pursuant to the GDPR (and, in particular, Article 28(3)(h) of the GDPR); and
 - b) the Data Controller shall use the Records for no other purpose except the purpose of auditing the Data Processor’s compliance with the Data Processor’s obligations under this Agreement only;

- c) the Data Controller shall carry out such inspection as soon as possible after the Records have been made available to the Data Controller and then return copies of the same to the Data Processor as soon as possible after completion of such inspection; and
- d) the Data Controller shall exercise its rights under this clause 3 with as little disturbance to the Data Processor's business operations as possible.

4. SECURITY BREACH

- 4.1 If the Data Processor becomes aware of a Security Breach relating to the Personal Data, then the Data Processor shall, without undue delay, notify the Data Controller of the same.

5. DATA PROCESSOR'S PROCESSING OBLIGATIONS

- 5.1 For the purposes of Article 28 of the GDPR (Processor) the Data Processor agrees that:
 - a) the Data Processor shall not engage another processor unless in accordance with clause 8 of this Agreement;
 - b) all persons authorised to process the Personal Data have entered into a binding contractual agreement with the Data Processor to ensure that the Personal Data remains confidential at all times or are under an appropriate statutory obligation of confidentiality in respect of the Personal Data;
 - c) the Data Processor shall, taking into account the nature of the processing, assist the Data Controller by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of the Data Controller's obligations to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR provided that any costs incurred in relation to such assistance shall be borne exclusively by the Data Controller;
 - d) the Data Processor shall assist the Data Controller in ensuring compliance with the obligations pursuant to Articles 32 (Security of processing) to Article 36 (Prior consultation) of the GDPR taking into account the nature of processing and the information available to the Data Processor and provided that any costs incurred in relation to such assistance shall be borne exclusively by the Data Controller; and

- e) at the Data Controller's option, the Data Processor shall delete or return all of the Personal Data to the Data Controller after the end of the Term and shall delete existing copies unless any provision of the Privacy and Data Protection Requirements requires storage of the Personal Data.

6. WARRANTIES

- 6.1 Each party warrants to the other that it will process the Personal Data in compliance with the Privacy and Data Protection Requirements.
- 6.2 Without prejudice to clause 6.1, the Data Processor warrants that:
 - a) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Processor will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including as appropriate:
 - b) the pseudonymisation and encryption of the Personal Data;
 - c) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - d) the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and
 - e) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

7. EFFECT OF TERMINATION

- 7.1 On any termination of the Contract for any reason or expiry of the Term the Data Processor shall:
 - a) unless notified otherwise by the Data Controller or required by law, as soon as reasonably practicable cease all processing of the Personal Data;
 - b) as soon as reasonably practicable return or destroy (as directed in writing by the Data Controller) all Personal Data, provided to the Data Processor by the Data Controller in connection with the Contract.

8. SUB-PROCESSING

- 8.1 The Data Processor shall not engage another processor without the Data Controller's prior specific or general written authorisation and without acting in accordance with the provisions of this clause 8.
- 8.2 The Data Processor will notify the Data Controller of the identity of any proposed sub-processor following which the Data Controller shall either approve or reject the appointment of such sub-contractor.
- 8.3 If the Data Controller rejects such appointment under clause 2 of this Agreement, or the Data Processor does not receive a response from the Data Controller within 5 Working Days of the Data Processor's notice under clause 8.2 of this Agreement, the Data Processor shall not sub-contract any of the Data Processor's obligations under this Agreement to such proposed sub-processor and the Data Processor reserves the right to terminate the Contract on written notice. If the Data Controller approves the appointment of such sub-processor under that clause, then before such appointment takes effect, the Data Processor shall enter into and maintain for the duration of such appointment a written agreement with such sub-processor on terms that are similar to those set out in this Agreement.

Schedule 1 to the Agreement

KEY DETAILS

GDPR ARTICLE 28 PARTICULARS

ITEM	DESCRIPTION
Subject Matter	Sale and supply of Equipment and/or Software and/or Services as per the Contract
Duration	The Term
Nature and purpose of processing	The Data Processor shall process the Personal Data in regard to performance of the rights and obligation arising from or relating to the Contract
Type of data	Full names, usernames, passwords, addresses, email addresses, telephone numbers and any other Personal Data the Data Processor may be storing or viewing, when selling or supplying Equipment and/or Software and/or Services to the Data Controller as per the Contract
Categories of data subjects	The Customers (and the Data Processor customers' employees, suppliers and/or customers)