

# Serversys Data Processing Agreement

Version: 1.2  
2023

The Serversys Ltd Data Processing Agreement, includes the Standard Contractual Clauses adopted by the UK ("UK SCC's"), as applicable, and reflects the parties' agreement with respect to the terms governing the Processing of Personal Data in association with services provided under the Serversys Ltd Standard Terms and Conditions (the "Service Agreement").

In this Data Processing Agreement, the Customer is defined as the Controller and Serversys Ltd is defined as the Processor.

This Data Processing Agreement Includes:

(i) Agreement Terms

(a) Schedule 1 which includes specifics on the Services and Products provided by Serversys Ltd where Personal Data is transferred by the Controller to the Processor.

(b) Schedule 2 which includes specifics on the Personal Data transferred by the Controller to the Processor.

(c) Schedule 3 which includes a description of the technical and organisational security measures implemented by the Processor as referenced.

(ii) List of Sub-Processors

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## AGREEMENT TERMS

### THIS AGREEMENT

#### BETWEEN:

(1) Customer of Serversys Ltd ("Controller") and

(2) Serversys Ltd a company registered in England and Wales under number 03752655 whose registered office is at CHANCERY HOUSE 30 ST JOHNS ROAD, WOKING, SURREY, GU21 7SA England ("Processor").

#### WHEREAS:

(1) Under a written agreement between the Controller and the Processor ("the Service Agreement") the Processor provides to the Controller the Services described in Schedule 1.

(2) The provision of the Services by the Processor involves it in processing the Personal Data described in Schedule 2 on behalf of the Controller.

(3) Under UK General Data Protection Regulation as defined in Section 3(10) of the Data Processing Act 2018 ("the UK GDPR"), Article 28, paragraph 3, the Controller is required to put in place an agreement in writing between the Controller and any organisation which processes personal data on its behalf governing the processing of that data.

(4) The Parties have agreed to enter into this Agreement to ensure compliance with the said provisions of the UK GDPR in relation to all processing of the Personal Data by the Processor for the Controller.

(5) The terms of this Agreement are to apply to all processing of Personal Data carried out for the Controller by the Processor and to all Personal Data held by the Processor in relation to all such processing.

**IT IS AGREED** as follows:

## 1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Controller", "Processor", "processing", and "data subject"</b>	shall have the meanings given to the terms "controller", "processor", "processing", and "data subject" respectively in Article 4 of the UK GDPR;
<b>"ICO"</b>	means the UK's supervisory authority, the Information Commissioner's Office;
<b>"Personal Data"</b>	means all such "personal data", as defined in Article 4 of the UK GDPR, as is, or is to be, processed by the Processor on behalf of the Controller, as described in Schedule 2;
<b>"Services"</b>	means those services described in Schedule 1 which are provided by the Processor to the Controller and which the Controller uses for the purposes described in Schedule 1;

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**“Sub-Processor”** means a sub-processor appointed by the Processor to process the Personal Data; and

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**“Sub-Processing Agreement”** means an agreement between the Processor and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as described in Clause 10.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;

1.2.4 a Schedule is a schedule to this Agreement; and

1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.2.6 a “Party” or the “Parties” refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include all other genders.

1.6 References to persons shall include corporations.

## 2. Scope and Application of this Agreement

2.1 The provisions of this Agreement shall apply to the processing of the Personal Data described in Schedule 2, carried out for the Controller by the Processor, and to all Personal Data held by the Processor in relation to all such processing whether such Personal Data is held at the date of this Agreement or received afterwards.

2.2 The provisions of this Agreement supersede any other arrangement, understanding, or agreement including, but not limited to, the terms of your order or service agreement made between the Parties at any time relating to the Personal Data.

2.3 This Agreement shall continue in full force and effect for so long as the Processor is processing Personal Data on behalf of the Controller, and thereafter as provided in Clause 9.

### **3. Provision of the Services and Processing Personal Data**

The Processor is only to carry out the Services, and only to process the Personal Data received from the Controller:

3.1 for the purposes of those Services and not for any other purpose;

3.2 to the extent and in such a manner as is necessary for those purposes; and

3.3 strictly in accordance with the express written authorisation and instructions of the Controller (which may be specific instructions or instructions of a general nature or as otherwise notified by the Controller to the Processor).

### **4. Data Protection Compliance**

4.1 All instructions given by the Controller to the Processor shall be made in writing and shall at all times be in compliance with the UK GDPR and other applicable laws. The Processor shall act only on such written instructions from the Controller unless the Processor is required by law to do otherwise (as per Article 29 of the UK GDPR).

4.2 The Processor shall promptly comply with any request from the Controller requiring the Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.

4.3 The Processor shall transfer all Personal Data to the Controller on the Controller's request in the formats, at the times, and in compliance with the Controller's written instructions.

4.4 Both Parties shall comply at all times with the UK GDPR and other applicable laws and shall not perform their obligations under this Agreement or any other agreement or arrangement between themselves in such way as to cause either Party to breach any of its applicable obligations under the UK GDPR.

4.5 The Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the UK GDPR in all respects including, but not limited to, its collection, holding, and processing.

4.6 The Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Agreement are satisfactorily performed in accordance with any and all applicable legislation from time to time in force (including, but not limited to, the UK GDPR) and any best practice guidance issued by the ICO.

4.7 The Processor shall provide all reasonable assistance (at the Controller's cost) to the Controller in complying with its obligations under the UK GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments, and in dealings with the ICO.

4.8 When processing the Personal Data on behalf of the Controller, the Processor shall:

4.8.1 not process the Personal Data outside the United Kingdom without the prior written consent of the Controller and, where the Controller consents to such a transfer to a country that is outside of the UK and EEA, to comply with the obligations of Processors under the provisions applicable to transfers of Personal Data to third countries set out in Chapter 5 of the UK GDPR by providing an adequate level of protection to any Personal Data that is transferred;

4.8.2 not transfer any of the Personal Data to any third party without the written consent of the Controller and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in Clause 10;

4.8.3 process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Controller or as may be required by law (in which case, the Processor shall inform the Controller of the legal requirement in question before processing the Personal for that purpose unless prohibited from doing so by law);

4.8.4 implement appropriate technical and organisational measures, as described in Schedule 3, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure. The Processor shall inform the Controller in advance of any changes to such measures;

4.8.5 if so requested by the Controller (and within the timescales required by the Controller) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;

4.8.6 keep detailed records of all processing activities carried out on the Personal Data in accordance with the requirements of Article 30(2) of the UK GDPR;

4.8.7 make available to the Controller any and all such information as is reasonably required and necessary to demonstrate the Processor's compliance with the UK GDPR;

4.8.8 on at least 30 days' prior notice, submit to audits and inspections and provide the Controller with any information reasonably required in order to assess and verify compliance with the provisions of this Agreement and both Parties' compliance with the requirements of the UK GDPR. The requirement to give notice will not apply if the Controller believes that the Processor is in breach of any of its obligations under this Agreement or under the law; and

4.8.9 inform the Controller immediately if it is asked to do anything that infringes the UK GDPR or any other applicable data protection legislation.

## **5. Data Subject Access, Complaints, and Breaches**

5.1 The Processor shall, at the Controller's cost, assist the Controller in complying with its obligations under the UK GDPR. In particular, the following shall apply to data subject access requests, complaints, and data breaches.

5.2 The Processor shall notify the Controller without undue delay if it receives:

5.2.1 a subject access request from a data subject; or

5.2.2 any other complaint or request relating to the processing of the Personal Data.

5.3 The Processor shall, at the Controller's cost, cooperate fully with the Controller and assist as required in relation to any subject access request, complaint, or other request, including by:

5.3.1 providing the Controller with full details of the complaint or request;

5.3.2 providing the necessary information and assistance in order to comply with a subject access request;

5.3.3 providing the Controller with any Personal Data it holds in relation to a data subject (within the timescales required by the Controller); and

5.3.4 providing the Controller with any other information requested by the Controller.

5.4 The Processor shall notify the Controller immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.

## 6. Appointment of a Data Protection Officer

6.1 The Controller shall appoint a Data Protection Officer in accordance with Article 37 of the UK GDPR and shall supply the details of the Data Protection Officer to the Processor prior to the commencement of the processing.

6.2 The Processor has appointed a Data Protection Officer in accordance with Article 37 of the UK GDPR, whose details are as follows: Mr Stuart Lawrence, Serversys Limited, 1650 Arlington Business Park, Theale, Reading, RG7 4SA

## 7. Liability and Indemnity

7.1 The Controller shall be liable for, and shall indemnify (and keep indemnified) the Processor in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Processor and any Sub-Processor arising directly or in connection with:

7.1.1 any non-compliance by the Controller with the UK GDPR or other applicable legislation;

7.1.2 any Personal Data processing carried out by the Processor or Sub-Processor in accordance with instructions given by the Controller that infringe the UK GDPR or other applicable legislation; or

7.1.3 any breach by the Controller of its obligations under this Agreement,

except to the extent that the Processor or Sub-Processor is liable under sub-Clause 7.2.

7.2 The Processor shall be liable for, and shall indemnify (and keep indemnified) the Controller in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Controller arising directly or in connection with the Processor's Personal Data processing activities that are subject to this Agreement:

7.2.1 only to the extent that the same results from the Processor's or a Sub-Processor's breach of this Agreement; and

7.2.2 not to the extent that the same is or are contributed to by any breach of this Agreement by the Controller.

7.3 The Controller shall not be entitled to claim back from the Processor or Sub-Processor any sums paid in compensation by the Controller in respect of any damage to the extent that the Controller is liable to indemnify the Processor or Sub-Processor under sub-Clause 7.1.

7.4 Nothing in this Agreement (and in particular, this Clause 7) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the UK GDPR. Furthermore, the Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a processor under the UK GDPR may render it subject to the fines, penalties, and compensation requirements set out in the UK GDPR.

## 8. Intellectual Property Rights

All copyright, database rights, and other intellectual property rights subsisting in the Personal Data (including but not limited to any updates, amendments, or adaptations to the Personal Data made by either the Controller or the Processor) shall belong to the Controller or to any other applicable third party from whom the Controller has obtained the Personal Data under licence (including, but not limited to, data subjects, where applicable). The Processor is licensed to use such Personal Data under such rights only for the purposes of the Services, and in accordance with this Agreement.

## 9. Confidentiality

9.1 The Processor shall maintain the Personal Data in confidence, and in particular, unless the Controller has given written consent for the Processor to do so, the Processor shall not disclose any Personal Data supplied to the Processor by, for, or on behalf of, the Controller to any third party. The Processor shall not process or make any use of any Personal Data supplied to it by the Controller otherwise than in connection with the provision of the Services to the Controller.

9.2 The Processor shall ensure that all personnel who are to access and/or process any of the Personal Data are contractually obliged to keep the Personal Data confidential.

9.3 The obligations set out in in this Clause 9 shall continue for a period of 12 months after the cessation of the provision of Services by the Processor to the Controller.

9.4 Nothing in this Agreement shall prevent either Party from complying with any requirement to disclose Personal Data where such disclosure is required by law. In such cases, the Party required to disclose shall notify the other Party of the disclosure requirements prior to disclosure, unless such notification is prohibited by law.

## 10. Appointment of Sub-Processors

10.1 The Processor shall not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Controller (such consent not to be unreasonably withheld).

10.2 In the event that the Processor appoints a Sub-Processor (with the written consent of the Controller), the Processor shall:

10.2.1 enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Processor by this Agreement and which shall permit both the Processor and the Controller to enforce those obligations; and

10.2.2 ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the UK GDPR.

10.3 In the event that a Sub-Processor fails to meet its obligations under any Sub-Processing Agreement, the Processor shall remain fully liable to the Controller for failing to meet its obligations under this Agreement.

## 11. Deletion and/or Disposal of Personal Data

11.1 The Processor shall, at the written request of the Controller, delete (or otherwise dispose of) the Personal Data or return it to the Controller in the format(s) reasonably requested by the Controller within a reasonable time after the earlier of the following:

11.1.1 the end of the provision of the Services under the Service Agreement; or

11.1.2 the processing of that Personal Data by the Processor is no longer required for the performance of the Processor's obligations under the Service Agreement.

11.2 Following the deletion, disposal, or return of the Personal Data under sub-Clause 11.1, the Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Processor shall inform the Controller of such requirement(s) in writing.

11.3 All Personal Data to be deleted or disposed of under this Agreement shall be deleted or disposed of using the following method(s): physical destruction of hardware or secure deletion where feasible, putting the data beyond use where hardware is retained until such time that it can be physically destroyed.

## 12. Law and Jurisdiction

12.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

12.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

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### **SCHEDULE 1 – Applicable Services Provided Serversys Ltd**

- Data Import, Data Migration and Data Cleansing Services.
- Provision of Unattended Technical Support of Microsoft SAS services.

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### **SCHEDULE 2 – Personal Data Transferred By The Controller To The Processor**

#### **Categories of Data Subjects .**

Controller's candidates, referees, clients, client contacts and suppliers, other end users including Controller's employees. Data Subjects also include individuals attempting to communicate with or transfer Personal Data to the Controller's end users.

#### **Types of Personal Data.**

Contact Information, the extent of which is determined and controlled by the Customer in its sole discretion, and other Personal Data such as address and contact information, CVs, compliance and data of sensitive nature such as ethnicity, sex, Compliance related information and evidence, Identification documents, DBS information, bank details, education history, employment history, email data, system usage data, application integration data, and other electronic data submitted, stored, sent, or received by end users via the Services.

#### **Subject-Matter and Nature of the Processing.**

The subject-matter of Processing of Personal Data by Processor is the provision of the services to the Controller that involves the Processing of Personal Data. Personal Data will be subject to those Processing activities as may be specified in the Agreement and an Order.

### **Purpose of the Processing .**

Personal Data will be Processed for purposes of providing the services set out in Schedule 1 and otherwise agreed to in a Data Processing Agreement and any applicable Order.

### **Duration of the Processing.**

Personal Data will be Processed for the duration of the Service Agreement, or subject to Section 3 of this Agreement.

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## **SCHEDULE 3 – Technical And Organisational Security Data Protection Measures**

The following are the technical and organisational data protection measures referred to in Clause 4:

1. The Processor shall ensure that, in respect of all Personal Data it receives from or processes on behalf of the Controller, it maintains security measures to a standard appropriate to:

1.1 the harm that might result from unlawful or unauthorised processing or accidental loss, damage, or destruction of the Personal Data; and

1.2 the nature of the Personal Data.

2. In particular, the Processor shall:

2.1 have in place, and comply with, a security policy which:

2.1.1 defines security needs based on a risk assessment;

2.1.2 allocates responsibility for implementing the policy to a specific individual or personnel;

2.1.3 is provided to the Controller on or before the commencement of this Agreement;

2.1.4 is disseminated to all relevant staff; and

2.1.5 provides a mechanism for feedback and review.

2.2 ensure that appropriate security safeguards and virus protection are in place to protect the hardware and software which is used in processing the Personal Data in accordance with best industry practice;

2.3 prevent unauthorised access to the Personal Data;

- 2.4 protect the Personal Data using pseudonymisation, where it is practical to do so;
- 2.5 ensure that its storage of Personal Data conforms with best industry practice such that the media on which Personal Data is recorded (including paper records and records stored electronically) are stored in secure locations and access by personnel to Personal Data is strictly monitored and controlled;
- 2.6 have secure methods in place for the transfer of Personal Data whether in physical form (for example, by using couriers rather than post) or electronic form (for example, by using SSL encryption);
- 2.7 password protect all computers and other devices on which Personal Data is stored, ensuring that all passwords are secure (incorporating a minimum of 8 characters with a mixture of uppercase, lowercase, numbers and special characters), and that passwords are not shared under any circumstances;
- 2.8 take reasonable steps to ensure the reliability of personnel who have access to the Personal Data;
- 2.9 have in place methods for detecting and dealing with breaches of security (including loss, damage, or destruction of Personal Data) including:
- 2.9.1 the ability to identify which individuals have worked with specific Personal Data;
- 2.9.2 having a proper procedure in place for investigating and remedying breaches of the UK GDPR; and
- 2.9.3 notifying the Controller as soon as any such security breach occurs.
- 2.10 have a secure procedure for backing up all electronic Personal Data and storing back-ups separately from originals;
- 2.11 have a secure method of disposal of unwanted Personal Data including for back-ups, disks, print-outs, and redundant equipment; and
- 2.12 adopt such organisational, operational, and technological processes and procedures as are required to comply with the requirements of ISO/IEC 27001:2013, as appropriate to the Services provided to the Controller.

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**LIST OF SUB-PROCESSORS**

- Microsoft Corporation (SAS Service for Dynamics and Office 365)