



DATA PROCESSING AGREEMENT

EFFECTIVE DATE [DD-MM-YYYY]:

BETWEEN:

- (1) **Overt Software Solutions Limited**, incorporated with number 07354763 with registered office at Unit 2 Hawford Business Centre, Hawford, Worcester, Worcestershire, WR3 7SG (hereinafter referred to as “**Data Processor**”);

and

- (2)

incorporated with number

with registered office at

(hereinafter referred to as the “**Data Controller**”).

(hereinafter referred to as the “Parties”)

WHEREAS:

- (A) The Controller processes Personal Data in connection with its business activities;
- (B) The Processor processes Personal Data on behalf of other businesses or organisations; and,
- (C) The Controller wishes to engage the services of the Processor to process Personal Data on its behalf.

1. Definitions and Interpretation

1.1 The words and expressions below will have the meanings set out next to them:

‘**Applicable Laws**’ means all applicable laws, statutes, regulations, and codes from time to time in force (as amended or superseded);

‘**Agreement**’ means this Data Processing Agreement.

‘**Business Day**’ means a day other than a Saturday, Sunday, or public holiday in England;

‘**Data Breach**’ means ‘personal data breach’ as defined in the UK GDPR;

‘**Data Controller**’ means ‘controller’ as defined in the UK GDPR;

‘**Data Processor**’ means ‘processor’ as defined in the UK GDPR;

‘**Data Protection Authority**’ means the relevant data protection authority in the UK, namely the Information Commissioners Office (ICO);

‘**Data Protection Legislation**’ means the Data Protection Act 2018 (DPA2018), United Kingdom General Data Protection Regulation (UK GDPR), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation implemented in



connection with the aforementioned legislation. Where data is processed by a controller or processor established in the European Union or comprises the data of people in the European Union, it also includes the EU General Data Protection Regulation (EU GDPR). This includes any replacement legislation coming into effect from time to time;

'Data Subject' means 'data subject' as defined in the Data Protection Legislation;

'UK GDPR' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

'Personal Data' means 'personal data' as defined in the UK GDPR and which is processed by Data Sub-Processor on behalf of Data Processor, as set out in Schedule 4;

'Party' or **'Parties'** means a party or the parties to this Agreement;

'Data Subject Request' means a request from a Data Subject exercising its rights under the Data Protection Legislation and which relates to the processing of Personal Data relating to such Data Subject by Data Sub-Processor on behalf of Data Processor; and

1.2 In this Agreement unless otherwise expressly stated:

1.2.1 references to Clauses are to clauses of this Agreement, unless expressly stated otherwise;

1.2.2 reference to the Schedules are to the schedules of this Agreement and are incorporated herein;

1.2.3 references to the singular include references to the plural and vice versa;

1.2.4 headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.5 any phrase introduced by the terms "including", "include", "in particular" or any similar expression are illustrative and do not limit the sense of the words preceding those terms and such terms shall be deemed to be followed by the words "without limitation";

1.2.6 references to a statute, or any section of any statute, include any statutory amendment, modification or re-enactment and instruments and regulations under it in force from time to time;

1.2.7 references to regulatory rules include any amendments or revisions to such rules from time to time; and

1.2.8 references to regulatory authorities refer to any successor regulatory authorities.

2. **Scope**

2.1 The purpose of this Data Processing Agreement is to describe the work to be carried out by the Data Processor in relation with the Agreement. This Data Processing Agreement shall be



deemed to take effect from the Effective Date and shall continue in full force and effect until termination of the Agreement.

3. Processing of the Personal Data

3.1 Data Controller is the Data Controller for the Personal Data and Data Processor is the Data Processor for the Personal Data. The Data Processor agrees to process the Personal Data only in accordance with Data Protection Legislation.

3.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove, or replace, a Party's obligations or rights under the Data Protection Legislation. In this Clause 3, Applicable Laws means (for so long as and to the extent that they apply to the Data Processor) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

3.3 The Parties acknowledge that the Data Processor may process Personal Data on behalf of the Data Controller during the term of this Agreement. A description of the Personal Data and the processing activities undertaken by the Data Processor is set out in Schedule 1.

3.4 To the extent that the Data Processor processes Personal Data on behalf of the Data Controller in connection with this Agreement, the Data Processor shall:

3.4.1 Solely process the Personal Data for the purposes of fulfilling its obligations under this Agreement and in compliance with the Data Controller's written instructions as set out in this Agreement and as may be specified from time to time in writing by the Data Controller;

3.4.2 Notify the Data Controller immediately if any instructions of the Data Controller relating to the processing of Personal Data are unlawful;

3.4.3 Maintain a record of its processing activities in accordance with Article 30(1) of the GDPR;

3.4.4 Assist the Data Controller in ensuring compliance with the obligations set out in Articles 32 to 36 of the GDPR taking into account the nature of the data processing undertaken by the Data Processor and the information available to the Data Processor, including (without limitation):

Data Sub-Processors

(i) In relation to Data Sub-Processors:

(A) Not engage with any Data Sub-Processor to carry out any processing of Personal Data without the prior written consent of the Data Controller (such consent not to be unreasonably withheld), provided that, notwithstanding any such consent, the Data Processor shall remain liable for compliance with all of the requirements of this Agreement including in relation to the processing of Personal Data;



- (B) The Data Controller gives the Data Processor general authorisation to replace any of its Data Sub-Processors or to add a new Data Sub-Processor. However, before any such replacement or addition the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of Data Sub-Processors, thereby giving the Data Controller the opportunity to object to such changes. If no objection is raised within 14 days, the proposed replacement or addition will be considered as accepted. If an objection is raised, and the Parties do not reach an agreement within 14 days from the day the objection is raised, the Data Processor shall have the right to proceed with the proposed addition or replacement, and the Data Controller shall have the right to terminate this Agreement forthwith at no cost and with no need to provide notice;
- (C) The Data Controller hereby grants consent for all the Data Processor to appoint the Data Sub-Processors as listed in Schedule 3 of this Agreement;
- (D) Ensure that obligations equivalent to the obligations set out in this Clause 3 are included in all contracts between the Data Processor and permitted Data Sub-Processors who will be processing Personal Data; and
- (E) Notwithstanding consent granted as per Clause 3.4.40(C)(C), ensure that its Data Sub-Processor shall not transfer to or access any Personal Data from a Country outside of the United Kingdom without the prior written consent of the Data Controller.

International Data Transfers

- (ii) In relation to International Data Transfers:
 - (A) The Data Processor shall comply with the Data Controller's instructions in relation to transfers of Personal Data to a Country outside of the United Kingdom unless the Data Processor is required pursuant to applicable laws to transfer Personal Data outside the United Kingdom, in which case the Data Processor shall inform the Data Controller in writing of the relevant legal requirement before any such transfer occurs, unless the relevant law prohibits such notification on important grounds of public interest;
 - (B) The Data Processor shall not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - 1) The Data Processor has implemented appropriate safeguards in relation to the transfer, such as standard data protection clauses, in accordance with Article 46 of the UK GDPR, or there is an adequacy decision in place pursuant to Article 45 of the UK GDPR and Sections 17A and 17B of the Data



- Protection Act 2018 in respect of the relevant territory outside the United Kingdom to which the Personal Data is transferred;
- 2) the Data Subject has enforceable rights and effective legal remedies;
 - 3) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - 4) the Data Processor or Data Sub-Processor has conducted any Transfer Impact Assessments (TIAs) as may be required; and,
 - 5) the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

Staff Confidentiality

- (iii) In relation to Staff Confidentiality:
- (A) The Data Processor shall ensure that any persons used by the Data Processor to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data and shall ensure that only such persons used by it to provide the Services have undergone training in Data Protection and in the care and handling of Personal Data;

Security Measures

- (iv) In relation to Security Measures:
- (A) The Data Processor shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with Article 32 of the GDPR;

Data Subject Rights

- (v) In relation to Data Subject Rights:
- (A) The Data Processor shall promptly notify the Data Controller if it receives a Request from a Data Subject (Data Subject Request) under any Data Protection Legislation in respect of Personal Data; and
 - (B) Ensure that it does not respond to that Request except on the documented instructions of the Data Controller or as required by applicable Data Protection Legislation to which the Data Processor is



subject, in which case the Data Processor shall, to the extent permitted by applicable Data Protection Legislation, inform the Data Controller of that legal requirement before the Data Processor responds to the request; and,

- (C) Taking into account the nature of the data processing activities undertaken by the Data Processor, provide all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Data Controller to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation;

Data Breaches

(vi) In relation to Data Breaches:

- (A) The Data Processor shall provide information and assistance upon request to enable the Data Controller to notify Data Security Breaches to the Information Commissioner and / or to affected individuals and / or to any other regulatory authorities to whom the Data Controller is required to notify any Data Security Breaches;

Data Protection Impact Assessments

(vii) In relation to Data Protection Impact Assessments:

- (A) The Data Processor shall provide input into and, upon the instruction of the Data Controller, carry out Data Protection Impact Assessments in relation to the Data Processor's data processing activities;

Deletion or Return of Data

(viii) In relation to Deletion or Return of Data:

- (A) Upon termination of this Agreement, at the choice of the Data Controller, the Data Processor shall delete securely or return all Personal Data to the Data Controller and delete all existing copies of the Personal Data unless and to the extent that the Data Processor is required to retain copies of the Personal Data in accordance with Applicable Laws, in which case, the Data Processor shall notify the Data Controller in writing of the Applicable Laws which require the Personal Data to be retained; and,
- (B) In the event that the Personal Data is deleted or destroyed by the Data Processor, the Data Processor shall provide the Data Controller with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted;

Audits

(ix) In relation to Audits:



- (A) The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with the obligations set out in this Clause 3 and allow for and contribute to audits, including inspections, conducted by or on behalf of the Data Controller or by the Information Commissioners Office (ICO), or other relevant regulatory authority, pursuant to Article 58(1) of the GDPR.

4. Data Subject Request Notification

- 4.1 The Data Processor shall notify the Data Controller without undue delay (and in any event within 72 hours) of becoming aware of a Data Subject Request by following the process outlined in Schedule 1.

5. Breach Identification and Notification

- 5.1 The Data Processor shall notify the Data Controller without undue delay (and in any event within 72 hours) of becoming aware of a Data Breach by completing a Personal Data Breach Notification Form (sample provided in Schedule 2) if:

- 5.1.1 the Data Processor or any Data Sub-Processor engaged by, or on behalf of, the Data Processor suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data; or

- 5.1.2 the Data Processor or any Data Sub-Processor engaged by, or on behalf of, the Data Processor receives any data security breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation.

- 5.2 In each case the Data Processor shall provide full co-operation, information and assistance to the Data Controller in relation to any such data security breach, compliance notice or communication

6. Access

- 6.1 Upon request, the Data Processor shall allow the Data Controller, the ICO, or other relevant regulatory authority, and their representatives access to the Data Processor's premises, records and personnel for the purposes of assessing the Data Processor's compliance with its obligations under this Agreement.

7. Confidentiality

- 7.1 Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement ("**Confidential Information**") confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

- 7.1.1 disclosure is required by law; or,

- 7.1.2 the relevant information is already in the public domain.



8. Termination

- 8.1 This Agreement shall commence on the Effective Date and shall continue until terminated by either Party in accordance with terms of the relevant Service Level Agreement.

9. Notices

- 9.1 Any notice under or in connection with this Agreement shall be in writing (but not by fax, e-mail or similar means) and shall be delivered personally, or sent by courier or by recorded or registered mail to the following addresses:

Notices to Data Controller:

Address:

Marked for the attention of:

Notices to Data Processor: Overt Software Solutions Ltd.

Address: Unit 2 Hawford Business Centre, Hawford, Worcester, Worcestershire, WR3 7SG.

Marked for the attention of: Data Protection Officer

A notice shall become effective on the date it is delivered to the address of the recipient Party shown above. A Party may notify the other of a change to its notice details.

10. Severability

- 10.1 Should any provision of this Agreement be held to be illegal, invalid or unenforceable in any respect by any judicial or other competent authority under the law of any jurisdiction, the provisions of Clauses 10.2 and 10.3 below shall apply.

- 10.2 If by substituting a shorter time period or more restricted application of the provision, it would be valid and enforceable, such shorter time period or more restricted application shall be substituted.

- 10.3 If Clause 10.2 is not applicable:

10.3.1 such provision shall, so far as it is illegal, invalid or unenforceable in any jurisdiction, be given no effect by the Parties and shall be deemed not to be included in this Agreement in that jurisdiction;

10.3.2 the other provisions of this Agreement shall be binding on the Parties in that jurisdiction as if such provision were not included herein;

10.3.3 the legality, validity and enforceability of the provision in any other jurisdiction shall not be affected or impaired; and

10.3.4 the Parties shall negotiate in good faith to agree an alternative provision in terms which as closely as possible achieve the intention of the Parties in the original provision, do not substantially impair the Parties' original interests and do not render such provisions invalid or unenforceable.



11. Variation

- 11.1 No variation or amendment to this Agreement shall bind either Party unless made in writing and signed by duly authorised officers of both Parties.

12. Waiver and Remedies

- 12.1 A failure to exercise or any delay in exercising any right or remedy provided by this Agreement or by law does not constitute a waiver of that right or remedy or a waiver of any other rights or remedies.

13. Entire agreement

- 13.1 This Agreement constitutes the entire agreement and understanding of the Parties relating to its subject matter and supersedes all prior proposals, contracts and understandings between the Parties or their advisors relating to such subject matter.
- 13.2 Each of the Parties hereby acknowledges and agrees that in entering into this Agreement, it does not rely on any statement, representation, warranty, undertaking, agreement, or understanding of any nature whatsoever made by any person other than as expressly included in this Agreement as a warranty (a "**Prior Representation**") and to the extent that it is so included that Party's only remedy shall be a contractual one for breach of warranty under the terms of this Agreement for damages. To the extent that, notwithstanding the foregoing a Prior Representation has been made and relied upon by either Party, the relevant Party unconditionally and irrevocably waives any claims, rights or remedies it may have in relation thereto.
- 13.3 Nothing in this Clause 13 or in this Agreement shall operate to limit or exclude any liability of either Party, or the remedies available to either Party for fraud, including fraudulent acts and/or fraudulent misrepresentations.

14. Rights of third parties

- 14.1 No person other than a Party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

15. Assignment and novation

- 15.1 Neither Party shall be entitled to assign or novate this Agreement nor all or any of its rights or obligations hereunder.

16. Further Assurance

- 16.1 The Parties shall execute all further documents as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to protect the rights of the Parties under it.

17. Governing Law

- 17.1 This Agreement and any matter arising from or in connection with it, whether in contract, tort (including negligence) or otherwise, shall be governed by and construed in accordance with English law. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the English



courts over any claim or matter arising from or in connection with this Agreement, or the legal relationships established by or in connection with this Agreement.



IN WITNESS whereof this Agreement is executed as follows:

Signed for and on behalf of the said **Data Processor** by

Edward Beddows

Director of Infrastructure and Security

A handwritten signature in blue ink, appearing to read "E Beddows", with a stylized flourish at the end.

on (date)

Signed for and on behalf of the said **Data Controller** by

on (date)

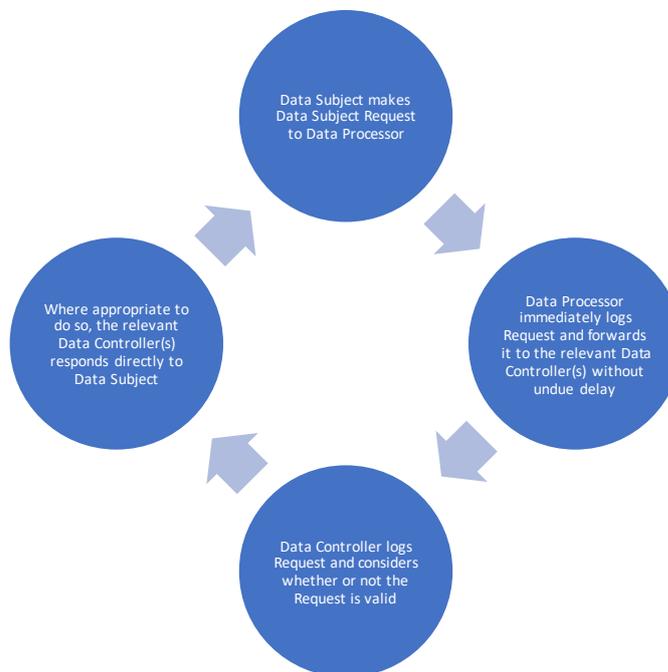


Schedule 1

Data Subject Request Process

In addition to Clause 4 of this Agreement, the Data Processor agrees to follow the following process in the event that the Data Processor receives a Data Subject Request.

All Data Subject Requests are to be logged and forwarded to the Data Controller without undue delay by emailing





Schedule 2

Breach Notification Template

In an instance where a breach is identified a written notification similar to the below, but including all information listed, must be made by emailing

Breach Notification Template

Incident Reference	
Data Controller Name	
Contact Name	
Contact Job Title	
Contact Details (Phone and email)	
Date / Time of Breach Notification	
Date / Time Breach Identified (if different)	
Business Impact	
Next Action	
Mitigation / Fix	
Root Cause	
Description of how the breach was identified	
Date / Time of next update	



Breach Details			
Categories of Data Breached		Approximate number of personal data records concerned.	
Approximate number of data subjects concerned		Describe the likely consequences of data breach	
Summary of Breach			



Schedule 3

Approved Sub-processors approved by the Data Processor

Pursuant to Clauses 3.4.43.4.4(i) and 3.4.4(ii), the Approved Data Sub-Processors below have been approved by Data Controller.

As per Clauses 3.4.4(i) and 3.4.4(ii), the Data Processor may provide notice of intention to appoint a new proposed Data Sub-Processor by seeking the Data Controller's consent, which may be either granted or withheld.

Should the Data Controller grant consent for the Data Processor to appoint a new Data Sub-Processor, a copy of the below table, but including all information listed, will be agreed by both Parties and appended to this Agreement. The appended table may be amended from time to time as agreed by both Parties.

Approved Data Sub-Processor Name	Service being Provided	Location where Data Sub-Processor is Registered as a Legal Entity	DPO Details at Approved Sub-Processor	Contract in Place?	Copy of Contract Available Upon Request?
Digital Ocean, LLC.	Hosting	US	privacy@digitalocean.com	Yes	Yes
UK Dedicated Servers Ltd	Hosting	UK	dpo@ukservers.com	Yes	Yes
Rapid Switch (iosmart Hosting Ltd)	Hosting	UK	dpo@iomart.com	Yes	Yes
Hetzner Online GmbH	Hosting and backup services	EU	data-protection@hetzner.com	Yes	Yes
Terus Technology Ltd	Online Support	UK	enquiries@teruselearning.co.uk	Yes	Yes
JetBrains s.r.o	Project Management Services	EU	legal@jetbrains.com	Yes	Yes



Microsoft Ireland	IT Services	EU	https://docs.microsoft.com/en-gb/compliance/regulatory/gdpr-data-protection-officer	Yes	Yes
Cloudflare, Inc.	Content delivery network, DDoS protection and web security	US	legal@cloudflare.com	Yes	Yes



Schedule 4

Purposes and type of processing, type of data, and categories of data subjects

Type of Data	Client data as determined by the Data Controller to be required to deliver the Services referred to in the corresponding Service Level Agreement in place between Data Controller and the Data Processor
Type of processing	Client data processing as determined by the Data Controller to be required to deliver the Services referred to in the corresponding Service Level Agreement in place between Data Controller and the Data Processor
Purposes (and nature) of processing	Nature and purposes as determined by the Data Controller(s) to be required to deliver the Services referred to in the corresponding Service Level Agreement in place between Data Controller and the Data Processor
Categories of data subjects	Data Subjects as determined by the Data Controller(s) to be required to deliver the Services referred to in the corresponding Service Level Agreement in place between Data Controller and the Data Processor
Duration of processing	For the duration of the corresponding Service Level Agreement