



DATA PROCESSING AMENDMENT AGREEMENT (GDPR UPDATE)

THIS AMENDMENT AGREEMENT is made between: **2sms** (a company registered in England with number 03294453) whose office is situated at Unit 3, Cranfield Innovation Centre, Cranfield, MK43 0BT, United Kingdom (contracting for itself and as agent for any subsidiary and associated companies, singly or jointly) (herein called “**2sms**”); and the entity who entered into the Original Agreement defined below (herein called the “**the Customer**”).

BACKGROUND:

- (A) 2sms and / or relevant Group Companies and the customer entered into one or more agreements for the provision of services prior to 25 May 2018 (“**Original Agreement**”).
- (B) 2sms receives and / or is granted access to certain Personal Data, in respect of which the customer are Controllers, in order to supply the customer with the Services (as defined below) pursuant to the Original Agreement.
- (C) In light of changes to data protection legislation (pursuant to the General Data Protection Regulation) which requires certain new contractual arrangements to be put in place in respect of the Processing of Personal Data, the parties need to amend the Original Agreement.
- (D) This Amendment Agreement sets out the new data processing provisions that shall replace the existing data protection provisions in the Original Agreement that apply to the Processing of the customer Personal Data.
- (E) 2sms shall be provided with access to the customer Personal Data (as defined below) and shall process the customer Personal Data on behalf of the customer in accordance with and subject to the terms and conditions of this Amendment Agreement.



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1. **AMENDMENTS TO THE ORIGINAL AGREEMENT**

- 1.1 the provisions of the Original Agreement that set out the requirements of each party in respect of the Processing of Personal Data shall be deleted and replaced with a new “**Data Processing Appendix**” as set out in Annex to this Amendment Agreement.
- 1.2 Capitalised terms set out in this Amendment Agreement have the meaning set out in Annex to this Amendment Agreement unless otherwise indicated.

2. **AGREEMENT IN FULL FORCE AND EFFECT**

This Amendment Agreement is supplemental to the Original Agreement and, save as expressly modified by the amendments described in this Amendment Agreement, the Original Agreement shall remain in full force and effect. References in the Original Agreement to “this Agreement” shall be deemed to refer to the Original Agreement as amended by this Amendment Agreement, unless the context otherwise requires.

3. **CONSIDERATION**

- 3.1 In consideration of:
 - 3.1.1 the mutual benefit to the parties in ensuring that their obligations under Data Protection Legislation are agreed in writing, including in particular that the Processing Instructions (as defined above), and each party’s status as Controller(s) and Processor respectively, are clearly and properly documented; and
 - 3.1.2 the customer paying to 2sms the sum of £1.00 in total, and 2sms paying to the customer the sum of £1.00 in total, with such sums to be paid by mutual set-off,

the parties agree to amend the existing data protection terms as set out below and each party shall perform their respective obligations under this Amendment Agreement.



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4. **TERM**

4.1 This Amendment Agreement shall commence on the Effective Date and shall continue in force until the termination or expiry of the Original Agreement.

5. **GENERAL**

5.1 This Amendment Agreement reflects the entire agreement between the parties in respect of its subject matter and supersedes and extinguishes any previous agreement between any of the parties, whether written or oral, in respect of data protection where the customer is a Controller and 2sms is a Processor or Sub-Processor in relation to that agreement (including in particular, any existing data protection provisions contained or referred to in the Original Agreement between the parties, where the customer is a Controller and 2sms is a Processor or Sub-Processor in the agreement). Other than as expressly set out above, nothing in this Amendment Agreement shall reduce any party's obligations under any other commercial arrangement between each other, and in all other respects the terms of those other commercial arrangements shall remain in full force and effect, including all other provisions in the Original Agreement.

5.2 Each party acknowledges that it has entered into this Amendment Agreement in reliance only on the representations, warranties promises, and terms contained or expressly referred to in this Amendment Agreement and, save as expressly set out in this Amendment Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the Effective Date unless it was made fraudulently.

5.3 To the extent that any provision of this Amendment Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Amendment Agreement, it shall not affect the enforceability of the remainder of this Amendment Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

5.4 Any right, power or remedy of a party under or pursuant to this Amendment Agreement or by law shall not be capable of being waived otherwise than by an express waiver in writing signed by an authorised representative of the relevant party.

5.5 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Amendment Agreement or otherwise.

5.6 This Amendment Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of England and Wales.



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5.7 the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Amendment Agreement, its subject matter or formation.

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ANNEX

1. DEFINITIONS AND INTERPRETATION

1.1 the following terms and expressions shall have the meaning set out below for the purposes of this Agreement:

“the Customer’s Personal Data” means all Personal Data which is owned, controlled or processed by the customer or any of its Group and which is provided made available or accessible by or on behalf of the customer or any of its Group to 2sms or which comes into the possession of 2sms as a result of or is otherwise obtained in connection with the performance of 2sms’s obligations under this Agreement or the Original Agreement;

“Appropriate Safeguards” means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Law from time to time;

“Complaint” means a complaint or request relating to either party’s obligations under Data Protection Law relevant to this Agreement, including any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;

“Data Controller” shall have the meaning given to “data controller” or “controller” in Data Protection Law and in this context is the customer;

“Data Processor” shall have the meaning given to “data processor” or “processor” in Data Protection Law;

“Data Protection Law” means any applicable Laws and Regulations relating to the Processing, privacy, and use of Personal Data, as applicable to the customer, 2sms, the Services, and/or the Original Agreement, including:

- (a) the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws or regulations implementing Council Directives 95/46/EC or 2002/58/EC;
- (b) the GDPR and/or any corresponding or equivalent national laws or regulations; and
- (c) any judicial or administrative interpretation of any of the above, and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

“Data Subject” shall have the meaning given to “data subject” in Data Protection Law;

“Data Subject Request” means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Law;

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“**DPIA**” means a data protection impact assessment or privacy impact assessment (as defined or used in Data Protection Law, including relevant guidance from Supervisory Authorities);

“**DP Losses**” means all liabilities and amounts, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, **charges**, procedures, expenses, losses and damages (including relating to material or non-material damage, which includes emotional distress);
- (b) loss or damage to reputation, brand or goodwill;
- (c) to the extent permitted by applicable Laws and Regulations:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - (ii) compensation paid to a Data Subject; and
 - (iii) the costs of compliance with investigations by a Supervisory Authority;

“**Effective Date**” means the 25 May 2018 when GDPR comes into force;

“**GDPR**” means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“**Group**” means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company (and the terms “**subsidiary**” and “**holding company**” shall have the meanings given to them by Section 1159 of the Companies Act 2006).

“**Group Company**” means in relation to a company, any member of its Group.

“**International Recipient**” has the meaning given to it in paragraph 2.8;

“**Laws and Regulations**” means the laws of England and Wales and any other laws or regulations, regulatory policies, directives statutes, subordinate legislation, common law, guidelines or industry codes including, without limitation, Data Protection Laws which apply to the provision of the Services from time to time;

“**Personal Data**” shall have the meaning given to it in the Data Protection Law;

“**Personal Data Breach**” means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any the customer Personal Data;

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“**Process**” or “**Processing**” means accessing, collecting, obtaining, recording, holding, disclosing, using, altering, deleting, erasing or destroying Personal Data, or carrying out any operation(s) on the Personal Data or as otherwise defined under applicable Data Protection Law;

“**Processing Instructions**” has the meaning given to it in paragraph 2.6.2;

“**Processor Contract**” has the meaning given to it in paragraph 2.10;

“**Services**” means the services provided pursuant to the Original Agreement;

“**Sub-Processor**” means another Data Processor engaged by 2sms for carrying out Processing activities in respect of the customer Personal Data;

“**Supervisory Authority**” means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Law.

“**2sms Personnel**” means all employees, staff, other workers, agents and consultants of 2sms and of any sub-contractors who are engaged in the provision of the Services from time to time.

1.2 All paragraph references in paragraph 1.1 of this Annex are references to paragraphs in this Annex only.

2. DATA PROTECTION PROVISIONS

2.1 To the extent that a term of this Agreement requires the performance by a party of an obligation “in accordance with Data Protection Law” (or similar), unless otherwise expressly agreed in this Agreement, this requires performance in accordance with the relevant requirements of such Data Protection Law as is in force and applicable at the time of performance (if any).

2.2 the parties agree that, for the customer Personal Data, the customer shall be the Data Controller and 2sms shall be the Data Processor.

2.3 the customer shall comply with all Data Protection Law in respect of the performance of its obligations under this Agreement.

2.4 2sms represents, warrants and undertakes that it has complied and shall continue to comply with Data Protection Law in connection with the processing of the customer Personal Data, the Services and the exercise and performance of its rights and obligations under this Agreement.

2.5 the Processing to be carried out by 2sms under this Agreement shall comprise the Processing set out in Schedule 1 (*Data Processing Details*), as updated from time to time by the written agreement of the parties.

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- 2.6 To the extent that 2sms or any 2sms Personnel Processes any the customer Personal Data 2sms:
- 2.6.1 shall not do or permit anything to be done which might cause the customer in any way to be in breach of the Data Protection Law;
 - 2.6.2 unless required to do otherwise by Laws and Regulations shall (and shall ensure that 2sms Personnel shall) Process the customer Personal Data only for the purposes of complying with 2sms’s obligations under this Agreement, and only on and in accordance with the customer's documented instructions as set out in this Agreement (including Schedule 1 (*Data Processing Details*)) as updated from time to time by the written agreement of the parties (“**Processing Instructions**”);
 - 2.6.3 unless prohibited by Laws and Regulations on important grounds of public interest, shall notify the customer if Laws and Regulations requires it to Process the customer Personal Data other than in accordance with the Processing Instructions (such notification to be made before 2sms Processes the customer Personal Data); and
 - 2.6.4 shall immediately inform the customer in writing if, in 2sms’s reasonable opinion, a Processing Instruction infringes Data Protection Law and explain the reasons for its opinion.
- 2.7 2sms shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the Processing of the customer Personal Data by 2sms:
- 2.7.1 such that the Processing will meet the requirements of Data Protection Law and ensure the protection of the rights of Data Subjects;
 - 2.7.2 so as to ensure a level of security in respect of the customer Personal Data Processed by it appropriate to the risks that are presented by the Processing, in particular from the accidental or unlawful alteration, loss, destruction or unauthorised disclosure of or access or damage to, Customer Personal Data transmitted, stored or otherwise Processed;
 - 2.7.3 without prejudice to paragraph 2.19, insofar as is possible, to assist the customer in the fulfilment of the customer’s obligations to respond to Data Subject Requests relating to the customer Personal Data.
- 2.8 2sms must not (and shall procure that any Sub-Processor or subcontractor shall not) transfer or allow the onward transfer of, or otherwise directly or indirectly disclose, any the customer Personal Data to any country outside the European Economic Area (EEA) or to any international organisation (an “**International Recipient**”) without the prior written consent of the customer. If the customer consents to such a transfer, 2sms shall ensure that such transfer, onward transfer and disclosure:
- 2.8.1 is pursuant to a written contract including equivalent obligations on the Sub-Processor in respect of the customer Personal Data (in particular relating to security and confidentiality) as apply to 2sms under this Agreement;

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- 2.8.2 is effected by way of Appropriate Safeguards, and the form of these shall be subject to the customer's prior written approval (which shall not be unreasonably withheld or delayed);
 - 2.8.3 complies with the provisions of this Agreement and any requirements specified in Schedule 1 (*Data Processing Details*); and
 - 2.8.4 otherwise complies with Data Protection Law.
- 2.9 2sms shall:
- 2.9.1 restrict the disclosure of the customer Personal Data to such of its 2sms Personnel as is necessary to meet its obligations under this Agreement;
 - 2.9.2 ensure the reliability of 2sms Personnel who Process the customer Personal Data and ensure that such 2sms Personnel receive reasonable levels of training in Data Protection Law, in the care and handling of Personal Data, and on compliance with this Agreement; and
 - 2.9.3 ensure that 2sms Personnel who Process the customer Personal Data have entered into a binding contractual obligation with 2sms to keep the customer Personal Data confidential (except where disclosure is required by Laws and Regulations, in which case 2sms shall, where practicable and not prohibited by such Laws and Regulations, notify the customer of any such requirement before such disclosure).
- 2.10 2sms shall not appoint subcontractors as further Data Processors for the carrying out of Processing activities in respect of the customer Personal Data without obtaining the customer's prior written consent. If the customer gives its consent for such other Data Processor to act as a Sub-Processor, 2sms shall (prior to any Processing of the customer Personal Data by the Sub-Processor) appoint the Sub-Processor under a binding written contract, with enforceable data protection obligations on the same terms as those that apply to 2sms under this Agreement ("**Processor Contract**"), including in particular that the Sub-Processor:
- 2.10.1 provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law; and
 - 2.10.2 must obtain the customer's prior written consent and comply with the conditions referred to in this Agreement for engaging another Data Processor.
- 2.11 2sms shall:
- 2.11.1 promptly upon request by the customer provide the relevant details of any such Processor Contract to the customer;

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- 2.11.2 where that Sub-Processor fails to fulfil its data protection obligations in accordance with the Processor Contract, remain fully liable to the customer for the performance of that Sub-Processor’s obligations; and
 - 2.11.3 immediately cease using a Sub-Processor to process the customer Personal Data upon receiving written notice from the customer requesting that the Sub-Processor ceases processing the customer Personal Data for security reasons or concerns about the Sub-Processor’s ability to carry out the relevant processing in compliance with Data Protection Law or this Agreement.
- 2.12 2sms shall (and shall procure that its Sub-Processors shall) make available to the customer on request in a timely manner (and in any event within 3 Business Days of request) such information as the customer reasonably requires to demonstrate 2sms’s compliance with its obligations under Data Protection Law and this Agreement, including sufficiently detailed information about the technical and organisational measures to be implemented and maintained by 2sms.
- 2.13 2sms shall (and shall procure that its Sub-Processors shall), at no cost to the customer allow for and contribute to audits, including inspections, conducted by the customer or another auditor mandated by the customer for the purpose of demonstrating compliance by 2sms with its obligations under Data Protection Law and under this Agreement, including allowing reasonable access for the customer or such other auditor to:
- 2.13.1 the facilities, equipment, premises and sites on which the customer Personal Data are held, and to any other equipment or facilities used in the provision of the Services (in each case whether or not owned or controlled by 2sms); and
 - 2.13.2 to 2sms Personnel,
- provided that the customer shall, where practicable, give 2sms reasonable prior notice of such audit and/or inspection and conduct this during normal business hours.
- 2.14 If any audit or inspection reveals a material non-compliance by 2sms with its obligations under Data Protection Law or a breach by 2sms of its data protection obligations under this Agreement, 2sms shall promptly on request:
- 2.14.1 pay the costs of the customer or its mandated auditors, of the audit or inspection; and
 - 2.14.2 resolve (and shall procure that its Sub-Processors do so), at its own cost and expense, all data protection and security issues discovered by the customer and reported to 2sms that reveal a breach or potential breach by 2sms (or a Sub-Processor) of its obligations under this Agreement.
- 2.15 the customer may share any notification, details, records or information provided by or on behalf of 2sms under this Agreement with its Group, its professional advisors and/or any Supervisory Authority.

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2.16 If 2sms (or a Sub-Processor) is in breach of its obligations under this Agreement, the customer may suspend the transfer of the customer Personal Data to 2sms until the breach is remedied.

2.17 2sms shall:

2.17.1 at no cost to the customer, record and then refer to the customer promptly (and in any event within two (2) Business Days of receipt), any Data Subject Request or Complaint;

2.17.2 at its cost and expense, provide such information and cooperation and other assistance as the customer requests in relation to a Data Subject Request or Complaint within the timescales reasonably required by the customer; and

2.17.3 not respond to any Data Subject Request or Complaint without the customer's prior written approval

2.18 In the event of any Personal Data Breach (actual or suspected) involving 2sms or a Sub-Processor, 2sms shall (at no cost to the customer):

2.18.1 notify the customer of the Personal Data Breach without undue delay (but in no event later than 12 hours after becoming aware of or first suspecting the Personal Data Breach);

2.18.2 provide the customer without undue delay (and wherever possible, no later than 24 hours after becoming aware of or first suspecting the Personal Data Breach) with such details as the customer may require in relation to:

- (a) the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Personal Data records concerned;
- (b) any investigations into such Personal Data Breach;
- (c) the likely consequences of the Personal Data Breach; and
- (d) any measures taken, or that 2sms recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects and prevent the re-occurrence of the Personal Data Breach or a similar breach,

provided that, (without prejudice to the above obligations) if 2sms cannot provide all these details within such timeframes, it shall before the end of this timeframe, provide the customer with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased), and give the customer regular updates on these matters.



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- 2.19 2sms shall, at its cost and expense, provide such information, cooperation and other assistance as the customer requests to ensure the customer's compliance with its obligations under Data Protection Law, including with respect to:
- 2.19.1 security of Processing;
 - 2.19.2 any remedial action and notifications to be taken in response to any Personal Data Breach or Complaint, including (subject in each case to the customer's prior written authorisation) regarding any notification of the Personal Data Breach to Supervisory Authorities and/or communication to affected Data Subjects;
 - 2.19.3 DPIAs, by promptly providing such information and cooperation as the customer may reasonably require for the purpose of assisting the customer in carrying out a DPIA, and periodic reviews to assess if the processing of the customer Personal Data is performed in compliance with the outcomes of the DPIA;
 - 2.19.4 prior consultation with a Supervisory Authority regarding high risk processing, by promptly and in consultation with the customer:
 - (a) providing such information and cooperation as the customer or a Supervisory Authority requests for the purpose of assisting in any consultation by the customer with the Supervisory Authority; and
 - (b) complying with any advice by a Supervisory Authority concerning 2sms's Processing activities related to this Agreement.
- 2.20 On expiry or termination of this Agreement for any reason 2sms shall immediately cease Processing the customer Personal Data.
- 2.21 At the customer's option or direction, 2sms shall either arrange for the prompt and secure return (in such form as the customer reasonably requires) or deletion of all the customer Personal Data after the earlier of the end of the provision of the relevant Services related to Processing or once Processing by 2sms of any the customer Personal Data is no longer required for the purpose of 2sms's performance of its relevant obligations under this agreement. 2sms shall also securely delete all copies of the customer Personal Data in its possession or control (unless storage of any such data is required by Laws and Regulations in which case 2sms shall inform the customer of any such requirement) and, where requested by the customer, certify that such destruction or return has taken place.

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SCHEDULE 1
DATA PROCESSING DETAILS

1. GENERAL – SUBJECT-MATTER OF THE PROCESSING:

the context for the Processing of the customer Personal Data is 2sms’s provision of the Services under the Original Agreement, which shall involve performance on behalf of the customer of the tasks and activities set out in the Original Agreement for the purpose of providing those Services.

2. NATURE AND PURPOSE OF THE PROCESSING:

the nature and purposes of the Personal Data Processing carried out by 2sms on behalf of the customer shall be as set out in the Original Agreement, which in particular shall be for the customer and / or any the customer Group Company to receive the Services under the Original Agreement, and not for any new purpose other than those previously approved.

3. DURATION OF PROCESSING:

Processing of the customer Personal Data by 2sms shall be for the term of the Original Agreement for the purpose of and only to the extent required to provide the Services set out in the Original Agreement, provided that Personal Data shall not be Processed for longer than is necessary for the purpose for which it was collected or is being Processed (except where a statutory exception applies).

4. PERSONAL DATA IN SCOPE:

2sms may Process any or all of the following types / categories of Personal Data, and any additional types of the customer Personal Data, as set out in the Original Agreement and as relevant in the context of the services (but no more than was processed previously unless otherwise agreed).

Personal Data, including:

- personal details
- family details
- lifestyle and social circumstances
- financial details
- employment and education details
- goods or services
- visual images, personal appearance and behaviour



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Sensitive Personal Data / other categories of Personal Data, including information relating to:

- physical or mental health data, genetic data or biometric data
- criminal offences and alleged offences and proceedings
- racial or ethnic origin
- religious or philosophical beliefs
- trade union membership
- sex life or sexual orientation

5. **PERSONS AFFECTED (DATA SUBJECTS):**

the group of data subjects affected by the Processing of their Personal Data includes any or all of the following individuals:

- the customer's customers and clients
- the customer's advisers, consultants and other professional experts
- the customer's employees and staff
- the customer's suppliers and services providers
- complainants and enquirers who contact the customer Group Companies, and / or
- individuals captured by CCTV images, including staff, customers and clients, offenders and suspected offenders, members of the public and those inside, entering or in the immediate vicinity of the area under surveillance.

6. **SPECIFIC RESTRICTIONS:**

Without prejudice to any other restrictions imposed on 2sms by the customer, 2sms shall comply with any specific additional restrictions imposed on it by the Original Agreement that affect the Processing of the customer Personal Data, including, for example, any requirements as to the location where Processing must occur or the form in which the customer Personal Data is to be used (e.g. anonymised / pseudonymised).



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