

## Data Processing Agreement

between

### Data Controller and Data Processor

#### PARTIES

Customer and Data Controller: <b>ABC LIMITED</b>	Jurisdiction of incorporation	England and Wales
	Number	XXXXXXXX
	Registered address	XXXXXXXX
	Physical address for the service of legal notices	XXXXXXXX
	Email address for the service of notices	XXXXXXXX
Supplier and Data Processor: <b>VACANCY FILLER LIMITED</b>	Jurisdiction of incorporation	England and Wales
	Registration number	06753483
	Registered Address	21 Jubilee Drive, Loughborough, LE11 5XS
	Email address for the service of notices	<a href="mailto:dpo@vacancyfiller.com">dpo@vacancyfiller.com</a>

#### TERM

Term:	For duration of the contract
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## TERMS AND CONDITIONS

### BACKGROUND

- (A) The Parties agree to share Personal Data with each other on the terms set out in this Agreement.
- (B) This is a free-standing Agreement that does not incorporate any commercial business terms that may be established by the Parties under separate commercial arrangements from time to time.

### IT IS AGREED as follows:

#### 1. Consideration

The Parties agree to comply with the terms of this Agreement in consideration of the payment by each Party to the other of the sum of £1, the receipt and sufficiency of which is acknowledged by each Party.

#### 2. Definitions

'Agreement' means this Data Processing Agreement, including the Coversheet, the Terms and Conditions and all Appendices.

'Commencement Date' has the meaning given to it in the Coversheet.

'Data Controller', 'Data Processor', 'Data Subject', 'Personal Data', shall bear the respective meanings given to them in Data Protection Legislation. For the purpose of this DPA, **VF is the Data Processor** and the **Customer is the Data Controller**.

'Data Protection Legislation' (i) the UK Data Protection Act 2018 as revised and superseded from time to time, (ii) any other laws and regulations relating to the processing of personal data and privacy which apply to a Party and, if applicable, (iii) the guidance and codes of practice issued by the relevant data protection or supervisory authority.

'ICO' means the UK supervisory authority, the Information Commissioners Office.

'Personal Data Breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

'Subject Access Request' means the exercise by a data subject of his or her rights under the Data Protection Act 2018.

'Sub-Processor' means a sub-processor appointed by the Data Processor to process Personal Data.

'Sub-Processing Agreement' means an agreement between the Data Processor and a Sub-Processor, governing the processing of Personal Data carried out by the Sub-Processor, as described in clause 9 of this DPA.

'Term' has the meaning given in the Coversheet.

### 3. **Scope and Application of this Agreement**

- 3.1 The provisions of this DPA shall apply to the processing of the Personal Data described in Appendix 1 to this DPA, carried out for the benefit of the Data Controller by the Data Processor in connection with the provision of the Services, and to all Personal Data held by the Data Processor in relation to all such processing whether such Personal Data is held at the date of this DPA or received afterwards.
- 3.2 The provisions of this DPA shall continue in full force and effect for so long as the Data Processor is processing Personal Data on behalf of the Data Controller and thereafter to the extent applicable in accordance with Data Protection Legislation.

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

#### 5. **The Data Processor will only process the Personal Data received from the Data Controller: (a) for the purposes of providing the Services and not for any other purpose unless otherwise agreed by VF and the Customer; and (b) to the extent and in such a manner as is necessary for those purposes. International Data Transfers**

- 4.1 The Data Processor will ensure that no Personal Data is transferred or accessed outside of either:
- 4.1.1 the European Economic Area; or
  - 4.1.2 any other territory in which restrictions are imposed on the transfer of Personal Data across borders under Data Protection Laws,
  - 4.1.3 without the prior written consent of Company and subject to clause 4.2.
- 4.2 Where such consent is given, Processor will ensure that Contractual Clauses or other applicable transfer mechanism, such as EU-US Privacy Shield Framework in relation to EU-US transfers, is in place to ensure adequate level of data protection.

### 5 **Data Requests**

- 5.1.1 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 5.1.2 The Data Processor shall notify and provide all reasonable assistance to the Data Controller in complying with its obligations as to Data Subject Access Requests and Personal Data Breaches.
- 5.1.3 The Data Processor shall notify the Data Controller within 24 hours of a Personal Data Breach or near miss.

## 6 Data Subject Access, Complaints, and Breaches

6.1 6.1 The Data Processor shall notify the Data Controller without undue delay if it receives: (a) a Data Subject Access Request; or (b) any other complaint or request relating to the processing of the Personal Data. The Parties shall each comply with its obligation to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) data subjects under Article 33 of the GDPR and shall each inform the other Party of any Personal Data Breach irrespective of whether there is a requirement to notify any Supervisory Authority or data subject(s).

6.2 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

## 7 Audits and DPIA

7.1 The Data Processor will make available to the Data Controller all information necessary and will allow for and contribute to audits, including inspections, conducted by the Data Controller (and/ or its duly appointed representatives as agreed by the Data Processor, including its appointed auditors), no more than once in any twelve (12) month period (other than where any such audit reveals a material non-compliance with this clause 13, in which case additional audits maybe undertaken until the Data Processor has no material non-compliance with this clause 13), within twenty (20) Working Days of such a request from the Data Controller, and shall provide reasonable information, assistance and co-operation to the Data Controller, including access to relevant Data Processor personnel and/or, on the request of the Data Controller, provide the Data Controller with such evidence as may be reasonably requested in order to ascertain compliance with the terms of this clause 13.

7.2 The Data Processor completes any data protection impact assessment as the Customer may reasonably require from time to time pursuant to the Data Protection Legislation.

## 8 Appointment of a Data Protection Officer

8.1.1 The Data Controller has appointed a Data Protection Officer in accordance with Article 37 of the GDPR, whose details are as follows:  
xxxxxxxxxx

8.1.2 The Data Processor has appointed a Data Protection Officer in accordance with Article 37 of the GDPR, whose details are as follows:  
Jon Brookes [dpo@vacancyfiller.com](mailto:dpo@vacancyfiller.com)

## 9 Appointment of Sub-Processors

9.1 The Data Processor shall be permitted to appoint Sub-Processors to the extent necessary or appropriate to perform the Agreement.

9.2 The Data Processor shall remain liable for the processing of Customer Personal Data by its Sub-Processors and imposes substantially the same data protection

obligations as set out in this Agreement on such sub-processors. The Data Controller reserves the right to withdraw their consent to the Data Processor use of sub-processors at any time during the term of this Agreement.

9.3 The Data Processor must provide the Data Controller with at least 30 days' written notice of any intended changes concerning the addition or replacement of Sub-Processors, thereby giving the Data Controller the opportunity to object to such changes.

## 10 Deletion and/or Disposal of Personal Data

10.1.1 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller within a reasonable time after the earlier of the following: (a) the end of the provision of the Services in accordance with the provisions of clause 15.3 (b) of the Agreement; or (b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under the Agreement.

10.1.2 Following the deletion, disposal, or return of the Personal Data under clause 10.1.1, the Data 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 Data Processor shall inform the Data Controller of such requirement(s) in writing.

## 11 Technical and Organisational Measures

11.1.1 Each party undertakes to put in place and keep appropriate technical and organisational measures to ensure compliance with the legislation.

## 12. Indemnity

12.1 Each Party undertakes to indemnify the other from any cost, charge, damages, expense or loss (collectively "**Losses**") (including non-contractual Losses) which they cause each other as a direct result of their breach of any of the provisions of this Agreement, except to the extent that any such liability is excluded under clause 14.214.2.

12.2 Indemnification hereunder is contingent upon:

12.2.1 the Party to be indemnified (the **indemnified Party**) promptly notifying the other Party (the **indemnifying Party**) of a claim,

12.2.2 the indemnifying Party having sole control of the defence and settlement of any such claim, and

12.2.3 the indemnified Party providing reasonable co-operation and assistance to the indemnifying Party in the defence of such claim, at the indemnifying Party's cost.

## 13 Allocation of cost

Each Party shall perform its obligations under this Agreement at its own cost.

## **14 Limitation of liability**

14.1 Neither Party excludes or limits liability to the other Party for:

14.1.1 fraud or fraudulent misrepresentation;

14.1.2 death or personal injury caused by negligence; or

14.1.3 any matter for which it would be unlawful for the Parties to exclude liability.

14.2 Subject to clause 14.1, neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

14.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue or turnover;

14.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

14.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.

14.3 shall not prevent claims, for:

14.3.1 direct financial loss that are not excluded under any of the categories set out in clause 14.2.1; or

14.3.2 tangible property or physical damage.

## **15 Third party rights**

15.1 Except as expressly in this Agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

15.2 No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## **16 Direct marketing**

16.1 If the Data Processor processes the Shared Personal Data for the purposes of direct marketing:

16.1.1 it shall not use the data for direct marketing unless it has received confirmation from the Data Controller that it has obtained the appropriate level of consent has been obtained from the relevant data subjects to allow the Personal Data to be used for the purposes of direct marketing in compliance with the Data Protection Legislation and any other applicable legislation; and

16.1.2 each Party shall implement effective procedures to allow data subjects to "opt-out" from having their Personal Data used for such direct marketing purposes.

## 17 Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## 18 Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 19 Severance

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 20 Changes to the applicable law

If during the Term, the Data Protection Legislation changes in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties shall negotiate in good faith to review and amend the Agreement in the light of the new legislation.

## 21 No partnership or agency

21.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

21.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## 22 Entire agreement

22.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each Party acknowledges that in entering into this Agreement it does not rely on and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

22.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

### **23 Further assurance**

Each Party shall, and shall use all reasonable endeavours to procure that any necessary third Party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

### **24 Force majeure**

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

### **25 Rights and remedies**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **26 Notices**

26.1 Any notice given under this Agreement shall be in writing, in English and signed by or on behalf of the Party giving it and shall be served by delivering it by registered mail, courier, personally, or by sending it by email to the email address notified by the relevant Party to the other Party.

26.2 All notices and other communications to either Party shall be sent to the persons at the addresses specified in the Coversheet.

26.3 Notices shall be deemed to have been received as follows:

26.3.1 If delivered by registered mail to a Party's address specified in the Coversheet, on the second Business Day after dispatch.

26.3.2 If delivered by hand or by courier to a Party's address specified in the Coversheet, on the day of delivery if received before 16:30 on a Business Day, otherwise on the next Business Day.

26.3.3 If sent by email a Party's email address specified in the Coversheet, at the time of transmission, if received before 16:30 on a Business Day, otherwise on the next Business Day.



26.4 In all cases where a notice is delivered by registered mail, by hand or by courier, the delivering Party shall also send the recipient a copy of the notice by email.

## 27 Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and each Party irrevocably agrees that the courts of London shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Agreement or its subject matter or formation.

SIGNED for and on behalf of the Data Controller by:

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Authorised Signature

Date: \_\_\_\_\_

SIGNED for and on behalf of Vacancy Filler Limited by:

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Authorised Signature

Date: \_\_\_\_\_

## Appendix 1

### Personal Data and processing activities

<b>Subject matter of processing</b>	<i>Individuals of the general public applying for roles at the Customer</i>
<b>Duration of processing</b>	<i>The recruitment process will be for the duration of the term of the Contract</i>
<b>Nature of processing</b>	<i>Personally identifiable information for example, name, address, emails, etc education and work history will be stored within the Supplier's Applicant Tracking System for the purposes of identifying and shortlisting potential candidates for the purposes of employment by the Customer. The data will held within the EEA for a duration determined by the Customer, typically 12 months. Further details of the storage details and safeguards are described in the Supplier's Service Definition Document V6.3.1</i>
<b>Purpose of processing</b>	<i>For the sole purposes of advertising, recruiting and onboarding both new and replacement staff for the Customer</i>
<b>Type of personal data</b>	<i>Name, address, education and work history are likely to be stored as a minimum and potentially NI number, bank details, next of kin information as part of an applicant onboarding process. This the type of data captured will be determined by the Customer</i>
<b>Categories of Data Subjects</b>	<i>Categories of data will include members of the public applying for staffing roles within the customer and is typically, but not exclusively, recruitment for permanent positions but could include volunteers or temporary workers.</i>