

The First Mailing Ltd

Data Controller & Data Processor Agreement

Under GDPR every time a company is used for the processing of data it requires a contract between the two parties to be in place which identifies their responsibilities duties to each other and the data subject and that there is a record of the transaction.

THIS AGREEMENT is made by and between the parties listed in the Schedule on the date shown in the Schedule.

IT IS HEREBY AGREED AS FOLLOWS.

1. Purpose of Contract

Data is provided to allow the Receiving Party to complete the task of:

- (i) The duration of this processing is likely to be within a 10 working day period from the receipt of data.
- (ii) The type of personal data provided are the names and addresses in an electronic or hard copy format.
- (iii) The data must remain GDPR compliant and in a format which is fit for purpose.

2. Undertakings

Subject to clause 5 below and in consideration of the disclosure of Confidential Information by the Disclosing Party, the Receiving Party agrees:-

A. Processor

- (i) to keep confidential and secure and not disclose to any third party, copy, reproduce, adapt, divulge, process, alter, publish or circulate any part of or the whole of any Confidential Information except with the prior written consent of the Disclosing Party; and
- (ii) not to combine any part of or the whole of the Confidential Information with any other information; and
- (iii) not to use Confidential Information disclosed to it under this Agreement for any purpose other than the Purpose; and
- (iv) to restrict access to the Confidential Information disclosed to it under this Agreement to those of its employees and any third party officers who need to know the same strictly for the Purpose; and
- (v) to ensure the safe transition of any data file to a third party for use of said data in order to meet the requirements of the agreed contract. Any contracted sub processor will be checked to ensure they are GDPR compliant.
- (vi) to ensure that the Confidential Information in its possession is stored securely and any electronic files are password protected and that physical access to it is controlled and monitored.

- (vii) This agreement supersedes any other prior written terms and conditions relating to the processing of data.
- (viii) The Receiving Party must act only on the written consent of the Data Controller/Disclosing Party
- (ix) The Receiving Party must insure people processing the data are subject to a duty of confidence
- (x) The Receiving Party must be available to assist in dealing with article 28 obligations and make the Data Controller/Disclosing Party aware of anything which might infringe on GDPR compliance.
- (xi) The receiving party will in accordance with its data security policy report any data breach within recommended timescales.
- (xii) Upon request will provide a record of the data processing transactions between parties.

B. Controller

- (i) The Disclosing Party will provide a clear written instruction to the Receiving Party that it has permission to use the data for the intended purpose and which specific purpose that is;
- (ii) Data sortation, Printing of records, Record amendment etc.,
- (iii) The Disclosing Party shall agree it has provided adequate security of data and made review of the content to ensure GDPR compliance prior to the supply of data.
- (iv) The Disclosing Party shall ensure the following GDPR conditions have been met prior to the transfer/sharing of the data with the Receiving Party.
- (v) The data has been supplied to meet the obligations of the Disclosing Party set by the ICO. The Disclosing Party have proven to be compliant have assessed and conform to GDPR ensuring that:
 - a. Consent has been gained from each data subject and their data can be used for the purpose of the individual contract to be completed in the format being asked.
 - b. It must be clearly stated in writing what the Processor activity on each project is.
 - c. There is a record of the date of consent available on request
 - d. The Data has been cleansed and updated to include those wishing to be 'forgotten'
 - e. The Data subject is given simple steps to be able to opt out of future communications.
 - f. Any previous opt outs have been updated within the data file.
- (vi) The Disclosing Party will only provide third party data to the Receiving Party after it has been verified and knowingly meets all the GDPR guidelines.
- (vii) The Disclosing Party when acting as a Data Processor, for the purpose of transferring data only, must disclose the full details of the actual Data Controller to the Receiving Party and vice versa. They must ensure that their Data Controller is also GDPR compliant.
- (viii) The data file provided should be clearly marked and a confirmation of the number of live records should be advised. The columns of data to be used for the contracted work should be provided any unnecessary columns should be removed or advised not to be used.

3. Security

To keep in an appropriate environment to ensure the security of data whilst being processed and that it is backed up to avoid theft, loss, damage or unauthorised access whilst in the care of the Receiving Party.

- (i) The Receiving Party must work with the Data Controller/Disclosing Party in meeting its obligations in relation to the security of the processing of the data by the employees or company agents.
- (ii) The Receiving Party must also advise notification of any breaches within 48 hours to the Disclosing Party.
- (iii) Data provided to the Receiving Party should not be retained for any period after the completion of the contract. The Data should be securely destroyed with a record of its destruction provided when asked for. A record of the processing activity must be maintained in accordance with your GDPR obligations.

4. Exclusions

The protections and restrictions in this Agreement as to the use and disclosure of Confidential Information shall not apply to any information which the Receiving Party can show:-

- (a) is, at the time of disclosure hereunder, already published or otherwise publicly available; or
- (b) is, after disclosure hereunder published or becomes available to the public other than by breach of this Agreement; or
- (c) is rightfully in the Receiving Party's possession with rights to use and disclose, prior to receipt from the Disclosing Party; or
- (d) is rightfully disclosed to the Receiving Party by a third party with rights to use and disclose; or
- (e) is independently developed by or for the Receiving Party without reference or access to Confidential Information disclosed hereunder.

The Receiving Party shall not be in breach of Clause 2 if it can demonstrate that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory or judicial obligation.

5. Indemnity and Limitations of Liabilities

Both parties maybe subject to investigative and corrective powers of a supervisory authority such as the ICO. If either party fail to meet their obligations under GDPR or any other data protection law then they may be liable to administration fines.

The Disclosing Party shall indemnify and keep indemnified The First Mailing Company Ltd from and against all costs, claims, losses, damages, expenses and other liabilities which arise out of or in connection with unauthorised disclosure, breach, updates, modifications or use of the confidential information or a part of it by the Disclosing Party and by any person to whom the confidential information has been disclosed by the Disclosing Party.

6. No Right of Use

Nothing contained in this Agreement shall be construed as conferring upon the Receiving Party any right of use in or title to Confidential Information received by it from the Disclosing Party, other than as expressly provided herein.

7. No Obligation to Disclose, No Representations

Nothing in this Agreement shall be construed as

- (i) creating an obligation on any of the Parties to disclose particular information; or
- (ii) creating an obligation on the parties to negotiate; or
- (iii) as a representation as to the accuracy, completeness, quality or reliability of the information.

8. Individuals right for complaints

Should a subject access request be asked for, in direct relation to the contract undertaken. The Receiving Party will provide details to the Disclosing Party. Similarly if a complaint regarding the use of data for the contract is received they should be directed towards the Disclosing Party to deal with.

9. Term & Termination

- (i) The agreement shall be terminated by either party in writing, although the current contract of works must be completed in full prior to this, either party may terminate this Agreement upon giving one month's prior written notice to the other.
- (ii) The Receiving Party shall, on the request of the Disclosing Party, return to the Disclosing Party (whose property they shall remain) all documents and things containing Confidential Information, together with all relevant samples and models which it has in its possession pursuant to this Agreement.
- (iii) The Receiving Party will provide a destruction of data certificate upon request.

10. Miscellaneous

10.1.1

- (a) The Disclosing Party and the Receiving Party will work together to ensure each party is undertaking its' obligations under GDPR. Both parties will still be required to meet their individual company obligations under its regulation.
- (b) No Party shall assign its rights and/or obligations pursuant to this Agreement without the prior written consent of the other Party;
- (c) In the event that there is a change of control in relation to one party, the other party may at its discretion terminate this Agreement on written notice such termination to take effect on the date specified in the notice;

- (d) For the purposes of this clause 11, ‘control’ in relation to a party means:
- (i) holding more than one third of that party’s voting rights;
 - (ii) having the right to remove or appoint a majority of that party’s voting rights;
 - (iii) controlling alone or pursuant to an agreement with other members a majority of the voting rights in that party;
 - (iv) being a person who the directors of that party (or of another company who has control of that party) are accustomed to act in accordance with that persons directions or instructions.
- 10.1.2 No failure or delay by either party in exercising any rights, power or legal remedy available to it hereunder shall operate as a waiver thereof.
- 10.1.3 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.
- 10.1.4 This Agreement shall be construed and governed in all respects in accordance with the laws of England and the Parties hereby submit to the jurisdiction of the English courts.
- 10.1.5 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.1.6 The signing of this Agreement shall not be construed as the forming of an agency, joint venture, employment or partnership.

SCHEDULE

1. Parties

1.1 **The First Mailing Co Ltd, a company incorporated under the laws of England and Wales (no.3618405) of Glebe Road, Huntingdon, Cambridgeshire, PE29 7HH.**

1.2 **Full company name: Company Registration Number: Address:**

Signed for and on behalf

The First Mailing Co Ltd

By its duly authorised representative



(Signature)

Stuart Searle

(Name)

Managing Director

(Title/position)

(Date)

Signed for and on behalf

COMPANY NAME

By its duly authorised representative

(Signature)

(Name)

(Title/position)

(Date)