



Broadbean Technology Limited - Data Processing Agreement (25th May 2018)

This agreement and its associated schedules shall come into force with effect from 25th May 2018 and shall from that date replace section 7 of the Broadbean Terms and Conditions for Recruitment Agencies 28th April 2010. For the avoidance of doubt section 7 shall remain in force until 25th May 2018.

- (1) This section on data processing (the “Data Processing Agreement”) specifies the data protection obligations of the Parties which arise in connection with the provision of the Services under this Order. This Data Processing Agreement applies to all activities performed in connection with this Order in which Processor and, if and insofar permissible, a third party acting on behalf of Processor may come into contact with personal data belonging to the Controller.
- (2) The relevant types of personal data, the individuals these personal data refer to and the types of processing of personal data being undertaken are dependent on the products and services purchased by the Customer under this Order and are set out at:

<https://www.broadbean.com/media/14838/schedule-of-data-processing-agency.pdf>
- (3) The term of this Data Processing Agreement is equal to the term of the Order. Clauses 32 and 33 of this document set out the position of the parties at the end of the term.
- (4) **For the purposes of this Data Processing Agreement, both parties hereby acknowledge and confirm that the Customer is the Data Controller, (hereinafter “Controller”) and Broadbean is the Data Processor, (hereinafter “Processor”).**

Definitions

- (5) “Data Protection Legislation” means the EU General Data Protection Regulation (effective 25th May 2018) and all other applicable laws and regulations relating to the processing of personal data and privacy.
- (6) “Personal Data” means any information relating to an identified or identifiable natural individual as defined by applicable Data Protection Legislation.
- (7) “Processing” means processing of Personal Data on behalf of Controller as defined by applicable Data Protection Legislation.
- (8) “Instruction” means a written instruction, issued by Controller to Processor, and directing Processor to perform a specific action with regard to Personal Data. These instructions may from time to time or case to case thereafter, be amended, amplified or replaced by Controller in separate written Instructions.

Scope and responsibility

- (9) Both parties shall assist each other in complying with its applicable obligations under the Data Protection Legislation. Each Party shall at all times comply with the Data Privacy Applicable laws and



Regulatory Requirements with regards to the provision of the Services under this Order and shall under no circumstances make the other Party in breach of these laws, rules or regulations.

- (10) Processor shall Process Personal Data on behalf of Controller and always in accordance with the Data Protection Legislation and codes of practice applying to the Processor.

Obligations of Processor

- (11) Processor shall process Personal Data only within the scope of Controller's Instructions. Processors interpretation of those instructions in so far as it applies to the products and services specified on this Order form can be found at:

<https://www.broadbean.com/media/14838/schedule-of-data-processing-agency.pdf>

Controller hereby acknowledges that the processing specified in the link above comprise its instructions to the Processor. If Processor is required to process the Personal Data for any other purpose by applicable law, Processor will inform the Controller of this legal requirement, to the extent permitted to do so by the applicable law. Processor shall not process Personal Data for its own purposes and shall keep Controller' Personal Data logically separate to data processed on behalf of any third party.

- (12) Processor shall notify Controller immediately if, in Processor's reasonable opinion, an Instruction breaches the Data Protection Legislation.

- (13) Processor shall take appropriate technical and organizational measures to adequately protect Controller's Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure taking into account the nature of the Processing. The processor has documented a summary of those measures adopted in the provision of the services which can be seen at:

<https://www.broadbean.com/media/14835/schedule-of-data-protection-measures.pdf>

The Controller acknowledges that the technical and organizational measures set out in the above link are subject to technical progress and development. Processor may implement, without advance notification to The Controller, adequate alternative measures providing these are no less adequate than the level of security provided by the specified measures accepted by Controller at the time of signing this Order Form. Any adequate alternative measures shall be updated at the above link from the time they are implemented.

- (14) If Processor becomes aware of known or suspected breaches of security leading to or which may have led to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data that Processor has processed ("Personal Data Breach"), Processor shall provide Controller with a description of the Personal Data Breach, the types of data that was the subject of the Personal Data Breach and the identity of each affected person as soon as such information can be collected or otherwise becomes available, as well as any other information Controller may reasonably request relating to the Personal Data Breach. In the event of a Personal Data Breach, Processor will without undue delay (i) take action immediately to investigate the Personal Data Breach and to identify, prevent recurrence and make reasonable efforts to mitigate the effects of any such Personal Data Breach and (ii) to carry out any recovery or other action necessary to remedy the Personal Data Breach. Processor shall not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach in respect of Controller's Personal Data without Controller's prior written approval.



- (15) Controller agrees that an unsuccessful security incident will not be subject to disclosure as per clause 14. An unsuccessful security incident is one that does not lead to any unauthorised access to Personal Data of the Controller or to any of the hardware or facilities of the Processor used for storing Personal Data of the Controller. This includes but is not limited to port scans, denial of service attacks, pings and other such broadcast attacks on firewalls and unsuccessful log-on attempts.
- (16) The Processor shall ensure that all personnel who have access to Personal Data belonging to Controller under the terms of this Data Processing Agreement maintain confidentiality, and that such obligations are contractually imposed. Processor shall ensure that access to Controller's Personal Data is limited to those persons who need access in order to meet the Processor's obligations under this Data Processing Agreement and that such access is only granted to such parts of the Controller's Personal Data as is strictly necessary in relation to that person's particular duties. Processor shall ensure that all personnel who have access to the Personal Data have undertaken training appropriate to their role in relation to the handling of Personal Data and applicable Data Protection Legislation.
- (17) Processor shall maintain descriptions of all Personal Data Processing activities carried out on behalf of Controller containing the information prescribed in applicable Data Protection Legislation (including but not limited to the type of Personal Data Processed and the purposes for which they are processed). The Processor has made these documents available at:
- <https://www.broadbean.com/media/14838/schedule-of-data-processing-agency.pdf>
- (18) Processor will immediately notify Controller of any monitoring, auditing or control activities and measures undertaken by a supervisory authority where Processor is permitted to do so by such supervisory authority.
- (19) The Personal Data will be processed and used by Processor exclusively within the territory of a member state of the European Union or the European Economic Area. Any transfer of Personal Data to a third country outside of this area requires the prior written consent of Controller.
- (20) Processor acknowledges and agrees that all rights, title and interest in Controller's Personal Data (including all intellectual property rights subsisting therein) shall vest solely in Controller.
- (21) Processor shall, upon request, permit a supervisory authority to access its premises, computer and other information systems, records, documents and records (where permitted by applicable Data Protection Legislation) to enable the supervisory authority to satisfy themselves that Processor is complying with its obligations under this Data Processing Agreement and applicable Data Protection Legislation.
- (22) During the term of the Order the Controller is authorised to audit the technical and organisational measures taken by the processor (hereinafter "Audit") in order to ensure Processor complies with its obligations under this Data Processing Agreement. Where Controller intends to conduct such an audit of the Processor it shall provide the latter with prior written notice a minimum of ten (10) working days before the beginning of the audit.

All audits shall be defined by the Controller, who shall be responsible for all costs. Audits may be carried out by (i) Controllers suitably qualified employees, (ii) External auditors of the Controller, (iii) regulators of the Controller, (iv) independent consultants appointed by the Controller and /or (v) voluntary disclosures from the Processor.

Should the Controller wish the audit to be performed by an external auditor or an independent consultant, the Controller must inform the Processor to allow it to raise the potential situation of



conflicts of interest with the proposed external auditor or independent Consultant. The absence of an issue raised by Processor within 5 days following the date of notice will amount to a tacit approval.

During the audit, Processor will provide with no undue delay information, reasonable assistance and access to its premises as may be necessary in order that those conducting the audit may fully and promptly carry out each audit.

The controller acknowledges that due to security constraints physical access to the subcontracted hosting facilities as set out at:

<https://www.broadbean.com/media/14833/schedule-of-subcontractors.pdf>

may not be possible and this will not be considered a breach of the Controllers right to audit.

Obligations of Controller

- (23) Controller and Processor shall each be responsible for complying with their applicable obligations under the Data Protection Legislation.
- (24) Controller is responsible for securing data subject's rights. Processor shall assist Controller in securing such rights.
- (25) Any additional reasonable costs arising in connection with the return or deletion of Personal Data after the termination or expiration of this Order shall be borne by Controller.
- (26) Controller is solely responsible for securing a legitimate legal basis for processing of the Personal Data in respect of the Personal Data it collects and requires the Processor to Process. Controller hereby indemnifies Processor against all claims, and other applicable actions brought by any Data Subject/s where Controller has failed to have a legitimate legal basis for the processing of the Personal Data that it requires Processor to carry out.

Enquiries by Data Subjects to Controller

- (27) Where Controller is obliged, under the Data Protection Legislation, to provide information to an individual or a government, regulatory or supervisory authority about the Processing of his or her Personal Data, Processor shall assist Controller in making this information available promptly and no later than 10 working days from receipt of such written request from the Controller.
- (28) If a data subject should apply directly to Processor to request access to, or the rectification, erasure, restriction or portability of, his personal data, or to object to the Processing of his Personal Data, Processor will forward this request to Controller without delay and no later than 5 working days after receipt. Processor will only correct, delete or block the Personal Data Processed on behalf of Controller when instructed to do so in writing by the Controller.

Subcontractors

- (29) A list of subcontractors used by the Processor in the Processing of Controller's data is given at

<https://www.broadbean.com/media/14833/schedule-of-subcontractors.pdf>



In signing the order form Controller hereby gives consent to Processor to use these subcontractors. Having regard to clauses 30 and 31 below Controller acknowledges that the list may be updated from time to time on the condition that prior notice is given by the processor to the Controller account administrator, and allowing the Controller reasonable opportunity to object to the changes. If no such objection is received from the Controller within seven working days this will be equivalent to Controller's written consent to the changes.

(30) Where Processor engages subcontractors with consent of Controller, Processor shall contractually require such subcontractors to comply with obligations that are substantially similar to those set forth herein, including in particular, but not limited to, the contractual requirements for confidentiality, data protection and data security. Processor shall restrict subcontractor's access to Personal Data of the Controller to the extent necessary for them to provide their services.

(31) For the avoidance of doubt, where a subcontractor fails to fulfil its obligations under any sub-processing agreement, Processor will remain fully liable to Controller for the fulfilment of its obligations under this Data Processing Agreement.

Deletion and/or return of data and data retention

(32) Within 15 calendar days of the end date shown on the Order form or upon written request from the Controller if earlier Processor will delete the Personal Data of the Controller in compliance with the Data Protection Legislation. A deletion log will be created and made available on request.

(33) Whilst the controller maintains a contractual relationship with the Processor and utilises the products and / or services of the Processor the Processor will retain the data of the Controller as set out below unless the Controller makes a written request for an alternative data retention period.

Product	Default Retention Period	Maximum retention period available	Length of data retention period post contract end (Grace Period)	Action upon expiry of Grace Period	Data Export
Adcourier	N/A	N/A	15 days	Account deleted*	N/A
Aplitrak	6 months from date application is received	1 year	15 days	Account deleted*	Yes to client specified FTP site
Search - Internal	2 years from date application is received	5 years	15 days	Account deleted*	Yes to client specified FTP site
Search - External	6 months	1 year	15 days	Account deleted*	Yes to client specified FTP site

Processor will not retain data of the Controller for longer than the maximum period shown in any event.

Both Controller and Processor agree that Processor will retain Controller data for a maximum of 15 days following the end of a contract period (the Grace Period) where no renewal contract has been agreed between the parties prior to that end date. On the expiry of the Grace Period Processor will delete all Controller data.



*Where Controller use multiple products of Processor and the contract periods relating to each are not co-terminus Processor will only delete the Controller account on the expiry of the latest end date in those contracts, in the intervening period Processor will suspend Controller access to the products where contracts have expired.

Duties to Inform, Mandatory Written Form

- (34) In the event that Processor (i) is required by law, court order, warrant, subpoena, or other legal judicial process to disclose any of Controller's Personal Data to any person other than Controller or (ii) receives any inquiry, communication, request or complaint from any governmental, regulatory or supervisory authority, Processor shall, where legally permitted to do so, immediately notify Controller in writing and shall furnish all reasonable assistance in a timely manner to Controller to enable it to respond or object to, or challenge any such inquiries, communications, requests, or complaints and to meet applicable statutory or regulatory deadlines.
- (35) No change of or amendment to this Data Processing Agreement or any of its requirements, including any commitment issued by Processor, shall be valid and binding unless made in writing and unless they make express reference to being a change or amendment to this Data Processing Agreement. Any waiver of any provision of this Data Processing Agreement shall be recorded in written form.