

DATA PROCESSING ADDENDUM AGREEMENT

PARTIES	
Ibec:	Ibec Company Limited by Guarantee, incorporated under company number 8706 and having its registered office at 84/86 Lower Baggot Street, Dublin 2
Supplier:	Ibec member
Ibec and the Supplier each a “party” , and collectively the “parties” .	
Customer email for notice:	
Processor email for notice:	dataprivacyoffice@ibec.ie
Effective Date:	9 th June 2018

BACKGROUND

The Supplier provides certain services to Ibec that involve the processing of Ibec Data (as defined below*). The parties hereby agree that the terms and conditions set out in this Data Processing Addendum Agreement will be incorporated into and form part of their existing agreement (the Main Agreement) as and from the 9th June 2018.

In accordance with the Data Protection Legislation (as defined below), Ibec and the Supplier have entered into this DPAA.

DESCRIPTION OF SERVICES/TASKS

*Describe tasks or services required in detail here – the more detailed the description the better!

AGREED TERMS

1. **Definitions and Interpretation**
 - 1.1 The definitions and rules of interpretation in this Clause 1 apply in this DPAA (unless the context requires otherwise).
 - 1.2 For the purposes of this DPAA:

"Data Protection Legislation" the Data Protection Acts 1988 and 2003, the Data Protection Directive (95/46/EC), the General Data Protection Regulation (EU) 2016/679 (the **"GDPR"**), the ePrivacy Directive 2002/58/EC and all applicable laws and regulations relating to the processing of personal data, including, where applicable, the guidance and codes of practice issued by the Data Protection Commissioner, the Article 29 Working Party and, to the extent required by Ibec, other supervisory authorities;

"Data Protection Liabilities", all liability, costs, claims, damages, loss or expense incurred by Ibec or for which Ibec may become liable including: (i) costs associated with civil claims in favour of a data subject; (ii) administrative fines imposed by a supervisory authority; and (iii) any costs associated with any audit or inspection conducted by a supervisory authority;

"EEA" refers to the European Economic Area;

"Ibec Data", the personal data disclosed or supplied by Ibec to the Supplier or otherwise acquired or generated by the Supplier on Ibec's behalf in relation to the provision of the Services;

"Main agreement" refers to the existing agreement in place between the parties

"Security Breach", the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Ibec Data;

"Services", has the meaning ascribed to it in the main agreement between the parties

"Standard Contractual Clauses", shall mean the standard contractual clauses annexed to the EU Commission Decision 2010/87/EU of 5 February 2010 for the Transfer of Personal Data to Processors established in Third Countries under Directive 95/46/EC;

"Sub-Processor", any sub-processor engaged by the Supplier, or any further tier of sub-processor (as the case may be) to provide some or all of the Services.

- 1.3 **"controller", "data subject", "personal data", "processing", "processor" and "supervisory authority"** shall have the meanings given to those terms in the GDPR.
- 1.4 A reference to this DPAA includes its schedules.
- 1.5 Words in the singular include the plural and vice versa.
- 1.6 Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed without limitation.
- 1.7 Clause, schedule or other headings in this DPAA are included for convenience only and shall have no effect on the interpretation of this DPAA.
- 1.8 A reference to any statute, statutory provision, rule, regulation or any requirement shall be construed as including references to it as modified, consolidated, re-enacted, superseded or replaced from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to any regulator or regulatory board shall include a reference to any replacement or successor bodies from time to time.
- 1.10 In the case of conflict or ambiguity between:
 - 1.10.1 the terms of this DPAA and the terms of the Main Agreement, with respect to the subject matter of this DPAA, the terms of this DPAA shall prevail;
 - 1.10.2 the terms of any provision contained in the main body of this DPAA and, to the extent applicable, the terms of any Standard Contractual Clauses entered into between the parties, the provisions of the Standard Contractual Clauses shall prevail;

2. Status

In respect of any Ibec Data processed by the Supplier under this DPAA, the parties acknowledge that Ibec shall be the controller and the Supplier shall be a processor.

3. Data Protection Obligations

3.1 To the extent that the provision of the Services by the Supplier involves the processing of Ibec Data, the Supplier warrants and agrees that:

3.1.1 it shall process Ibec Data solely in accordance with the documented instructions of Ibec (unless the Supplier is required to process Ibec Data by applicable European Union or EEA Member State law to which the Supplier is subject and in such a case, the Supplier shall notify Ibec of that legal requirement before such transfer or access occurs or is permitted, unless that law prohibits such notification on important grounds of public interest);

3.1.2 it complies and shall continue to comply with its obligations under the Data Protection Legislation and the provisions of this DPAA;

3.1.3 it shall process Ibec Data exclusively for the provision of the Services but for no other purposes whatsoever;

3.1.4 Ibec Data is confidential in nature and, unless otherwise directed by Ibec, the Supplier shall ensure that:

(a) each of its employees and/or agents engaged in processing Ibec Data are informed of the confidential nature of Ibec Data and are subject to contractual obligations of confidentiality;

(b) all its employees and/or agents have undertaken training in the handling of personal data in accordance with the Data Protection Legislation and are made aware of the Supplier's duties and obligations under such laws and, to the extent applicable, this DPAA;

(c) neither the Supplier nor any of its employees or agents publish, disclose or divulge Ibec Data to any third party unless otherwise required by this DPAA or as directed in writing to do so by Ibec; and

(d) access to Ibec Data is limited to those employees, agents and Sub-Processors who need access to Ibec Data to allow the Supplier to fulfil its obligations under this DPAA on similar terms to those set out in this DPAA and, in the case of any access to Ibec Data by any employee, agent or Sub-Processor, ensure such access is limited to such part or parts of Ibec Data as is strictly necessary for performance of such employee's, agent's, or Sub-Processor's duties;

3.1.5 it shall promptly cooperate as requested by Ibec from time to time to enable Ibec to comply with any exercise of rights by a data subject under the Data Protection Legislation in respect of personal data processed by the Supplier under this DPAA;

- 3.1.6 it shall cooperate with the Data Protection Commissioner (or any other data protection or privacy supervisory authority) in the performance of its tasks where required (which shall include allowing for inspections of the Supplier's systems, facilities and equipment);
- 3.1.7 it shall assist Ibec in a timely manner where Ibec conducts a data protection impact assessment or engages in a process of prior consultation with a supervisory authority following the outcome of a data protection impact assessment;
- 3.1.8 it shall (and shall procure that its Sub-Processors and agents shall) immediately (and in any event within 24 hours) notify Ibec about:
 - (a) any legally binding request for disclosure of Ibec Data by a law enforcement or other applicable authority unless otherwise prohibited by applicable law; and
 - (b) any request received directly from a data subject without responding to that request, unless they have been otherwise authorised by Ibec to do so;
- 3.1.9 it shall assist Ibec in taking any actions deemed necessary or appropriate to deal with complaints or allegations of or in connection with a failure to comply with the Data Processing Legislation;

4. Security

- 4.1 The Supplier shall implement appropriate technical and organisational measures to ensure a level of security of Ibec Data appropriate to the risk in particular against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure of, or access to Ibec Data, including as appropriate:
 - (a) the pseudonymisation and encryption of Ibec Data;
 - (b) the ability to ensure ongoing confidentiality, integrity, availability and resilience of its processing systems and the Services;
 - (c) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - (d) the prevention of the use of Ibec Data without prior written authorisation;
 - (e) the prevention of the reading, copying, modification, or removal of Ibec Data during processing without the authorisation of Ibec;
 - (f) a process for ensuring that it is possible to check and establish whether and by whom Ibec Data has been accessed;
 - (g) a process for preventing unauthorised persons from gaining access to Ibec Data and ensuring that only appropriately trained employees, Sub-Processors, agents and/or contractors have access to Ibec Data;
 - (h) a process for preserving, so far as possible, the integrity of Ibec Data and prevent any loss, unauthorised disclosure, theft, manipulation or interception of or degradation in Ibec Data;

- (i) a process for making secure back-up copies of Ibec Data on such regular basis as is reasonable for the particular data concerned as required by the Supplier's disaster recovery and business continuity plan to ensure that availability and access to Ibec Data can be restored in a timely manner in the event of a physical or technical incident; and
 - (j) a process for ensuring that appropriate physical access controls, system access controls, data access controls, input controls, and order controls to Ibec Data are in place,

(together the "**Security Measures**").
- 4.1.2 The Supplier shall ensure that it at all times complies with the Security Measures and shall not implement any proposed changes to the Security Measures which would adversely affect the security of Ibec Data unless previously agreed in writing by Ibec.
- 4.1.3 The Supplier shall, and shall procure that its Sub-Processors shall, notify Ibec promptly (and in any event within 72 hours) of any actual, anticipated or suspected Security Breach.
- 4.1.4 In the event that Ibec Data is corrupted or lost or sufficiently degraded as to be unusable, Ibec shall have the option to require the Supplier, at the Supplier's own expense, to restore or procure the restoration of Ibec Data to Ibec's satisfaction.

5. International Transfers

- 5.1 The Supplier shall not (and shall procure that its employees, agents and Sub-Processors shall not) process or transfer any Ibec Data outside the European Economic Area (EEA) except:
 - 5.1.1 on the specific written instruction of Ibec; and
 - 5.1.2 in a manner which is compliant with Data Protection Legislation applicable to Ibec (which may include use of the Standard Contractual Clauses or in the case of US transfers, the Privacy Shield).
 - 5.1.3 In the event that the legal mechanism used to transfer Ibec Data outside the EEA is held by a court of competent jurisdiction to be an invalid basis for the transfer of personal data outside of the EEA, the parties agree that:
 - (a) no Ibec Data shall be transferred outside of the EEA until an appropriate legal basis for transfer is affected by the parties; and
 - (b) the parties will take all reasonable steps to put in place a mechanism for international data transfers in compliance with Data Protection Legislation.
 - 5.1.4 If at any time the UK ceases to be part of the EEA, the supplier may only transfer Ibec data to the UK where the UK has been deemed to meet the data protection standards of the EU.

6. Appointment of Sub-Processors

- 6.1 The Supplier shall not subcontract any of its processing obligations under this DPAA without the prior written consent of Ibec. For the purposes of this DPAA, Ibec hereby authorises the Supplier to continue to use the existing Sub-Processors already agreed between the parties.
- 6.2 Where the Supplier appoints a Sub-Processor in accordance with clause 6.1, the Supplier shall ensure that each Sub-Processor's contract:
- 6.2.1 is on terms that are consistent with and at least as onerous as those set out in this DPAA;
 - 6.2.2 is terminated immediately on termination of this DPAA for any reason; and
 - 6.2.3 to the extent applicable, flows down the same obligations as are applicable to the Supplier (and its Sub-Processors) as set out in any of EU standard contractual clauses which may be entered into between Ibec and the Supplier.
- 6.3 The Supplier shall at all times remain liable for the acts and omissions of any Sub-Processor as if such acts and omissions were those of the Supplier.
- 6.4 Without prejudice to clause 5.1, Ibec authorises the Supplier to act as its agent for the limited purposes of binding Ibec as principal, in the capacity of "data exporter", to a data transfer agreement with the Supplier's Sub-Processors in the form of the Standard Contractual Clauses. The Supplier shall:
- 6.4.1 provide a copy of the executed Standard Contractual Clauses to Ibec and represents and warrants that the appendices to the Standard Contractual Clauses will be complete, comprehensive and accurate regarding the Ibec Data being processed and transferred;
 - 6.4.2 monitor the compliance by its Sub-Processors with the terms of the Standard Contractual Clauses, enforce the Standard Contractual Clauses and promptly notify Ibec of any breach of the Standard Contractual Clauses by such Sub-Processors that relates to Ibec Data; and
 - 6.4.3 except with the prior written authorisation of Ibec, ensure that no special categories of Ibec Data are transferred to, accessed from or otherwise processed outside of the EEA whether in connection with the Services or otherwise.

7. Audits

- 7.1 The Supplier shall promptly provide all information (including details of the Security Measures implemented by the Supplier) requested by Ibec in respect of the Supplier's processing of Ibec Data.
- 7.2 The Supplier shall permit Ibec and Ibec's third-party representatives, on reasonable notice by Ibec during normal business hours (but without notice in the event of any actual or suspected Security Breach or breach of this DPAA or Data Protection Legislation) the right of access to any of the Supplier's premises, systems, personnel, records, facilities and equipment for the purpose of determining whether the Supplier is complying with its obligations under this DPAA and under Data Protection Legislation.

7.3 Any information obtained by Ibec in connection with or in the course of any such audit and any written description of the security technical and organisational measures shall, without prejudice in any way to Ibec's legal rights and remedies in the circumstances, be maintained by Ibec in confidence, shall be used solely for the purposes of determining whether the Supplier is complying with its obligations under this DPAA and under Data Protection Legislation and shall not be used or disclosed for any other purpose save that such information may be shared with a supervisory authority without such obligations of confidentiality or restrictions on use applying.

8. Responsibility for Default

8.1 The Supplier shall indemnify Ibec from and against any and all Data Protection Liabilities incurred by Ibec arising out of or in connection with a breach by the Supplier (or its employees, agents and Sub-Processors) of the Supplier's data protection obligations under this DPAA or under Data Protection Legislation. The Supplier's liability under this DPAA shall not be subject to any exclusions and/or limitations of liability set out in the Main Agreement.

8.2 The Supplier shall take out and maintain insurance sufficient to cover any payment that may be required under clause 8.1 and produce the policy and receipt for premium paid, to Ibec on request.

9. Term and Termination

9.1 This DPAA shall be effective as and from the 9th June 2018 and shall remain in force until the main agreement between the parties is terminated.

9.2 Following termination of this DPAA, the Supplier shall return immediately all Ibec Data to Ibec and subsequently shall promptly securely destroy all Ibec Data unless European Union or European Economic Area Member State law applicable to the Supplier requires further storage of the Ibec Data. The Supplier shall certify to Ibec that no copies have been made or retained and, to the extent applicable, that any deletion has been affected permanently.

10. General

10.1 Any notice or other communication required to be given to a party under or in connection with this DPAA shall be in writing and shall be delivered by email only to dataprivacyoffice@ibec.ie. Any notice or communication shall be deemed to have been received the first working day after the time of transmission.

10.2 The Supplier shall not assign or deal in any other manner with any of its rights and obligations under this DPAA without the prior written consent of Ibec.

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

10.4 This DPAA, together with the Main Agreement, represents the entire agreement between the parties with respect to its subject matter. Each party confirms that it has not relied upon any representations not recorded in this document inducing it to enter into this DPAA. No variation

of these terms and conditions will be valid unless confirmed in writing by authorised signatories of each of the parties on or after the date of this DPAA.

- 10.5 No variation of this DPAA shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.6 If any provision or part-provision of this DPAA is or becomes invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. If such amendment is not possible, the relevant provision or part-provision shall be deemed deleted. Any amendment to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this DPAA.
- 10.7 Nothing in this DPAA is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided herein.
- 10.8 This DPAA may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this DPAA by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this DPAA.

This DPAA and all disputes arising from this DPAA whether contractual or non-contractual in nature shall be governed by and construed in accordance with the laws of Ireland. The parties irrevocably submit to the exclusive jurisdiction of the Irish courts in relation to all matters arising out of or in connection with this DPAA.

IN WITNESS whereof the parties have entered into this DPAA on the date specified above.

SIGNED
on behalf of Ibec
by its authorised signatory:

Authorised Signatory (Signature)

Print name

SIGNED
on behalf of the Supplier
by its authorised signatory:

Authorised Signatory (Signature)

Print name

