

## DATA PROCESSING AGREEMENT

### BETWEEN:

- (1) \_\_\_\_\_ whose address is \_\_\_\_\_ (“Controller”) and
- (2) Swiftpage International Limited, a company registered in England under number 08397789 whose registered office is at Ground Floor, Q15 Quorum Business Park, Benton Lane, Newcastle upon Tyne, NE12 8BU, UK (“Swiftpage”).

### BACKGROUND:

- (1) Swiftpage provides to the Controller the Services described in Schedule 1, under the Services Agreement.
- (2) The provision of the Services by Swiftpage involves it processing the Personal Data described in Schedule 2 on behalf of the Controller, as a processor.
- (3) Under EU Regulation 2016/679 General Data Protection Regulation (“the GDPR”) (Article 28, paragraph 3), there must be an agreement in writing between the Controller and a processor governing the processing of personal data.
- (4) The Parties have agreed to enter into this Agreement to ensure compliance with those provisions of the GDPR in relation to all processing of the Personal Data by Swiftpage as processor for the Controller.

### IT IS AGREED as follows:

#### 1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**“controller”, “processor”, “processing”, “data subject” and “supervisory authority”** shall have the meanings given to the terms “controller”, “processor”, “processing”, “data subject”, and “supervisory authority” respectively in Article 4 of the GDPR;

**“Personal Data”** means all such “personal data”, as defined in Article 4 of the GDPR, as is, or is to be, processed by Swiftpage on behalf of the Controller, as described in Schedule 2;

**“Services”** means those services described in Schedule 1 which are provided by Swiftpage to the Controller; and

**“Sub-Processor”** means a processor appointed by Swiftpage to process the Personal Data.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 "writing", and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to this Agreement;
- 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Using a singular word will be deemed to include the plural and vice versa.
- 1.5 References to any gender shall include all other genders.
- 1.6 References to persons shall include corporations.
- 1.7 The words "include" or "including" shall be construed without limitation to the words following.

## **2. Scope, Application and Term of this Agreement**

- 2.1 The provisions of this Agreement shall apply to the processing of the Personal Data described in Schedule 2, carried out for the Controller by Swiftpage, and to all Personal Data held by Swiftpage in relation to all such processing whether such Personal Data is held at the date of this Agreement or received afterwards.
- 2.2 This Agreement supplements the main agreement between the parties for the Services (the "Services Agreement"), whose terms apply to this Agreement. The provisions of this Agreement supersede any other processor arrangement, understanding, or agreement made between the Parties at any time relating to the Personal Data, whether in the Services Agreement or elsewhere.
- 2.3 This Agreement shall continue in full force and effect from the later of the two dates on page 6, and for so long as Swiftpage is processing Personal Data on behalf of the Controller, anticipated as being the term of the Services Agreement (including any transition period on entrance or exit).

## **3. Scope of Processing Personal Data**

Swiftpage agrees only to process the Personal Data:

- 3.1 for the purposes of providing the Services and not for any other purpose;
- 3.2 to the extent and in such a manner as is necessary for those purposes; and
- 3.3 in accordance with the written instructions of the Controller, except if Swiftpage is required by law to do otherwise (such exception being required by Article 29 of the GDPR).

#### 4. **Data Protection Compliance by Swiftpage**

Swiftpage agrees to:

- 4.1 ensure that anyone it authorises to process the Personal Data:
  - 4.1.1 has committed themselves to keep it confidential, unless they are already under an appropriate statutory obligation of confidentiality; and
  - 4.1.2 only processes the Personal Data in accordance with the instructions received by Swiftpage from the Controller;
- 4.2 take all measures required pursuant to Article 32 (Security of processing) of the GDPR. Swiftpage acknowledges that at the time of this Agreement the measures set out in Schedule 3 are appropriate technical and organisational measures to ensure a level of security appropriate to the risk of processing the Personal Data;
- 4.3 respect the conditions referred to in Article 28 (Processor) paragraphs 2 and 4 of the GDPR for engaging another processor to process the Personal Data;
- 4.4 taking into account the nature of the processing, assist the Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising a data subject's rights laid down in Chapter III (Rights of the data subject) of the GDPR;
- 4.5 assist the Controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR (32: Security of processing; 33: Notification of a personal data breach to the supervisory authority; 34: Communication of a personal data breach to the data subject; 35: Data protection impact assessment; 36: Prior consultation), taking into account the nature of processing and the information available to Swiftpage;
- 4.6 at the choice of the Controller, delete or return all the Personal Data to the Controller after the end of the provision of Services, and delete existing copies unless European Union or European Union Member State law requires storage of the Personal Data;
- 4.7 make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 (Processor) of the GDPR and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller, and Swiftpage shall immediately inform the Controller if, in its opinion, an instruction infringes the GDPR or other European Union or European Union Member State data protection provisions.

#### 5. **International transfers**

Swiftpage may transfer the Personal Data outside of the European Economic Area ("EEA") only if it has taken such measures as are necessary to ensure the transfer is in compliance with GDPR. For example, at the time of this Agreement, Swiftpage may transfer the Personal Data to a recipient in the United States which has certified its compliance with the EU-US Privacy Shield or is in the process of so certifying, or which has taken alternative appropriate safeguards. Swiftpage and its US-based Sub-processors have entered into agreements based on the standard contractual clauses for transfers.

#### 6. **Appointment of Sub-Processors**

- 6.1 If Swiftpage engages another processor for carrying out specific processing activities on behalf of the Controller, the same data protection obligations as set

out in clause 4 shall be imposed on that other processor by way of a contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. Swiftpage acknowledges and agrees that if that other processor fails to fulfil its data protection obligations as set out in clause 4, Swiftpage shall remain fully liable to the Controller for the performance of that other processor's obligations.

6.2 The Controller consents to Swiftpage engaging Sub-Processors to process the Personal Data provided that:

6.2.1 Swiftpage describes its Sub-Processors on its website. The Controller shall check such description from time to time and if it objects to any describer Sub-Processor may notify Swiftpage in writing of its objection;

6.2.2 Swiftpage imposes data protection terms on any Sub-Processor it appoints that require it to protect the Personal Data to the standard required by the GDPR; and

6.2.3 Swiftpage remains liable for any breach of this Agreement that is caused by an act, error or omission of its Sub-Processor. Controller may object to Swiftpage's appointment or replacement of a Sub-Processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Swiftpage will either not appoint or replace the Sub-Processor or, if this is not reasonably possible, in Swiftpage's sole discretion, Controller may suspend or terminate the provision of the Services by Swiftpage without penalty (without prejudice to any fees incurred by Controller up to and including the date of suspension or termination).

## 7. **Data Protection Compliance by the Controller**

7.1 The Controller shall perform its obligations and exercise its rights under this Agreement and the Services Agreement in a way that ensures that Swiftpage does not breach any of its applicable obligations under the GDPR.

7.2 The Controller shall ensure that all instructions given to Swiftpage relating to Personal Data shall be made in writing and shall at all times be in compliance with the GDPR.

7.3 The Controller acknowledges that it has assessed the particular risks of processing the Personal Data specifically using the Services, and in deciding to use the Services has taken into account the security measures which it has been informed of by Swiftpage as described at Schedule 3.

7.4 The Controller shall not disclose (and shall not permit any data subject to disclose) any special categories of personal data or criminal data to Swiftpage for processing.

## 8. **Consideration and costs**

Swiftpage accepts the obligations in this Agreement in consideration of the payment of GBP1 from the Controller, which Swiftpage hereby acknowledges. If Swiftpage assists the Controller with the Controller's compliance with GDPR or other data protection requirements under or pursuant to this Agreement, that assistance will be at the Controller's cost.

## 9. **Law and Jurisdiction**

9.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

9.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

## 10. **Change**

10.1 In the event that there is a change during the term of this Agreement in:

10.1.1 applicable data protection law in the UK or in England;

10.1.2 (where applicable) the available mechanisms used to transfer Personal Data to a third country, territory, one or more specified sectors within that third country or international organisation;

10.1.3 (where applicable) the available standard contractual clauses which are relevant to either party's or both parties' processing of Personal Data; and/or

10.1.4 (given the particular difficulty in foreseeing the future legal landscape during and after the withdrawal of the UK from the European Union) some other event or situation or happening

and Swiftpage reasonably determines that this Agreement is, wholly or in part, no longer appropriate in the light of that change, Swiftpage shall notify the Controller of its determination and (a) each party shall promptly take such reasonable and appropriate steps necessary to ensure its ongoing compliance with applicable data protection law, and (b) the Controller shall negotiate with Swiftpage in good faith to enter promptly into such variation to this Agreement as is necessary to ensure the parties' ongoing compliance with applicable data protection law.

SIGNED for and on behalf of the Controller by:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position / Job role

\_\_\_\_\_  
Authorised signature

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

SIGNED for and on behalf of Swiftpage by:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position / Job role

\_\_\_\_\_  
Authorised signature

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

## SCHEDULE 1

### Services

The provision of the Act! software and related services (including, as appropriate to the Controller's use: Act! Premium deployed on the Cloud, Act! Marketing Automation, Act! Emarketing and Act!365) as such software and related services are described in the relevant order confirmation and invoice sent from Swiftpage to the Controller, as well as the applicable terms of use, scope of support, relevant user licence agreement, copies of all of which are at Swiftpage's website at [www.act.com](http://www.act.com).

## SCHEDULE 2

### Subject matter and duration of the processing

The purpose of enabling the Controller to receive the Services for the duration of the Processing as described below (including any transition period on entrance or exit to the Services Agreement).

### Nature of the processing

Any or all of the following processing operations:

- Collection
- Recording
- Organisation
- Structuring
- Storage
- Adaptation/alteration
- Retrieval
- Consultation
- Use
- Disclosure by transmission / dissemination or otherwise making available
- Alignment / combination
- Restriction
- Erasure / destruction

### Purpose of the processing

The receipt by the Controller of the Services under the Services Agreement.

### Categories of Data subjects

The Controller may submit personal data in the course of receiving and using the Services, the extent of which is determined and controlled by the Controller and which may include, but is not limited to, personal data relating to the following categories of data subject:

- Licensed/Named Users of Act!;
- employees of the Controller;
- consultants of the Controller;
- contractors of the Controller;
- agents of the Controller; and/or
- third parties with which the Controller conducts business, including the Controller's clients, prospects and any other data subjects who interact with the Controller or whose details are imported into the Services or provided by the Controller.

### Categories of data

The personal data transferred concern the following categories of data:

Any personal data comprised in data stored in the course of receiving the Services, including for example an Act! database, or stored in a similar way as part of a similar service, and which may include all or any of the following types of Personal Data:

- Personal details (any information that identifies the data subject and their personal characteristics e.g. name, address, contact details, age, sex, date of birth, physical description and any identifier issued by a public body, e.g. National Insurance or social security number)

- Education and training details (any information which relates to the education and any professional training of the data subject e.g. academic records, qualifications, skills, training records, professional expertise, and student and pupil records)
- Family, lifestyle and social circumstances (any information relating to the family of the Data subject and the data subject's lifestyle and social circumstances e.g. current marriage and partnerships and marital history, details of family and other household members, habits, housing, travel details, leisure activities and membership of charitable or voluntary organisations)
- Employment details (any information relating to the employment of the data subject e.g. employment and career history, recruitment and termination details, attendance records, health and safety records, performance appraisals, training records and security records)
- Financial details (any information relating to the financial affairs of the data subject e.g. income, salary, assets and investments, payments, creditworthiness, loans, benefits, grants, insurance details and pension information)
- Goods and services provided (any information relating to goods and services that have been provided e.g. goods or services supplied, licences issued, agreements and contracts)
- Other data imported into the Services via other applications or provided by the Controller

and associated contacts data (data concerning contact made between a data subject and the Controller including correspondence and other communications and interactions with the Controller via websites or other online media).

### **Special categories of data**

The Controller may submit personal data to Swiftpage in the course of receiving and using the Services, the extent of which is determined and controlled by the Controller in compliance with the GDPR; notwithstanding the prohibition in Clause 7.4, the data may concern the following special categories of data, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade-union membership;
- genetic data
- biometric data for the purpose of uniquely identifying a data subject;
- health; and
- sex life or sexual orientation

and may also include criminal data (if any).

### **Duration of the processing**

The term of the Services as set out in the relevant invoice sent from Swiftpage to the Controller as such term may be extended by agreement of the parties until the date Swiftpage destroys the personal data in accordance with the applicable terms of use, scope of support, relevant user licence agreement, copies of which are available at Swiftpage's website at [www.act.com](http://www.act.com).

### **Controller's obligations and rights**

The obligations to comply with Clause 7 of this Agreement and more generally to comply with the GDPR and other local data protection requirements.

The rights to enforce the terms of this Agreement on Swiftpage as processor, in particular as set out in Clause 4.



## SCHEDULE 3

### Technical and Organisational Data Protection Measures

The measures Swiftpage takes to ensure appropriate security of personal data are described in its document 'Swiftpage, Act! and the security principle of the GDPR' available on its website at <https://www.act.com/en-uk/swiftpage-and-security>.