

DATA PROCESSING AGREEMENT



Dated day: month: year:

PARTIES

1. _____ (Controller)
2. Merge Freeze Ltd (Processor)

BACKGROUND

- A. The Controller and the Processor have entered into Terms of Service for software services (Services Agreement).
- B. As required by Applicable Privacy Laws, the Controller and the Processor have agreed to enter into this Agreement for the protection of the personal data that may be processed by the Processor in providing the Services.

AGREEMENT

1 DEFINITIONS

1.1 **Definitions:** Unless the context otherwise requires:

Agreement means this data processing agreement.

Applicable Privacy Laws means the laws protecting the right to privacy with respect to the processing of personal data applicable to the Controller and the Processor, including the General Data Protection Regulation (EU) 2016/679 (GDPR).

Business Day means a day other than a Saturday or Sunday or public holiday on which banks are open for commercial business in the country of the Processor;

Controller Personal Data means any personal data in respect of which the Controller is a data controller, including the type of Personal Data and categories of data subjects referred to in the Privacy Policy, and which is processed by the Processor on the instructions of the Controller.

Cross-Border Data Transfer means any transfer of Controller Personal Data to recipients located outside in a Third Country.

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

Privacy Policy means the Processor's privacy information made available at <https://www.mergefreeze.com/privacy>.

Regulatory Bodies means those government departments and regulatory, statutory and other bodies, entities and committees which, whether under statute, rule, regulation, code of practice or otherwise, are entitled to regulate, investigate or influence the matters relating to the security of data, personal data, privacy protection or other laws.

Services means the services as described in the Services Agreement.

Subprocessor shall mean any data processor engaged by the Processor (or by any other Subprocessor of the Processor) in order to be able to perform the Services.

Terms of Service means the terms of service between the Controller and Processor (available at <https://www.mergefreeze.com/terms>).

Transfer shall mean making Controller Personal Data accessible to any person other than the data subject, including, but not limited to the active transfer of the data, permitting access, also remotely, sharing and publishing.

Third Country means a country or territory which is not a Member State of the European Union or EEA.

1.2 **Interpretation:** In this Agreement where the context permits:

1.2.1 references to data subject, data controller, data processor, identifiable, personal data, processing and special category personal data shall have the same meanings ascribed to them by the Applicable Privacy Laws;

1.2.2 reference to a party shall include that party's executors, administrators, successors and assigns;

1.2.3 reference to a statute or regulation shall include all amendments and re-enactments thereof;

1.2.4 writing includes electronic communications (including email) and written has a corresponding meaning; and

1.2.5 the clause headings are inserted for ease of reference only and do not affect the construction of this Agreement.

2 DATA CONTROLLER AND PROCESSOR

2.1 **Data Controller:** The Processor acknowledges that, in respect of the Controller Personal Data and for the purposes of the Applicable Privacy Laws, the Controller (and each group company of the Controller) is the data controller. The Controller agrees to comply with its obligations under this Agreement

2.2 **Privacy notices:** The Controller is solely responsible for all data controller obligations under Applicable Privacy Laws, including providing any required notices and obtaining any required consents, and for the processing instructions that it gives to the Processor.

2.3 **Controller warranties:** The Controller warrants that:

2.3.1 no contractual obligations prohibit the processing of the Controller Personal Data as described in the Services agreement and this Agreement; and

2.3.2 the production, collection, and processing of Controller Personal Data has been and will continue to be carried out in accordance with the Applicable Privacy Laws.

2.4 **Appointment as Data Processor:** The Controller appoints the Processor as a data processor of the Controller Personal Data, and the Provider accepts the appointment and agrees to comply with its obligations under this Agreement.

3 DATA PROCESSING

3.1 **Principles:** Personal data shall be processed under the general principles of lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability.

- 3.2 **Processing restrictions:** Subject to clause 3.3, the Processor shall ensure that all Controller Personal Data is processed only:
- 3.2.1 according to the instructions of the Controller, which shall include for the purposes of providing the Services as described in the Services Agreement;
 - 3.2.2 in accordance with this Agreement; and
 - 3.2.3 in compliance with Applicable Privacy Laws.
- 3.3 **Outside of instructions:** The Processor may process Controller Personal Data outside of the Controller's instructions if laws to which the Processor is subject requires it.
- 3.4 **Breach of Applicable Privacy Laws:** The Processor shall immediately notify the Controller if it is of the opinion that any instruction provided by the Controller is in breach of any Applicable Data Protection Law.

4 COOPERATION OBLIGATIONS

- 4.1 **Assistance:** The Processor shall take any steps reasonably requested by the Controller to assist the Controller to demonstrate compliance with its obligations under Applicable Privacy Laws, including to assist and support the Controller:
- 4.1.1 in the event of an investigation or other control measures or by any Regulatory Body to the extent that such investigation relates to Controller Personal Data;
 - 4.1.2 in the event of the exercise of any claims by data subjects or third parties related to the processing under this Agreement;
 - 4.1.3 in complying with the rights of data subjects, including the right to obtain transparent information, the right to access, rectify, and erase their personal data, restrict, or object to, the processing of their personal data, exercise their right to data portability;
 - 4.1.4 in notifying, consulting with and obtaining approvals from Regulatory Bodies where required; and
 - 4.1.5 in performing data protection impact assessments.
- 4.2 **Data subject rights:**
- 4.2.1 The Processor shall promptly comply with any request from the Controller requiring the Processor to access, amend, transfer or delete any Controller Personal Data.
 - 4.2.2 The Processor must inform the Controller promptly, taking into account the notification requirements imposed on the Controller under the Applicable Privacy Laws, following the Processor's receipt of any inquiry from a Data Subject with respect to Controller Personal Data.
 - 4.2.3 Provided that the Controller acts in accordance with Applicable Privacy Laws, the Processor shall not respond to any such request referred to in clause 4.2.2 unless expressly authorised to do so by the Controller.
- 4.3 **Regulatory action:** The Processor will promptly notify the Controller about:

- 4.3.1 any binding request addressed to the Processor or any of its Subprocessors for the disclosure of Controller Personal Data by a Regulatory Body unless otherwise prohibited by the applicable law; and
 - 4.3.2 any monitoring activities and measures undertaken by the Regulatory Body, including where a Regulatory Body investigates the Processor for a possible breach of Applicable Privacy Laws.
- 4.4 **Audit rights:** The Controller has the right to, on reasonable notice and in a reasonable manner, audit and inspect the implemented technical and organisational measures of the Processor and the Processor's compliance with this Agreement. If the Processor notifies the Controller of a Personal Data Breach, then the Controller shall have the right to perform an on-site audit of the Processor without undue delay. Any audit or inspection undertaken by the Controller shall be at the Controller's cost.

5 PERSONAL DATA BREACH

- 5.1 **Data breach:** To the extent the Processor becomes aware of any Personal Data Breach or if it has reason to believe that a Personal Data Breach may have occurred, then the Processor must:
- 5.1.1 immediately notify the Controller, taking into account the notification duty requirements imposed on the Controller under the Applicable Privacy Laws;
 - 5.1.2 act immediately to:
 - (a) investigate the Personal Data Breach and no later than 24 hours after the Processor became aware of the Personal Data Breach, provide the Controller with the information set out in clause 5.2, or if it is not possible to provide all of that information within 24 hours then provide that information in phases without undue further delay; and
 - (b) with the prior consent of the Controller, take measures to prevent further Personal Data Breaches, and mitigate or remedy the Personal Data Breach.
- 5.2 **Information obligations:** The Processor shall summarise in reasonable detail the impact of the Personal Data Breach, including describing to the extent this is known to the Processor:
- 5.2.1 the nature of the Personal Data Breach;
 - 5.2.2 the categories and numbers of data subjects concerned;
 - 5.2.3 the categories and numbers of personal data records concerned;
 - 5.2.4 the details of any unlawful recipient (including names, addresses and business sectors);
 - 5.2.5 the estimated risk and the likely consequences of the Personal Data Breach; and
 - 5.2.6 the measures taken or proposed to be taken to address the Personal Data Breach.
- 5.3 **Public notice:** The Processor shall not issue any public notice that relates to a suspected or actual Personal Data Breach without the Controller's prior approval unless otherwise required by law.

- 5.4 **Records:** The Processor shall maintain records of any actual or suspected Personal Data Breach in accordance with commercially accepted industry practices. The Processor shall make such records reasonably available to the Controller.

6 TECHNICAL AND ORGANISATION MEASURES

- 6.1 **Confidentiality:** The Processor will:
- 6.1.1 ensure that the personal it authorises are under appropriate confidentiality obligations; and
 - 6.1.2 inform its authorised personnel that the Controller Personal Data is only to be processed as instructed by the Controller.
- 6.2 **Data Security:** During the processing of Controller Personal Data, the Processor shall take appropriate technical and organisational measures to ensure a level of security appropriate to the risk of a Personal Data Breach.
- 6.3 **Security Measures:** The security measures adopted by the Processor include but not limited to the following:
- 6.3.1 [taking reasonable steps to ensure the reliability of any staff who have access to Controller Personal Data;
 - 6.3.2 the encryption, and the pseudonymisation (where reasonably practicable) of Controller Personal Data;
 - 6.3.3 ensuring the ongoing confidentiality, integrity, availability and resilience of the systems and services processing Controller Personal Data;
 - 6.3.4 maintaining the security of the premises where Controller Personal Data is processed;
 - 6.3.5 maintaining the ability to restore access to Controller Personal Data in a timely manner in the event of a physical or technical incident;
 - 6.3.6 implementing a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing of Controller Personal Data; and
 - 6.3.7 taking any other steps required by Applicable Privacy Laws.

7 CROSS-BORDER DATA TRANSFERS

- 7.1 **Cross-Border Transfers:** The Processor shall not transfer Controller Personal Data to a Third Country, except on written approval of the Controller, including as set out in the Services Agreement and this Agreement, and then subject to any additional restrictions reasonably required by the Controller or in compliance with Applicable Privacy Laws.
- 7.2 **Existing Transfers:** It is noted that the Processor is based in New Zealand and the Processor's subprocessor's are in the United States. The Controller acknowledges and agrees that:
- 7.2.1 the European Commission has recognised New Zealand and the United States (limited to Privacy Shield certified organisations) as providing adequate protection;

8 SUBPROCESSORS

- 8.1 **Subprocessors:** The Controller gives the Processor general written consent for the Processor to authorise any third party to process Controller Personal Data as a Subprocessor subject to the following conditions:
- 8.1.1 the Processor must maintain an up-to-date list of the names and locations of all Subprocessors, and shall make this list reasonably available to the Controller;
 - 8.1.2 the Processor will notify the Controller of any changes in Subprocessors and the Controller has the right to object to any changes to Subprocessors (acting reasonably and recognising that the Processor's is a SaaS provider); and
 - 8.1.3 the contract entered into between the Processor and a Subprocessor will be on terms which are substantially the same as those set out in this Agreement, and will terminate automatically on expiration or termination of the Services Agreement.

The Processor will assume all liabilities for the acts and omissions of its Subprocessors in relation to the Services provided to the Controller.

9 TERM AND TERMINATION

- 9.1 **Term:** This Agreement takes effect on and from the date it is signed by both parties and remains effective during the term of the Services Agreement.
- 9.2 **Termination:** Despite clause 9.1, the parties may terminate this Agreement earlier where both parties agree to terminate this Agreement in writing, or where the parties sign a new data processing agreement to replace this Agreement.
- 9.3 **Return/Destruction of Controller Personal Data:** Except as otherwise directed by the Controller, at the earlier of:
- 9.3.1 termination or expiration of the Services Agreement; or
 - 9.3.2 when requested to do so by the Controller,

the Processor shall hand over to the Controller all Controller Personal Data, and shall erase or destroy related data as described in the Privacy Policy.

10 SERVICES AGREEMENT

- 10.1 **Services Agreement:** This Agreement is supplemental to the Services Agreement, and other than as stated by this Agreement, the Services Agreement remains in full force and effect.
- 10.2 **Priority:** In the event of any conflict between the terms of Services Agreement and this Agreement, the terms in this Agreement shall prevail (to the extent of any such inconsistency).

SIGNATURES

Signed on behalf of
Merge Freeze Ltd

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)
) Director
Name: James Player

Signed on behalf of

)
)
) Director/Authorised Signatory
Name: