

SCHEDULE 5: PERSONAL DATA PROCESSING

Definitions In this Schedule:

Applicable Law	means as applicable and binding on the Customer, Kinetic and/or the Services: <ul style="list-style-type: none"> a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; b) the common law and laws of equity as applicable to the parties from time to time; c) any binding court order, judgment or decree; or d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Appropriate Safeguards	means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
Data Controller	has the meaning given to that term (or to the term 'controller') in Data Protection Laws;
Data Processor	has the meaning given to that term (or to the term 'processor') in Data Protection Laws;
Data Subject	has the meaning given to that term in Data Protection Laws;
Data Subject Request	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
Data Protection Laws	means as applicable and binding on the Customer, Kinetic and/or the Services: <ul style="list-style-type: none"> a) in the United Kingdom: <ul style="list-style-type: none"> i. the Data Protection Act 2018 ii. the GDPR, and/or any corresponding or equivalent national laws or regulations; b) in member states of the European Union: the GDPR, and all relevant member state laws or regulations giving effect to replacing or supplementing the same; and c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;
Data Protection Losses	means all liabilities arising under Data Protection Laws, including all: <ul style="list-style-type: none"> a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and b) to the extent permitted by Applicable Law: <ul style="list-style-type: none"> i. administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; ii. compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and iii. the reasonable costs of compliance with investigations by a Supervisory Authority;



EEA	means the European Economic Area, which constitutes the member states of the European Union and Norway, Iceland and Liechtenstein, as well as, for the purposes of this Schedule, the United Kingdom.
GDPR	means the General Data Protection Regulation (EU) 2016/679;
International Recipient	has the meaning given to that term in paragraph 6.1;
Personal Data	has the meaning given to that term in Data Protection Laws;
Personal Data Breach	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
Processing	has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
Processing Instructions	has the meaning given to that term in paragraph 2.1.1;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of Kinetic's obligations under the Agreement and this Schedule 5;
Sub-Processor	means another Data Processor engaged by Kinetic for carrying out processing activities in respect of the Protected Data on behalf of the Customer; and
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

1. References to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable; and

2. A reference to a law includes all subordinate legislation made under that law.

1. Data Processor and Data Controller

1.1. The parties agree that, for the Protected Data, the Customer shall be the Data Controller and Kinetic shall be the Data Processor.

1.2. Kinetic shall process Protected Data in compliance with:

1.2.1. the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under the Agreement and this Schedule 5.

1.3. The Customer shall comply with:



1.3.1. all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Schedule 5, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and

1.3.2. the terms of this Schedule.

1.4. The Customer warrants, represents and undertakes, that:

1.4.1. all data sourced by the Customer for use in connection with the Services, prior to such data being provided to or accessed by Kinetic for the performance of the Services under this Schedule 5, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;

1.4.2. all instructions given by it to Kinetic in respect of Personal Data shall at all times be in accordance with Data Protection Laws;

1.4.3. it has undertaken due diligence in relation to Kinetic's processing operations, and it is satisfied that:

a) Kinetic's processing operations are suitable for the purposes for which the Customer proposes to use the Services and engage Kinetic to process the Protected Data; and

b) Kinetic has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.

1.5. The Customer shall not withhold, delay or condition its agreement to any Change requested by Kinetic in order to ensure the Services and Kinetic (and each Sub-Processor) can comply with Data Protection Laws.

2. Instructions and details of processing

2.1. Insofar as Kinetic processes Protected Data on behalf of the Customer, Kinetic:

2.1.1. unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data in accordance with Our standard procedures unless the Customer has provided us with differing documented instructions (Processing Instructions);

2.1.2. if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and

2.1.3. from the Date of the Agreement, shall inform the Customer if Kinetic becomes aware of a Processing Instruction that, in Kinetic's opinion, infringes Data Protection Laws, provided that:

a) this shall be without prejudice to paragraphs 1.3 and 1.4;

b) to the maximum extent permitted by mandatory law, Kinetic shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including



any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information; and

c) this paragraph 2.1.3 shall only apply from the Agreement Date.

3. Technical and organisational measures

3.1. Kinetic shall implement and maintain, at its cost and expense, the technical and organisational measures:

3.1.1. in relation to the processing of Protected Data by Kinetic; and

3.1.2. from the Agreement Date, taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data.

3.2. Any additional technical and organisational measures shall be at the Customer's cost and expense.

3.3. The Customer shall, where reasonably possible ensure that any Protected Data in respect of which Kinetic is requested to provide support and maintenance services under the Agreement and this Schedule 5 are anonymised prior to Kinetic being granted access to them.

4. Using Sub-Processors and staff

4.1. From the Date of the Agreement:

4.1.1. Where Data Processors and/or Sub-Processors are identified in a Schedule or predefined in a Service (e.g. Microsoft, Azure, AWS, or Google Cloud), or where Kinetic utilizes an affiliate or subsidiary to perform Help Desk functions, or as identified [here](#) and/or disclosed on Appendix 1 to this Schedule 5, unless expressly modified in this clause, Customer consents to the use of such Sub-Processors. Otherwise, Kinetic shall not engage any Sub-Processor for carrying out any processing activities in respect of the Protected Data without the Customer's authorisation (such authorisation not to be unreasonably withheld, conditioned or delayed).

4.1.2. Kinetic shall appoint Sub-Processors under a written contract containing materially the same obligations as under paragraphs 1 to 11 (inclusive).

4.1.3. Kinetic shall ensure that all of its personnel authorised to process Protected Data are subject to a binding written contractual obligation with Kinetic to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case Kinetic shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

5. Assistance with the Customer's compliance and Data Subject rights

5.1. Kinetic shall refer all Data Subject Requests it receives to the Customer within 1 Business Days of receipt of the request.

5.2. From the Agreement Date, Kinetic shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to Kinetic) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:



- 5.2.1. security of processing;
- 5.2.2. data protection impact assessments (as such term is defined in Data Protection Laws);
- 5.2.3. prior consultation with a Supervisory Authority regarding high risk processing; and
- 5.2.4. notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach, provided the Customer shall pay Kinetic's Charges for providing the assistance in this paragraph 5.2, such Charges to be calculated on a time and materials basis at Kinetic's standard rates from time to time in force.

6. International data transfers

6.1. The Customer agrees that Kinetic may transfer Protected Data to countries outside the European Economic Area (EEA) or to any international organisation(s) (an International Recipient) as disclosed in Appendix 1 to this Schedule 5, provided all transfers by Kinetic of Protected Data to an International Recipient shall (to the extent required under Data Protection Laws) be effected by way of Appropriate Safeguards and in accordance with Data Protection Laws. The provisions of this Schedule 5 shall constitute the Customer's instructions with respect to transfers in accordance with paragraph 2.1.

7. Records, information and audit

7.1. Kinetic shall maintain, in accordance with Data Protection Laws binding on Kinetic, written records of all categories of processing activities carried out on behalf of the Customer.

7.2. Kinetic shall, in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate Kinetic's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:

7.2.1. giving Kinetic reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

7.2.2. ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

7.2.3. ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Kinetic's business, the Sub-Processors' business and the business of other customers of Kinetic; and

7.2.4. paying Kinetic's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

8. Breach notification

8.1. In respect of any Personal Data Breach involving Protected Data, the parties shall, without undue delay:

8.1.1. notify the other party of the Personal Data Breach; and



8.1.2. provide the other party with details of the Personal Data Breach.

9. Deletion or return of Protected Data and copies

9.1. Kinetic shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

9.1.1. the end of the provision of the relevant Services related to processing; or

9.1.2. once processing by Kinetic of any Protected Data is no longer required for the purpose of Kinetic's performance of its relevant obligations under this Schedule 5, and delete existing copies (unless storage of any data is required by Applicable Law and, if so, Kinetic shall inform the Customer of any such requirement).

10. Liability, indemnities and compensation claims

10.1. The Customer shall indemnify and keep indemnified Kinetic in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Kinetic and any Sub-Processor arising from or in connection with any:

10.1.1. non-compliance by the Customer with the Data Protection Laws;

10.1.2. processing carried out by Kinetic or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or

10.1.3. breach by the Customer of any of its obligations under paragraphs 1 to 11 (inclusive), except to the extent Kinetic is liable under paragraph 10.2.

10.2. Subject to Part B, clause 10.3. of the Agreement, Kinetic shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence or otherwise) under or in connection with the Agreement and this Schedule 5:

10.2.1. only to the extent caused by the processing of Protected Data under this Schedule 5 and directly resulting from Kinetic's breach of paragraphs 1 to 11 (inclusive); and

10.2.2. in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Schedule 5 by the Customer (including in accordance with paragraph 2.1.3(b)).

10.3. If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

10.3.1. make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

10.3.2. consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Schedule 5 for paying the compensation.



10.4. The parties agree that the Customer shall not be entitled to claim back from Kinetic any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify Kinetic in accordance with paragraph 10.1.

10.5. This paragraph 10 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

10.5.1. to the extent not permitted by Applicable Law (including Data Protection Laws); and

10.5.2. that it does not affect the liability of either party to any Data Subject.

11. Survival of data protection provisions

11.1. Paragraphs 1 to 11 (inclusive) shall survive termination (for any reason) or expiry of this Schedule 5 and continue:

11.1.1. indefinitely in the case of paragraphs 9 to 11 (inclusive); and

11.1.2. until 12 months following the earlier of the termination or expiry of this Schedule 5 in the case paragraphs 1 to 8 (inclusive), provided always that any termination or expiry of paragraphs 1 to 8 (inclusive) shall be without prejudice to any accrued rights or remedies of either party under any such paragraphs at the time of such termination or expiry.

12. Miscellaneous

In case of any conflict between this Schedule 5 and the Agreement, the provisions of this Schedule 5 shall control as regards the Processing of Protected Data unless expressly stated otherwise herein.

ANY CLAIMS BROUGHT UNDER OR PURSUANT TO THIS SCHEDULE 5 OR OTHERWISE RELATED HERETO SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO THE EXCLUSIONS OF LIABILITY AND THE LIMITATIONS OF LIABILITY SET FORTH IN PART B CLAUSE 10.3 THEREIN WHICH SHALL APPLY TO THE LIABILITIES AND INDEMNITIES UNDER AND IN CONNECTIONS WITH THIS SCHEDULE 5.



Appendix 1 to Schedule 5

Below is a list of the approved Kinetic third party processors and sub-contractors as of the date of the Agreement. This Appendix may be updated from time to time. If in the event, Kinetic determines an update to this Appendix will materially impact the manner in which Kinetic provides such Service, Kinetic will use commercially reasonable efforts to notify the Customer of such change and as necessary seek additional consent:

<u>SUPPLIER</u>	<u>LOCATION</u>	<u>NATURE OF PROCESSING</u>	<u>DATA TYPE</u>	<u>TRANSFER BASIS</u>
MICROSOFT AZURE	EEA, USA	HOSTING PROVIDER	PERSONAL AND SENSITIVE	DPA as published by Microsoft
CONTOUR SOFTWARE (Pvt.) Ltd	PAKISTAN	DEVELOPMENT AND SUPPORT SERVICES	PERSONAL AND SENSITIVE	DPA based on STANDARD APPROVED EU MODEL CLAUSES
AMAZON WEB SERVICES (AWS)	EEA, USA	CLOUD SERVICES PROVIDER (KXPAYMENTS)	PERSONAL	DPA as published by AWS
GOOGLE CLOUD PLATFORM (GCP)	EEA, USA	CLOUD SERVICES PROVIDER (PULSE)	PERSONAL AND SENSITIVE	DPA as published by GCP
CARDSTREAM	UK	PAYMENT SERVICE PROVIDER (KXPAYMENTS)	PERSONAL	DPA
SMARTHOTELS	EEA	CHANNEL MANAGER	PERSONAL	DPA

