

# Data Processing Agreement — HML



This Data Processing Agreement (“**Agreement**”) forms part of the HML Contractor Accreditation Scheme (“**Principal Agreement**”) between

HML PM Ltd (the “**Company**”) and any or all of its accredited contractors (the “**Data Processor**”) (together as the “**Parties**”)

WHEREAS

(A) The Company acts as an Agent for the “**Data Controller**”.

(B) The Data Controller wishes to subcontract certain “**Services**” to contractors who are part of the Principle Agreement, which imply the processing of personal data, to the Data Processor.

(C) The Company manages the processing of the Principle Agreement on behalf of the Data Controller.

(D) The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

(E) The Parties wish to lay down their rights and obligations.

**IT IS AGREED AS FOLLOWS:**

## **1. Definitions and Interpretation**

1.1 Unless otherwise defined herein, capitalised terms and expressions used in this Agreement shall have the following meaning:

1.1.1 “**Agreement**” means this Data Processing Agreement and all Schedules;

1.1.2 “**Agent**” means HML PM Ltd acting as the Residential Managing Agent and data processor on behalf of the Data Controller.

1.1.3 “**Company**” means HML PM Ltd acting as the Agent of the Data Controller

1.1.4 “**Company Personal Data**” means any Personal Data Processed by the Data Processor on behalf of the Company pursuant to or in connection with the Principal Agreement;

1.1.5 “**Contracted Processor**” means a Subprocessor;

1.1.6 “**Data Controller**” means the Residential Management Company, Freeholder, Right to Manage Company or entity that has assumed the management responsible of the communal lands that the Agent is acting on behalf of;

1.1.7 “**Data Processor**” Accredited contractors after agreeing and adhering to the Principle Agreement

1.1.8 “**Data Protection Laws**” means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

1.1.9 “**EEA**” means the European Economic Area;

1.1.10 “EU Data Protection Laws” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.11 “GDPR” means EU General Data Protection Regulation 2016/679;

1.1.12 “Data Transfer” means:

1.1.12.1 a transfer of Company Personal Data from the Company to a Contracted Processor; or

1.1.12.2 an onward transfer of Company Personal Data from a Data Processor to a Subprocessor, or between two establishments of a Data Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

1.1.13 “Principle Agreement” means the HML Contractor Accreditation Scheme

1.1.14 “Services” means any and all services the Company provides.

1.1.15 “Subprocessor” means any person appointed by or on behalf of Data Processor to process Personal Data on behalf of the Company in connection with the Principle Agreement.

1.2 The terms, “Commission”, “Data Controller”, “Data Subject”, “Member State”, “Personal Data”, “Personal Data Breach”, “Processing” and “Supervisory Authority” shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

## **2. Processing of Company Personal Data**

2.1 The Data Processor shall:

2.1.1 comply with all applicable Data Protection Laws in the Processing of Personal Data provided by the Company as an Agent of the Data Controller;

2.1.2 not to Process the Personal Data provided by the Company as an Agent of the Data Controller other than on the relevant Company’s documented instructions.

2.2 The Company as an Agent of the Data Controller instructs the Data Processor to process the Personal Data provided by Company.

## **3. Data Processor Personnel**

The Data Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Subprocessor who may have access to the Personal Data provided by the Company as an Agent of the Data Controller, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data provided by the Company as an Agent of the Data Controller, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual’s duties to the Subprocessor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## **4. Security**

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Processor shall in relation to the Personal Data provided by the Company as an Agent of the Data Controller implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4.2 In assessing the appropriate level of security, the Data Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

## **5. Subprocessing**

5.1 the Data Processor shall not appoint (or disclose any Company Personal Data to) any Subprocessor unless required or authorised by the Company.

## **6. Data Subject Rights**

6.1 Taking into account the nature of the Processing, the Data Processor shall assist the Company as an Agent of the Data Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Company obligations, as reasonably understood by the Company as an Agent of the Data Controller, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

### **6.2 The Data Processor shall:**

6.2.1 promptly notify the Company if it receives a request from a Data Subject under any Data Protection Law in respect of Personal Data provided by the Company as an Agent of the Data Controller; and

6.2.2 ensure that it does not respond to that request except on the documented instructions of the Company or as required by Applicable Laws to which the Data Processor is subject, in which case Data Processor shall to the extent permitted by Applicable Laws inform the Company of that legal requirement before the Data Processor responds to the request.

## **7. Personal Data Breach**

7.1 the Data Processor shall notify the Company without undue delay upon the Data Processor becoming aware of a Personal Data Breach affecting Personal Data provided by the Company as an Agent of the Controller, providing the Company with sufficient information to allow the Company to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2 the Data Processor shall co-operate with the Company and take reasonable commercial steps as are directed by the Company to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **8. Data Protection Impact Assessment and Prior Consultation**

8.1 The Data Processor shall provide reasonable assistance to the Company with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Company reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Company Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

## **9. Deletion or return of Company Personal Data**

9.1 Subject to this section 9 the Data Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of Personal Data provided by the Company as an Agent of the Controller (the "Cessation Date"), delete and procure the deletion of all copies of those Personal Data provided by the Company as an Agent of the Data Controller.

## **10. Audit rights**

10.1 Subject to this section 10, the Data Processor shall make available to the Company on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Company or an auditor mandated by the Company in relation to the Processing of the Personal Data provided by the Company as an Agent of the Data Controller.

10.2 Information and audit rights of the Company only arise under section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

## **11. Data Transfer**

11.1 The Data Processor may not transfer or authorise the transfer of Data to countries outside the EU and/or the European Economic Area (EEA) without the prior written consent of the Company. If personal data processed under this Agreement is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on EU-approved standard contractual clauses for the transfer of personal data.

## **12. General Terms**

12.1 Confidentiality. Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

- (a) disclosure is required by law;
- (b) the relevant information is already in the public domain.

12.2 Notices. All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement at such other address as notified from time to time by the Parties changing address.

## **13. Governing Law and Jurisdiction**

13.1 This Agreement is governed by the laws of England and Wales.

13.2 Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of England and Wales.