

End User Data Processing Agreement

1. INTRODUCTION AND SCOPE

- 1.1 With effect from 25 May 2018 (except provisions relating to law enforcement processing, in which case those provisions relating to such processing shall apply from 6 May 2018) (“**the Effective Date**”) save where expressly stated in this End User Data Processing Addendum, the terms of this End User Data Processing Addendum shall delete and replace all previous data protection, privacy and security provisions contained within the Agreement and any associated schedule, addendum, special conditions, variations or special terms if applicable
- 1.2 Notwithstanding the terms of the Agreement, except where indicated otherwise, from the Effective Date, the terms of this End User Data Processing Addendum shall apply to the relationship between the Intermediary, GBG and the End User and these additional terms shall take precedence over the terms in the Agreement.
- 1.3 Except as set out in this End User Data Processing Addendum, the Agreement shall remain unchanged and in full force and effect
- 1.4 All references in this End User Data Processing Addendum to clauses are to the clauses in this End User Data Processing Addendum unless otherwise stated

2. DEFINITIONS AND INTERPRETATIONS

- 2.1 In this End User Data Processing Addendum the following definitions shall apply:
- “**Additional Terms**” means the special terms and conditions relating to the use of Supplier Data as updated from time to time and as set out in the appendices to the Agreement which will apply if the End User has selected to use the relevant element of the Service incorporating the Supplier Data.
- “**End User Data**” any Personal Data provided to the Intermediary by the End User for processing in accordance with the terms of the Agreement.
- “**Controller**” means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by EU or Member State laws, the Controller (or the criteria for nominating the controller) may be designated by those laws.
- “**Data Subject**” means an identifiable natural person about whom a Controller holds Personal Data. For the purposes of the Agreement and this Data Processing Addendum, this may include an individual whose details are provided to the Intermediary and/or GBG by the End User as part of the End User Data or whose details are contained within the Supplier Data.
- “**Data Supplier**” means GBG’s third party data suppliers that provide Supplier Data for use in the Intermediary’s products and services.
- “**GBG**” means GB Group PLC or the GBG Group Company who signed the original Agreement with the Intermediary

who provides the service to the Intermediary for resale to its End Users.

“**GBG Group Company**” means; IDscan Biometrics Limited; Postcode Anywhere Holdings Limited; PCA Predict Inc; Loqate Inc; GBG Dectech Solutions S.L.; GBG Dectech Sdn.Bhd and GBG Dectech Pty

“**GDPR**” means General Data Protection Regulation (EU) 2016/679 as in force from time to time 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 GDPR.

“**LED**” means the Law Enforcement Directive (*Directive* (EU) 2016/680)) (as transposed into domestic legislation of each Member State) as may be applicable with regard to the processing of Personal Data by a competent authority (as defined in the LED) for the purposes of prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties.

“**Personal Data**” shall have the meaning set out in the GDPR specifically this means any information relating to a Data Subject; who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“**Privacy and Data Protection Requirements**” all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, if relevant, the GDPR, the LED, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and the Privacy and Electronic Communication Regulations 2003, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in England and Wales or a European Union judicial authority.

“**Processor**” means a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller.

“**Sub-processor**” means a natural or legal person, public authority, agency or any other body contracted by the Processor and/or GBG to process Personal Data for the purpose of carrying out a specific processing activity on behalf of the Controller.

“**Supplier Data**” means any Personal Data provided to Intermediary and/or the End User by GBG and/or the Data Supplier or used within the Intermediary’s products and services in accordance with the terms of the Agreement.

“**Supervisory Authority**” means an independent public authority which is established by a Member State pursuant to Article 51 of GDPR.

3. GENERAL

- 3.1 Both Parties warrant that they will comply with their respective obligations under the Privacy and Data Protection Requirements and the terms of this End User Data Processing Addendum.
- 3.2 In addition to this End User Data Processing Addendum forming a legally binding agreement between the Intermediary and End User, the End User acknowledges and agree that the terms of this End User Data Processing Addendum shall also form a legal and binding agreement between the End User and GBG.
- 3.3 For the purpose of this End User Data Processing Addendum, the End User is the Controller, the Intermediary is the Processor and GBG is a Sub-processor.

4. CONTROLLER OBLIGATIONS IN RELATION TO PROCESSING OF END USER DATA

- 4.1 The End User warrants and represents that all instructions provided to the Intermediary in relation to the processing of End User Data are lawful and shall as a minimum include:
 - (a) The nature and purpose of the processing of the End User Data;
 - (b) The types of Personal Data to be processed; and
 - (c) The categories of Data Subjects to whom the Personal Data relates.
- 4.2 The End User shall only provide instructions to the Intermediary that are in accordance with the terms of the Agreement and this End User Data Processing Addendum. Such instructions shall be limited to the subject matter of the relevant Services under the Agreement.
- 4.3 The End User acknowledges that as Controller it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to the Intermediary to process End User Data for the purposes of carrying out the Services as set out in the Agreement.
- 4.4 The Parties acknowledge and accept that processing of Personal Data belonging to an EEA Data Subject and/or the the processing of Personal Data in the context of the activities of an establishment of a Controller or Processor within the EEA shall be lawful only if and to the extent that either an exemption, Article 2 GDPR or at least one of the following conditions (as specified on a Proforma or otherwise) applies:
 - (a) the Data Subject has given consent to the processing of his or her Personal Data for one or more specific purposes;
 - (b) processing is necessary for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract;
 - (c) processing is necessary for compliance with a legal obligation to which the Controller is subject;
 - (d) processing is necessary in order to protect the vital interests of the Data Subject or of another natural person;
 - (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller; or
 - (f) processing is necessary for the purposes of the legitimate interests pursued by the Controller or by

a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Data Subject which require protection of Personal Data, in particular where the Data Subject is a child.

5. PROCESSOR OBLIGATIONS IN RELATION TO THE PROCESSING OF END USER DATA

- 5.1 To the extent that the performance of the Intermediary's obligations, and any supporting and/or ancillary activities, involves processing End User Data, the Intermediary acting as Processor shall:
 - (a) only carry out processing of End User Data in accordance with the End User's documented instructions, including where relevant for transfers of End User Data outside the European Economic Area ("EEA") or to an international organisation (unless the Intermediary is otherwise required to process End User Data by European Union, Member State and/or UK law to which the Intermediary is subject, in which case Intermediary shall inform the End User of that legal requirement before processing unless prohibited by that law on important grounds of public interest), and shall immediately inform the End User if, in the Intermediary's opinion, any instruction given by the End User to the Intermediary infringes Privacy and Data Protection Requirements;
 - (b) notify the End User without undue delay of any requests received from a Data Subject exercising their rights under Privacy and Data Protection Requirements and, taking into account the nature of the processing, assist the End User by taking appropriate technical and organisational measures, insofar as this is possible, with fulfilling its obligations in respect of Data Subject rights under Privacy and Data Protection Requirements, including assisting the End User in responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of Personal Data, or for restriction of processing or objections to processing of Personal Data;
 - (c) take all security measures required in accordance with Privacy and Data Protection Requirements (Article 32 GDPR), and at the request of the End User provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to Personal Data transmitted stored or otherwise processed; and detect and report Personal Data breaches without undue delay;
 - (d) taking into account the nature of the processing and the information available to the Intermediary, use all measures to assist the End User in ensuring compliance with the End User's obligations to:
 - i. keep Personal Data secure (Article 32 GDPR);
 - ii. notify Personal Data breaches to the Supervisory Authority (Article 33 GDPR);
 - iii. advise Data Subjects when there has been a Personal Data breach (Article 34 GDPR);

- iv. carry out data protection impact assessments (Article 35 GDPR); and
 - v. consult with the Supervisory Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 36 GDPR).
- (e) without undue delay, inform the End User of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the End User Data transmitted, stored or otherwise processed. Intermediary accepts and acknowledges that the End User shall direct in its sole discretion, any and all steps and measures taken to remedy a breach by Intermediary under Privacy and Data Protection Requirements, including but not limited to any communications with a Supervisory Authority. The Intermediary agrees not to act in any way upon such disclosure without the prior written consent of the End User;
- (f) make available to the End User all information necessary to demonstrate compliance with the obligations laid down in this End User Data Processing Addendum and allow for and contribute to audits, including inspections, conducted by the End User or another auditor mandated by the End User as set out in clause 7; and
- (g) in addition to the confidentiality obligations contained within the Agreement, ensure that persons authorised to process the End User Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 5.2 On expiry or termination of the Agreement, the Intermediary shall immediately cease to use End User Data and shall arrange for its safe return or destruction as shall be required by the End User (unless European Union, Member States and/or UK Law requires storage of any Personal Data contained within the End User Data or an exemption under GDPR applies).

6. USE OF SUPPLIER DATA

- 6.1 Where the End User uses or receives Supplier Data as part of the Services, the End User acknowledges that:
- (a) the Supplier Data may be subject to Additional Terms;
 - (b) where relevant for the provision of Services under the Agreement, the End User shall comply with the Additional Terms; and
 - (c) where the Additional Terms specify that Personal Data belonging to EEA Data Subjects cannot be processed by a particular Data Supplier, the Client warrants that it will not use that element of the Service for the processing of Personal Data belonging to an EEA Data Subject.
- 6.2 The Intermediary shall promptly notify the End User in the event of a change to the Additional Terms.

7. AUDIT RIGHTS

- 7.1 Upon the End User's reasonable request, the Intermediary agrees to provide the End User with any documentation or

records (which may be redacted to remove confidential commercial information not relevant to the requirements of this End User Data Processing Addendum) which will enable it to verify and monitor the Intermediary's compliance with its data protection and security obligations under the terms of this Data Processing Addendum, within 14 days of receipt of such request, and to notify the End User of the person within Intermediary's organisation who will act as the point of contact for provision of the information required by the End User.

- 7.2 Where, in the reasonable opinion of the End User, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR (or where applicable Article 22 of the LED), the End User will be entitled, upon reasonable prior written notice to the Intermediary and upon reasonable grounds, to conduct an on-site audit of the Intermediary's premises used in connection with the Service, solely to confirm compliance with its data protection and security obligations under this End User Data Processing Addendum.
- 7.3 Any audit carried out by the End User will be conducted in a manner that does not disrupt, delay or interfere with Intermediary's performance of its business. The End User shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the Agreement.
- 7.4 Any audit right granted to the Intermediary or GBG under the Agreement shall remain in full force and effect. In the event that there is no audit right in favour of the Intermediary or GBG, or the audit right contained in the Agreement in favour of the Intermediary or GBG is not sufficient to enable it to verify and monitor the End User's compliance with its data protection and security obligations under the terms of this End User Data Processing Addendum, then, Intermediary or GBG shall be entitled to carry out an audit of the End User on reciprocal terms as those set out in clauses **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.**

8. USE OF SUB-PROCESSORS

- 8.1 The End User provides their consent for the Intermediary and GBG to use Sub-processors in the delivery of the Service. Where the Intermediary and GBG uses third party Data Suppliers or any other third party and where they are acting as a Sub-processor in relation to the End User Data the Intermediary shall:
- (a) enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this End User Data Processing Addendum to the extent applicable to the nature of the services provided by such Sub-processor, in particular, unless otherwise stated in the Additional Terms in accordance with clause 6.1(c), providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR;
 - (b) shall remain liable for any act or omission of a Sub-processor that does not comply with the data

protection obligations as set out in this End User Data Processing Addendum; and

- (c) the Intermediary shall inform the End User of any intended changes concerning the addition or replacement of a Sub-processor with access to End User Data and give the End User the opportunity to object to such changes.

9. TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

9.1 The Intermediary and GBG shall not cause or permit any End User Data to be transferred outside of the EEA unless such transfer is necessary for the purposes of the Intermediary and GBG carrying out its obligations under the Agreement in which case, the provisions of this clause 9 shall apply.

9.2 **Transfer subject to adequate safeguards:** Subject to clauses **Error! Reference source not found.** and **Error! Reference source not found.**, if Personal Data is to be processed outside of the EEA, the Intermediary and GBG agrees to provide and maintain appropriate safeguards as set out in Article 46 GDPR to lawfully transfer the Personal Data to a third country.

9.3 **Transfers based on adequacy decisions:** Clause **Error! Reference source not found.** shall not apply if the processing of the Personal Data is carried out in a country that the European Commission has considered as offering an adequate level of protection.

9.4 **Derogations for specific situations:** The End User has consented to such transfer and acknowledges and accepts that certain Data Suppliers engaged by the Intermediary and/or GBG in the provision of the products and services are located in a country that the European Commission has not formally declared to have an adequate level of protection (Clause **Error! Reference source not found.**/ Article 45(3) GDPR) and are not able to demonstrate appropriate safeguards (Clause **Error! Reference source not found.**/ Article 46 GDPR). In such circumstances this will be stated in the Additional Terms and where GDPR applies to the Intermediary End User by virtue of Article 3 GDPR, the End User as Controller acknowledges that prior to submitting End User Data to the Intermediary and GBG for processing it shall determine, and is solely liable for ensuring, that one of following exceptions set out in Article 49 GDPR applies:

- (a) the Data Subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the Data Subject due to the absence of an adequacy decision and appropriate safeguards;
- (b) the transfer is necessary for the performance of a contract between the Data Subject and the End User or the implementation of pre-contractual measures taken at the Data Subject's request;
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the Data Subject between the End User and another natural or legal person;
- (d) the transfer is necessary for important reasons of public interest;

- (e) the transfer is necessary for the establishment, exercise or defence of legal claims;
- (f) the transfer is necessary in order to protect the vital interests of the Data Subject or of other persons, where the Data Subject is physically or legally incapable of giving consent; or
- (g) the transfer is made from a register which according to European Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by European Union or Member State law for consultation are fulfilled in the particular case.

The terms of this clause 9.4 shall not apply where the Client is subject to LED. In such circumstance clause 9.5 of this Data Processing Addendum shall apply.

9.5 **Derogations for specific situations where the LED is applicable to the Client:**

The Client has consented to such transfer and acknowledges and accepts that certain Data Suppliers engaged by GBG in the provision and services are located in a country that the European Commission has not formally declared to have an adequate level of protection (Clause 9.3/ Article 36 LED) and are not able to demonstrate appropriate safeguards (Clause 9.2/Article 37 LED). In such circumstances this will be stated in the Additional Terms and the Client as Controller acknowledges that prior to submitting Client Data to GBG for processing it shall determine, and is solely liable for ensuring that, one of the following exceptions set out in Article 38 LED applies:

- (a) the transfer is necessary to protect the vital interest of the Data Subject or another person;
- (b) to safeguard legitimate interest of the Data Subject, where the law of the Member State transferring the Personal Data so provides;
- (c) for the prevention of an immediate and serious threat to public security of a Member State or a third country;
- (d) in individual cases for the purposes set out in Article 1 (1) LED; or
- (e) in an individual case for the purpose set out in Article 1 (1) LED.

10. SECURITY

10.1 For the avoidance of doubt, both Parties acknowledge that any provisions in relation to User IDs and passwords used in connection with the Service under the Agreement shall remain unchanged and in full force and effect.

11. LIABILITY

11.1 The Intermediary, GBG and the End User do not exclude or limit their liability in respect of the terms of this End User Data Processing Addendum.

12. MISCELLANEOUS

12.1 This End User Data Processing Addendum and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with the laws of England and subject to any dispute

resolution procedure as set out in the Agreement, both Parties submit to the exclusive jurisdiction of the English Courts,.

12.2 Subject to clause 3.2, a person who is not a Party to this End User Data Processing Addendum has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce the provisions of this End User Data Processing Addendum.

12.3 Where applicable, the Parties agree that if, upon review following GDPR and LED coming into force, the provisions of this End User Data Processing Addendum do not comply with GDPR and/or LED then both Parties agree to cooperate in good faith to re-negotiate the terms of this End User Data Processing Addendum to ensure compliance with GDPR and/or LED.