

DATA PROCESSING AGREEMENT

CovertSwarm Limited – Data Processing Agreement DATA PROCESSING AGREEMENT

PART 1

1. These terms and conditions were last updated on 1st January 2024.
2. This Data Processing Agreement applies to the processing of personal data in relation to services provided by CovertSwarm to its customers (the “**Security Services**”) under an agreement entered into between CovertSwarm and its customers (the “**Agreement**”).
3. The terms “**controller**”, “**processor**”, “**personal data**”, “**personal data breach**”, “**data subject**” and “**processing**” have the meanings given to them in the Data Protection Legislation (as defined below).
4. Each of the parties to this Agreement acknowledge and agree that for the purpose of the Data Protection Legislation:
 - 4.1. Customer is the Controller; and
 - 4.2. CovertSwarm is the Processor

in relation to the processing by CovertSwarm of any Personal Data.

5. Definitions

Affiliate: means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, has the meaning given in the Corporation Tax Act 2010, s 1124 and Controls, Controlled and under common Control shall be interested accordingly.

Business Day: means a day other than a Saturday, Sunday or bank or public holiday in England.

Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

UK Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Sub-Processors: means a Processor engaged by CovertSwarm or by any other Sub-Processor for carrying out processing activities in respect of the Agreement.

6. CovertSwarm's obligations in relation to processing Personal Data

CovertSwarm will:

- 6.1. in relation to the processing of Personal Data, comply with its obligations under the Data Protection Legislation and ensure the protection of the rights of data subjects;
- 6.2. process (and will procure that its personnel will process) the Personal Data (including the transfer to an international organisation or a country (other than the United Kingdom) outside the European Union) only:
 - 6.2.1. in accordance with Customer's commercially reasonable, written instructions from time to time and in accordance with Part 2 of this Data Processing Agreement; or
 - 6.2.2. as otherwise required by law (subject to CovertSwarm first notifying Customer of the relevant legal requirement unless such notification is itself prohibited by law on important grounds of public interest) and only to the extent and in such a manner as is necessary for CovertSwarm to provide the Security Services and to perform its other obligations under the Agreement in accordance with the Agreement and not for any other purpose;
- 6.3. immediately notify Customer if CovertSwarm (or any of its Sub-processors) believes any of Customer's instructions relating to processing Personal Data breaches any Data Protection Legislation and CovertSwarm shall be entitled without penalty to suspend execution of the instructions concerned. Any notification by CovertSwarm under this clause should not be regarded as legal advice;
- 6.4. only disclose the Personal Data to, and ensure that access to the Personal Data is limited to, those of its personnel who are bound by confidentiality obligations in relation to the Personal Data;
- 6.5. not transfer any Personal Data to an international organisation or any country (other than the United Kingdom) outside the European Union without the express prior written consent of Customer and only in accordance with Data Protection Legislation from time to time;
- 6.6. implement appropriate technical and organizational measures designed to ensure a level of security appropriate to the data security risks presented by processing the Personal Data, including the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;
- 6.7. when CovertSwarm ceases to provide Security Services relating to processing pursuant to the Agreement:
 - 6.7.1. at Customer's option, delete or return to Customer all Personal Data; and
 - 6.7.2. delete all copies of the Personal Data except insofar as CovertSwarm is required by law to continue to store such copies.

7. Security

CovertSwarm shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer Personal Data), confidentiality and integrity of Customer Personal Data.

8. Information, co-operation and assistance

- 8.1. CovertSwarm will take appropriate technical and organizational measures to assist Customer in fulfilling Customer's obligations to respond to any request by any data subject to exercise any data subject right under the Data Protection Legislation, in each case only to the extent that the data subject's request relates to the processing of Personal Data by CovertSwarm pursuant to the Agreement.
- 8.2. CovertSwarm will at Customer's request assist Customer in complying with the Customer's obligations under the Data Protection Legislation or any equivalent or implementing legislation, in relation to security of processing, notification of personal data breaches, communication of personal data breaches to data subjects, data protection impact assessments and consultation with the supervisory authority where necessary in relation to data protection impact assessments, in each case only to the extent that the Customer's request relates to the processing of Personal Data by CovertSwarm pursuant to the Agreement.

9. Records, audit and inspection

CovertSwarm will:

- 9.1. at Customer's request, make available to Customer all information required to demonstrate:
 - 9.1.1. CovertSwarm's compliance with the Agreement;
 - 9.1.2. the compliance by each of its Sub-processors with the agreement between CovertSwarm and such Sub-processor referred to in clause 10.3; and
 - 9.1.3. Customer's compliance with its obligations under the Agreement and/or with the Data Protection Legislation in relation to the engagement of a processor; and
- 9.2. on reasonable notice during business hours allow Customer, its statutory or regulatory auditors, and in each case their authorised agents, access to the information referred to in clause 9.1 as Customer may require in order to verify CovertSwarm's compliance with its obligations in relation to data processing under the Agreement. Unless Customer has reasonable grounds to believe that CovertSwarm has committed a material breach of the obligations in this Data Processing Agreement, Customer may not exercise its audit right more than once in any twelve-month period. Customer shall use all reasonable endeavours to ensure that the conduct of any audit by Customer or its authorised agents does not unreasonably disrupt CovertSwarm or its business. Any audit by Customer or its authorised agents will be limited to two working days in any 12-month period and any audits exceeding more than two Business Days will incur a fee to the Customer and/or its authorised agents of £500 per day over and above two Business Days. Any audit by the Customer or authorised agent shall also be limited to an audit of the Personal Data and the processes relating to the Personal Data and will not include any information relating to any other customer of CovertSwarm or any other third party (other than a Sub-processor).

10. Sub-processing

- 10.1. The Customer acknowledges and agrees that CovertSwarm may use the following third parties to process any Personal Data on behalf of the Customer pursuant to the Agreement:

- Amazon Web Services Limited with Company number 08650665

- Digital Ocean Limited with Company number 11363201
- Microsoft Limited with Company number 01624297
- Xero (UK) Limited with Company number 06071722
- Freshworks Technologies UK Limited with Company number 09338697
- ZenLeads Inc. (Trading as Apollo.io)
- Lead Forensics Limited with Company Number 07158006

CovertSwarm will give Customer not less than thirty days' prior notice of the proposed appointment of any replacement or additional Sub-processor. Customer must notify CovertSwarm of any objection to such appointment within five days after receiving notice of the proposed appointment from CovertSwarm; if Customer's objection to the proposed appointment is reasonable, CovertSwarm will re-arrange the processing arrangements so that proposed appointee is not used to process Personal Data or make such other amendment to the terms of the Agreement as the parties (acting reasonably and in good faith) agree is appropriate to reflect the change in the sub-processing arrangements or, if neither of these options is practicable, CovertSwarm will so notify Customer which shall be entitled to terminate the Agreement by giving CovertSwarm not less than thirty days' notice, such notice being given within thirty days following Customer's receipt of CovertSwarm's notice that it is not practicable to either re-arrange the processing to avoid the need to use the proposed sub-processor or to agree appropriate amendments to the terms of the Agreement.

10.2. If CovertSwarm proposes to sub-contract the processing of any Personal Data on behalf (directly or indirectly) of Customer, CovertSwarm will ensure that the proposed sub-processor provides sufficient guarantees to implement appropriate technical and organizational measures in such a way that its processing will comply with the Data Protection Legislation.

10.3. If CovertSwarm sub-contracts the processing of any Personal Data to any third party on behalf (directly or indirectly) of Customer including any replacement or additional sub-contractor pursuant to clause 10.1, CovertSwarm will enter into a written agreement with such Sub-Processor and include in that agreement at least:

10.3.1. obligations on the Sub-Processor which are equivalent to the obligations on CovertSwarm in relation to Personal Data under the Agreement;

10.3.2. obligations on the Sub-Processor not to sub-contract the processing of any Personal Data on behalf (directly or indirectly) of Customer to any third party without ensuring that each Sub-Processor is bound by equivalent obligations to the obligations on CovertSwarm under the Agreement; and

10.3.3. provisions in favour of Customer equivalent to those in this Data Processing Agreement.

10.4. If CovertSwarm sub-contracts the processing of any Personal Data on behalf (directly or indirectly) of Customer, CovertSwarm will not consent to any such Sub-Processor further sub-contracting the processing of any Personal Data on behalf (directly or indirectly) of Customer without ensuring that such Sub-Processor enters into a written agreement with its sub-sub-processor including provisions equivalent to those in clauses 10.3.1 to 10.3.3 inclusive.

10.5. CovertSwarm remains fully liable to the Customer for the performance of each of its Sub-Processors and their sub-contractors in relation to processing Personal Data.

11. Customer's obligations in relation to processing Personal Data

11.1. Customer will:

- 11.1.1. comply with its obligations under the Data Protection Legislation which arise in relation to the Agreement and the receipt of the Security Services;
- 11.1.2. not do or omit to do anything which causes CovertSwarm to breach any of its obligations under the Data Protection Legislation; and
- 11.1.3. reimburse CovertSwarm for any reasonable costs reasonably incurred by CovertSwarm in performing its obligations under this Data Processing Agreement, except to the extent that such costs were incurred as a result of any breach by CovertSwarm of any of its obligations under this Data Processing Agreement or Data Protection Legislation.

11.2. Customer represents, warrants and undertakes to CovertSwarm that:

- 11.2.1. Customer (and any other sub-contractor of the Customer) has obtained the Personal Data in accordance with the Data Protection Legislation and has provided (or will provide) all necessary notices to data subjects whose Personal Data comprises part of the Personal Data; and
- 11.2.2. it has (or will at the required time have) one or more valid grounds for CovertSwarm's (and any Sub-Processor's and their sub-sub-processor's) processing of the Personal Data in accordance with this Agreement, so that CovertSwarm's (and any Sub-Processors and their sub-sub-processors) processing of the Personal Data in accordance with this Agreement complies with the Data Protection Legislation.

12. General

- 12.1. All other terms set out in the Agreement will apply to this Data Processing Agreement.
- 12.2. Any liability of CovertSwarm under this Data Processing Agreement will be subject to clause 6 of the Agreement.

PART 2 - PROCESSING ACTIVITIES

1. Subject-matter, nature and purpose of the processing:

CovertSwarm will process Personal Data for and behalf of Customer and its Affiliates and in accordance with Customer's instructions for purposes of providing the Security Services in accordance with the Agreement.

Such purposes may include:

- Service Delivery: Personal data obtained through point of compromise or collecting during services engagement.
- Business Purposes: to provide business products and services to Customer.

2. Duration of processing:

Processing of the Personal Data by CovertSwarm shall be for the term of the Agreement, provided that Customer's Personal Data shall not be processed for longer than is necessary for the purpose for which it was collected or is being processed (except where a statutory exception applies).

3. Personal data in scope:

CovertSwarm may process the following types/categories of personal data:

Personal data, consisting of:

- personal details and contact details

4. Persons affected (data subjects):

The group of data subjects affected by the processing of their personal data consists of:

- Customer's employees and staff whom CovertSwarm communicate with for the purposes of service delivery.
- Data accessed or obtained through service delivery. Any data obtained in this way will be redacted in any communications and immediately destroyed (removed from all CovertSwarm systems) following the customer's confirmation of finding receipt or after 1 (one) Business Day (whichever is soonest).