



GDPR Clause

1 A note on “you”

1.1 You’ and ‘your’ in the Data Protection clause below mean the Customer.

1.2 Phrases that refer to ‘we’, ‘our’, ‘us’, ‘each of us’, ‘each of our’, ‘both of us’, ‘we each’, ‘we will each’, ‘we will both’, ‘whichever of us’, ‘one of us’, ‘neither of us’, ‘either of us’, ‘either of our’, ‘either one of us’ and ‘we both’ mean one or both of Gigaloch and the Customer, whichever makes sense in the context of the sentence.

2 Data Protection

2.1 The following terms each have the meaning given to it in the GDPR: “Binding Corporate Rules”, “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing”, “Processor” and “Supervisory Authority”.

2.2 Whether or not any other provision in the Contract may say something different, for Gigaloch to provide a Service, Personal Data may be:

2.2.1 used, managed, accessed, transferred, or held on a variety of systems, networks and facilities (including databases) worldwide; or

2.2.2 transferred by Gigaloch to the extent necessary to allow Gigaloch to fulfil its obligations under the Contract and you appoint Gigaloch to perform each transfer in order to provide the Services provided that Gigaloch will where necessary implement appropriate transfer mechanisms permitted by Data Protection Legislation, including:

(a) Gigaloch’s Binding Corporate Rules (for transfers among Gigaloch’s Affiliates and transfers from you to Gigaloch); and

(b) agreements incorporating the relevant standard data protection clauses adopted by the European Commission or the UK Secretary of State

2.3 Gigaloch will be either Controller, Processor or both under the Contract depending on the type of Personal Data Processed and the purpose of the Processing.

2.4 If Gigaloch acts as a Controller:

2.4.1 Gigaloch may collect, Process, use or share Personal Data with Gigaloch Affiliates and Sub-Processors, within or outside the country of origin in order to do any or all of the following:

(a) administer, track and fulfil Orders for the Service;

(b) implement the Service;

(c) manage and protect the security and resilience of any Gigaloch Equipment, the Gigaloch Network and the Services;

(d) manage, track and resolve Incidents with the Service as may be set out in the Contract;

(e) administer access to online portals relating to the Service;

(f) compile, dispatch and manage the payment of invoices;

(g) manage the Contract and resolve any disputes relating to it;

(h) respond to general queries relating to the Service or Contract; or

(i) comply with Applicable Law;

2.4.2 Gigaloch will Process the Personal Data in accordance with applicable Data Protection Legislation and as set out in the Gigaloch Privacy Policy and,

2.4.3 Gigaloch may, from time to time, contact the Customer Contact, or other network, IT or procurement manager involved in the procurement or management of the Service, to provide additional information concerning the Service or other similar services.

2.5 If Gigaloch acts as a Processor:

2.5.1 the subject-matter, duration, nature and purpose of the Processing, the type of Customer Personal Data and categories of Data Subjects will be set out.

2.5.2 in order to perform its obligations under the Contract, Gigaloch will:

(a) Process the Customer Personal Data on your behalf in accordance with your documented instructions as set out in Clause 2.5.11, except where:

(i) Applicable Law requires Gigaloch to Process the Customer Personal Data otherwise, in which case, Gigaloch will notify you of that requirement before Processing, unless to do so would be contrary to that Applicable Law on important grounds of public interest;

(ii) in Gigaloch's reasonable opinion an additional instruction or a change to the instructions provided by you in accordance with Clause 2.5.11 infringes the Data Protection Legislation and Gigaloch will inform you of its opinion without undue delay and will not be required to comply with that instruction.

(b) to protect the Customer Personal Data against a Personal Data Breach, implement technical and organisational security measures, including those that may be set out in the Contract, that are appropriate to the risk represented by Gigaloch's Processing and the nature of the Customer Personal Data being Processed.

(c) provide Notice to you without undue delay after becoming aware of a Personal Data Breach affecting the Customer Personal Data.

(d) only use the Sub-Processors approved by you by entering into the Contract or in accordance with Clause 2.5.9; and

(e) assist you in your compliance with the Data Protection Legislation, taking into account the nature of the Processing of the Customer Personal Data and the information available to Gigaloch, relating to:

(i) its obligation to respond to lawful requests from a Data Subject to the extent practicable;

(ii) the security of the Processing of the Customer Personal Data.

(iii) notification of a Personal Data Breach affecting the Customer Personal Data to the Supervisory Authority or the Data Subjects; and

(iv) a data protection impact assessment as may be required by Data Protection Legislation and prior consultation with the Supervisory Authority, and you will reimburse Gigaloch's reasonable costs for this assistance except for the assistance set out in Clause

2.5.2(e)(iii) where a Personal Data Breach affecting the Customer Personal Data occurred as a direct result of a breach of Gigaloch's obligations set out in Clause 2.5.2(b);

2.5.3 unless Applicable Law requires Gigaloch to store a copy of the Customer Personal Data, upon expiry or termination of the Contract and at your option, Gigaloch will delete or return the Customer Personal Data within a reasonable time period and you will reimburse Gigaloch's reasonable costs for this deletion or return of the Customer Personal Data;

2.5.4 Gigaloch will make available to you the information demonstrating Gigaloch's compliance with its obligations set out in Clause 2.5, and, subject to 30 days' Notice from you, allow for and reasonably cooperate with you (or a third-party auditor appointed by you) to audit this compliance at reasonable intervals (but not more than once per year), so long as:

(a) the audit will:

(i) not disrupt Gigaloch's business;

(ii) be conducted during Business Days;

(iii) not interfere with the interests of Gigaloch's other customers;

(iv) not cause Gigaloch to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and

(v) not exceed a period of two successive Business Days;

(b) you (or your third party auditor) will comply with Gigaloch's relevant security policies and appropriate confidentiality obligations; and

(c) you will reimburse Gigaloch's reasonable costs associated with the audit and, where Gigaloch conducts an audit of its Sub-Processors to demonstrate Gigaloch's compliance with its obligations set out in Clause 2.5, those of its Sub-Processors.

2.5.5 Gigaloch may demonstrate its compliance with its obligations set out in Clause 2.5 by adhering to an approved code of conduct, by obtaining an approved certification or by providing you with an audit report issued by an independent third-party auditor (provided that you will comply with appropriate confidentiality obligations and not use this audit report for any other purpose);

2.5.6 Gigaloch will not disclose Customer Personal Data to a third party unless required for the performance of the Service, permitted under the Contract or otherwise required by Applicable Law;

2.5.7 Gigaloch will ensure that persons authorised by Gigaloch to Process the Customer Personal Data will be bound by a duty of confidentiality.

2.5.8 Gigaloch may use Sub-Processors in accordance with the provision, if there is one, in the Contract that sets out Gigaloch's right to subcontract the performance of any of its obligations under the Contract and will ensure that data protection obligations in respect of Processing Customer Personal Data equivalent to those set out in Clause 2.5 of this Data Protection Clause will be imposed on any Sub-Processors;

2.5.9 Gigaloch will inform you of proposed changes to Gigaloch's Sub-Processors from time to time by either:

(a) providing you with online notice of the intended changes and you will have 30 days starting from the first Business Day of the calendar month following the date of the online notice to object to the change; or,

(b) giving you Notice and you will have 30 days starting from the date of the Notice to object to the change, and if you do not object in accordance with Clauses 2.5.9(a) or 2.5.9(b), you will be deemed to have authorised the use of the new Sub-Processors;

2.5.10 you may object to the use of a new Sub-Processor by giving Notice documenting material concerns that the Sub-Processor will not be able to comply with the Data Protection Legislation, and if such Notice is received within the time required by Clause 2.5.9, we will both address your objection in accordance with the process set out in the provision, if there is one, in the Contract that sets out how you and Gigaloch will deal with disputes, and Gigaloch may use the relevant Sub-Processor to provide the Service until the objection is resolved;

2.5.11 the Contract, including this Data Protection Clause, contains your complete instructions to Gigaloch for the Processing of Customer Personal Data and any additional instructions or changes to the instructions will be incorporated into this Contract:

(a) in accordance with the provision in the Contract that sets out how you may request a change to the Contract to take account of any resulting change in the Charges or the Service; and if there is no such provision,

(b) by agreement between the parties taking into account any resulting change in the Charges or the Service;

2.5.12 you will comply with applicable Data Protection Legislation and will fulfil all the requirements necessary for the provision of the Service by Gigaloch, including providing any notifications and obtaining any regulatory approvals or consents required when sharing Personal Data with Gigaloch; and

2.5.13 you will only disclose to Gigaloch the Personal Data that Gigaloch requires to perform the Service.

2.6 If permitted by Applicable Law:

2.6.1 a party in breach of the Data Protection Legislation or this Data Protection Clause will be liable to the other for any losses, costs and liabilities (including those arising from Claims) incurred or suffered by the other party where those losses, costs and liabilities are caused by, or in connection with, that breach including where the parties are jointly and severally liable; and

2.6.2 where the parties are jointly and severally liable for a Claim caused by Processing neither party will make any payment or any offer of payment to any Data Subject (including third parties acting on behalf of any Data Subject) in response to any Claim caused by or relating to the Processing of Personal Data, without the prior written agreement of the other party.

2.6.3 Where each party acts as a Controller in relation to the Processing of Personal Data under the Contract, the parties will not act as joint Controllers (as defined by Data Protection Legislation) in relation to such Processing.

2.6.4 If Gigaloch proposes amendments to the Contract (in accordance with the provision, if there is one, in the Contract that sets out how the parties may amend the Contract), to reflect changes to Gigaloch's security measures, policies and processes to enable Gigaloch to comply with the Data Protection Legislation, you will act reasonably and in good faith.

3 General

3.1 The Contract will be amended as set out in this Data Protection Clause and will be deemed to have been amended on and from the 17 May 2022.

3.2 If there is a conflict between any of the documents in your Contract and this Data Protection Clause, this Data Protection Clause takes precedence.

3.3 This Data Protection Clause is in addition to the terms in the Contract and will be read as one document together with the Contract and the Contract will continue in full force and effect except as amended by this Data Protection Clause.

The definitions set out below apply for the interpretation of this Data Protection Clause only:

“Affiliate” means any entity that directly or indirectly controls or is controlled by either one of us, or is jointly controlled with either you or Gigaloch;

“Applicable Law” means the laws of Scotland and any laws and regulations, as may be amended from time to time, that apply to the provision or receipt of a Service, including:

(a) anti-corruption laws set out in the Bribery Act 2010 and

(b) all applicable export laws and regulations, including those of England & Wales and Northern Ireland

“Gigaloch” means Gigaloch Ltd and its Affiliates;

“Gigaloch Equipment” means any equipment and any related Software that Gigaloch owns or that is licensed to Gigaloch and that Gigaloch uses to provide the Services;

“Gigaloch Network” means the communications network owned or leased by Gigaloch and used to provide a Service;

“Gigaloch Privacy Policy” means the policy that Gigaloch has implemented and may update from time to time on how it Processes Personal Data and that is set out on our website

“Business Day” means any day generally seen locally in the place where a Service is provided as a working day and excluding national, public and bank holidays. If one of us is supposed to do something on a day that is not a Business Day, then they will need to do it on the next Business Day;

“Charges” mean the fees and charges that you pay in relation to a Service;

“Claim” means any legal claims, actions or proceedings against one of us, whether threatened or actual, whether by a third party or the other party to the Contract;

“Contract” means the agreement between you and Gigaloch for Services;

“Customer” means the party with whom Gigaloch contracts to provide the Service;

“Customer Contact” means any individuals authorised to act on your behalf for Service management matters;

“Customer Personal Data” means only the proportion of Personal Data where you are the Controller and that Gigaloch needs to Process on your behalf as a Processor in providing the Services to you under the Contract;

“Data Protection Clause” means these provisions that amend your Contract;

“Data Protection Legislation” means collectively

- (i) any applicable laws of the European Union,
- (ii) (ii) any applicable local laws relating to the Processing of Personal Data and the protection of an individual’s privacy,
- (iii) (iii) the GDPR, and
- (iv) any binding guidance or code of practice issued by a Supervisory Authority;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 (“EU GDPR”) and any amendment or replacement to it, (including any corresponding or equivalent national law or regulation that implements the GDPR)and the UK GDPR, as applicable to the processing;

“Incident” means an unplanned interruption to, or a reduction in the quality of, the Service or particular element of the Service.”

“Notice” means any notice to be given by one of us to the other in accordance with the provision, if there is one, in your Contract that sets out how notice will be given by either one of us under the Contract;

“Order” means any order or part of an Order you give to Gigaloch that is accepted by Gigaloch for one or more Services;

“Purchased Equipment” means any equipment, including any Software, that Gigaloch sells or licenses to you;

“Service” and “Services” means any service or services that Gigaloch provides under the Contract. If relevant, it includes a service for a particular Site, or a part or component of a Service and may also include content that Gigaloch has provided to you as well as Purchased Equipment;

“Site” means any place identified in your Contract from or to which Gigaloch provides a Service;

“Software” means any software in object code format only, and related documentation (whether on tangible or intangible media) that Gigaloch provides to you as part of a Service. It includes any embedded software,

“Sub-Processor” means a Gigaloch Affiliate or Gigaloch’s supplier or subcontractor that Gigaloch engages to Process Customer Personal Data for the purposes of the Contract; and

“UK GDPR” means the GDPR as applicable as part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended), as amended or replaced