

MSC R&D Services Limited (MSC R&D)

Data Processing and Anti- Facilitation of Tax Evasion

DEFINITIONS

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: 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);

UK Data Protection Legislation: 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); 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.

1. DATA PROTECTION

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This notice is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this paragraph **1**, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and MSC R&D is the Processor. Paragraph 2 below sets out the purpose of processing by MSC R&D, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 1.3 Without prejudice to the generality of paragraph **1.1**, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to MSC R&D and/or lawful collection of the Personal Data by MSC R&D on behalf of the Client as required for the provision of the service by MSC R&D and for the duration of the provision of the services.
- 1.4 Without prejudice to the generality of paragraph **1.1**, MSC R&D shall, in relation to any Personal Data processed in connection with the performance MSC R&D of its obligations as required for the provision of the services:

- (a) process that Personal Data only on the documented written instructions of the Client unless MSC R&D is required by Applicable Laws to otherwise process that Personal Data. Where MSC R&D is relying on Applicable Laws as the basis for processing Personal Data, MSC R&D shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit MSC R&D from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
 - (i) MSC R&D has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies; and
 - (iii) MSC R&D complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this notice.

1.5 The Client consents to MSC R&D appointing associates as relevant to the services as a third-party processor of Personal Data. MSC R&D confirms any associate is subject to a written

agreement incorporating terms which are substantially similar to those set out in this paragraph. As between the Client and MSC R&D, MSC R&D shall remain fully liable for all acts or omissions of the associates appointed by it pursuant to this paragraph.

- 1.6 MSC R&D may, at any time on not less than 30 days' notice, revise this paragraph by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 1.7 The Client shall be liable for, and shall indemnify (and keep indemnified) MSC R&D in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, MSC R&D arising directly or in connection with:
 - (a) any non-compliance by the Client of Data Protection Legislation;
 - (b) any Personal Data processing carried out by MSC R&D in accordance with instructions given by the Client that infringe the Data Protection Legislation; or
 - (c) any breach by the Client of its obligations under this notice.
- 1.8 Subject to paragraph 1.9 MSC R&D shall be liable for, and shall indemnify (and keep indemnified) the Client in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Client arising directly or in connection with MSC R&D's Personal Data processing activities that relate to the services:
 - (a) only to the extent that the same results from MSC R&D's or a sub-processor's breach of this notice; and
 - (b) not to the extent that the same is or are contributed to by any breach of this notice by the Client.
- 1.9 The aggregate total liability of MSC R&D for a breach of this notice and for liability set out in paragraph 1.8 shall be the fees paid by the Client in relation to the services in respect of which MSC R&D processed the Personal Data from which the liability arose.

2. Processing by MSC R&D

- 2.1 (a) Scope
 - (i) Purpose of processing: to provide services which include but are not limited to R&D tax credits or grant applications.
 - (ii) Duration of the processing; the term of the contract for the provision of the services.
- (b) Types of Personal Data: Name, address, salary details.
- (c) Categories of Data Subject: employees or contractors of the Client.

3. ANTI-FACILITATION OF TAX EVASION

3.1 Neither MSC R&D nor the Client shall:

- (a) engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) have and shall maintain in place throughout the term engagement between the parties such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation, in the case of MSC R&D, its employees and associates) and to ensure compliance with paragraph 3.1(a);
- (c) promptly report to the other party any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the services.

3.2 Each party shall ensure that any person associated with it and who is involved in the provision of services on the part of MSC R&D or providing relevant information to MSC R&D to enable to provision of the services does so on the basis of a written contract incorporating terms which are substantially similar to those set out in this paragraph 3 (**Relevant Terms**). MSC R&D shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms and vice versa, the Client shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to MSC R&D for any breach by such persons of any of the Relevant Terms.

3.3 For the purposes of this paragraph 3, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with MSC R&D includes any associate analyst.