

# Updating your Trading agreement to reflect GDPR

**THIS AMENDMENT AGREEMENT** is made between: **TOWER LEASING LIMITED** (a company registered in England with number 2296333) whose office is situated at Columbia, 2nd Floor, Station Road, Bracknell, Berkshire, RG12 1LP (contracting for itself and as agent for any subsidiary and associated companies, singly or jointly) (herein called the “**Tower**”); and the entity who entered into the Original Trading Agreement defined below (herein called the “**Supplier**”)

## Background:

- (A) The Parties entered into a trading agreement pursuant to which Tower provides leasing and instalment credit facilities to customers introduced by the Supplier and accepted by Tower at its absolute discretion (“Original Trading Agreement”);
- (B) Each of the Parties has agreed to amend the Original Trading Agreement in light of changes to data protection legislation (pursuant to the General Data Protection Regulation) which requires certain contractual arrangements to be put in place in respect of the processing of personal data.

## Agreement:

### 1. Definitions and interpretation

Unless otherwise provided the words and expressions defined in, and the rules of interpretation of, the Original Trading Agreement shall have the same meaning in this Amendment Agreement.

“**Effective Date**” means 25 May 2018;

### 2. Amendments to the Contract

- 2.1. The Clauses under the heading “**Data Protection**” of the Original Trading Agreement shall be replaced in entirety by the following: “Each Party shall comply with the data protection obligations set out in the Data Processing Appendix of this Agreement.”
- 2.2. The Schedule to this Amendment Agreement is added to the Original Trading Agreement as a “**Data Processing Appendix**”.
- 2.3. All applicable cross references in the Original Trading Agreement are deemed amended in accordance with the changes made by this Amendment Agreement.

### 3. Consideration

- 3.1. In consideration of:
- 3.1.1. the mutual benefit to the parties in ensuring that their obligations under Data Protection Legislation are agreed in writing, including in particular that each party’s status as Controller(s) respectively, are clearly and properly documented; and
- 3.1.2. Tower paying to the Supplier the sum of £1.00 in total, and the Supplier paying to Tower the sum of £1.00 in total, with such sums to be paid by mutual set-off, the Parties agree to amend the existing data protection terms as set out below and each party shall perform their respective obligations under this Amendment Agreement.

### 4. Agreement in full force and effect

This Amendment Agreement is supplemental to the Original Trading Agreement and, save as expressly modified by the amendments described in this Amendment Agreement; the Original Trading Agreement shall remain in full force and effect. References in the Original Trading Agreement to “this Agreement” shall be deemed to refer to the Original Trading Agreement as amended by this Amendment Agreement, unless the context otherwise requires.

### 5. Term

This Amendment Agreement shall commence on the Effective Date and shall continue in force until the termination or expiry of the Original Trading Agreement.

### 6. Confirmation and incorporation

The Parties further agree and declare that the terms of the Original Trading Agreement except as varied by this Amendment Agreement are confirmed as if the same were set out in this Amendment Agreement in full and that such terms as so varied shall for all purposes be deemed incorporated in this Amendment Agreement.

### 7. Governing law and jurisdiction

This Amendment Agreement and any dispute or claim arising out of it or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England & Wales, and the parties hereby surrender themselves to the non-exclusive jurisdiction of the English courts.

**Data processing appendix:**

**1. Definitions and interpretation**

**1.1.** The following terms and expressions shall have the meaning set out below for the purposes of this Appendix:

**“Data Controller”** (or controller), **“Data Subject”**, **“Personal Data”**, **“Processing”**, and **“Sensitive Personal Data”** (or special categories of Personal Data) all have the meanings given to those terms in Data Protection Laws (and related terms such as **“Process”** and **“Processed”** shall have corresponding meanings);

**“Data Protection Laws”** means any applicable Laws and Regulations relating to the processing, privacy, and use of Personal Data, as applicable to Tower, the Supplier and/or the Services, including:

- a) the Data Protection Act 1998 (until 25 May 2018), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws or regulations implementing Council Directives 95/46/EC or 2002/58/EC;
- b) the GDPR (from 25 May 2018) and/or any corresponding or equivalent national laws or regulations; and
- c) any judicial or administrative interpretation of any of the above, and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

**“Data Subject Request”** means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

**“DP Losses”** means all liabilities and amounts, including all:

- a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material or non- material damage, which includes emotional distress);
- b) loss or damage to reputation, brand or goodwill;
- c) to the extent permitted by applicable Laws and Regulations:
  - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority
  - (ii) compensation paid to a Data Subject; and
  - (iii) the costs of compliance with investigations by a Supervisory Authority;

**“GDPR”** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, applicable as of 25 May 2018 and repealing Directive 95/46/EC;

**“Laws and Regulations”** means the laws of England and Wales and any other laws or regulations, regulatory policies, directives statutes, subordinate legislation, common law, guidelines or industry codes including, without limitation, Data Protection Laws which apply to the provision of the Services from time to time;

**“Personal Data Breach”** means a breach of security or other action or inaction leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data pursuant to this Agreement; and

**“Supervisory Authority”** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws

**1.2.** To the extent that a term of this Agreement requires the performance by a party of an obligation in accordance with Data Protection Laws (or similar), unless otherwise expressly agreed in this Agreement, this requires performance in accordance with the relevant requirements of such Data Protection Laws as is in force and applicable at the time of performance (if any).

**2. Data processing details**

**2.1.** The Supplier is a Data Controller in respect of the Processing of Personal Data of the prospective Customer and such Personal Data is made available to Tower for purposes relating to providing the Services to the prospective Customer.

**2.2.** Each party is a Data Controllers in processing any Personal Data pursuant to clause 2.1.

**2.3.** Each Party shall comply with Data Protection Laws at all times in relation to the Personal Data processed under this Agreement.

**2.4.** Each Party shall be responsible for its own obligations as a Data Controller under this Agreement including in particular but without limitation:

- a) ensuring that there is a lawful basis on which Personal Data can be processed by it;

Data processing appendix:

- b) ensuring that it keeps Personal Data secure at all times, including by implementing and maintaining at its cost and expense, appropriate technical and organisational measures in relation to its Processing of the Personal Data so as to ensure a level of security appropriate to the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed; and
  - c) ensuring all Personal Data are accurate prior to any sharing with the other Party and taking reasonable steps to ensure data remains accurate on an ongoing basis, and promptly notifying the other Party in the event it receives updates or corrections to any of such Personal Data, where it is reasonable to do so.
- 2.5.** The Supplier shall not do or permit anything to be done through act or omission that would cause Tower to incur any liability under Data Protection Laws.
- 2.6.** The Supplier shall be responsible for ensuring that appropriate privacy notices and/or policies are communicated to the Customer or prospective Customer that explain how their personal data will be processed in line with the Supplier's transparency obligations under Data Protection Laws. These notices/policies must be clear and provide sufficient information for the Customer to understand what of their Personal Data the Supplier shares with Tower.
- 2.7.** The Supplier shall grant Tower and/or its auditors and/or legal advisers access to the Supplier's premises and/or data processing systems (including access to relevant records and to staff or other persons who process Personal Data) at any reasonable time, for the purposes of ensuring compliance by the Supplier with the provisions of this Appendix, and the Supplier shall co-operate with Tower and/or its auditors and/or legal advisers to the fullest extent possible in connection with the granting of such access.
- 2.8.** Without prejudice to any other indemnity contained in this Agreement, the Supplier shall indemnify and keep indemnified Tower from and against all DP Losses (including, but not limited to, regulatory fines and penalties) suffered or incurred by, awarded against or agreed to be paid by, Tower, arising from or in connection with any breach by the Supplier (or any agent, employee or subcontractor of the Supplier carrying out Processing under this Agreement) of this Clause 20 or of Data Protection Laws.