AppFox Data Processing Agreement

This Data Processing Agreement ("**Agreement**") is made between

xxx

(the “**Company**”)

and

Automation Consultants Ltd, trading as AppFox (support@appfox*.*io)

(the “**Data** **Processor**”)

(together as the “**Parties**”). It governs the use of personal data in the context of the use of software provided by the Data Processor and forms part of the End User Licence Agreement (**“EULA”**) or ("**Principal Agreement**") for the Services.

# WHEREAS

1. The Company acts as a Data Controller.
2. The Company wishes to contract certain Services, which imply the processing of personal data, to the Data Processor.
3. The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing and in particular the GDPR.
4. The Parties wish to lay down their rights and obligations.

IT IS AGREED AS FOLLOWS:

# 1. Definitions and Interpretation

1.1 Unless otherwise defined herein, capitalized terms and expressions used in this Agreement shall have the following meaning:

1.1.1 "**Agreement**" means this Data Processing Agreement and all Schedules;

1.1.2 "**Company Personal Data**" means any Personal Data Processed by a Contracted Processor on behalf of Company pursuant to or in connection with the Principal Agreement;

 1.1.3 "**Contracted Processor**" means a Subprocessor;

 1.1.4 "**Data Protection Laws**" means UK Data Protection Laws and,

to the extent applicable, the data protection or privacy laws of any other jurisdiction;

 1.1.5 "**EEA**" means the European Economic Area;

1.1.6 "**EU GDPR**" means Regulation 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 (General Data Protection Regulation);

1.1.7 "**GDPR**" means EU GDPR as saved into United Kingdom law by virtue of Section3 of the United Kingdom's European Union (Withdrawal) Act 2018.

 1.1.8 "**Data Transfer**"means:

1.1.8.1 a transfer of Company Personal Data from the Company to the Data Processor; or

1.1.8.2 an onward transfer of Company Personal Data from the Data Processor to a Subprocessor, or between two establishments of a Data Processor, in each case, where such transfer would be restricted by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

1.1.9 "**Recipient of Instructions**" means the person within the Data Processor organisation responsible for receiving the instructions to process Company Personal Data set out in Section 2.1 of this Agreement.

1.1.10 "**Services**" means the services provided by AppFox Atlassian Cloud apps, being software developed and hosted by AppFox acting as extensions of the cloud versions of Atlassian Jira and Confluence. Atlassian cloud Jira and Confluence are hosted by Atlassian and outside the scope of this agreement.

1.1.11 "**Subprocessor**" means any person appointed by or on behalf of the Data Processor to process Personal Data on behalf of the Company in connection with the Agreement.

1.1.12 "**Term**" means the duration of this Agreement, which shall be the same as that of the EULA.

1.2 The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**","**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

**2. Processing of Company Personal Data**

2.1 The Company instructs the Data Processor to process Company Personal Data in order for the Data Processor to provide the functionality of the Services.

2.2 The Data Processor shall:

2.2.1 comply with all applicable Data Protection Laws in the Processing of Company Personal Data;

2.2.2 not Process Company Personal Data except to execute the published functionality of the Services; and

2.2.3 process the Company Personal Data only on documented instructions from the controller, including those provided in Section 2.1.

2.3 The Data Processor shall immediately inform the Controller if, in its opinion, an instruction infringes the GDPR or other Data Protection Laws.

2.4 The types of Company Personal Data to be processed consist of whatever types of Company Personal Data the Company chooses to put into the apps to which the Services relate, provided those types of Company Personal Data are compatible with the published functionality of the apps.

2.5 The categories of Data Subject whose Company Personal Data may be processed include all categories whose Company Personal Data the Company chooses to put into the apps to which the Services relate, provided that the use of those Company Personal data is compatible with the published functionality of the apps.

# 3. Data Processor Personnel

3.1 The Data Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

3.2 The Data Protection Officer of the Data Processor shall be the Data Processor’s Chief Technology Officer, contactable at dataprotection@appfox.io .

3.3 The Recipient of Instructions of the Data Processor shall be the AppFox Head of Product, contactable at dataprotection@appfox.io .

# 4. Security

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Processor shall in relation to the Company Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4.2 In assessing the appropriate level of security, the Data Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

# 5. Subprocessing

5.1 Data Processor shall not appoint (or disclose any Company Personal Data to) any Subprocessor unless required or authorized by the Company, with the exception of Amazon Web Services EMEA SARL and its subsidiaries.

# 6. Data Subject Rights

6.1 Taking into account the nature of the Processing, the Data Processor shall assist the Company by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Company obligations, as reasonably understood by Company, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2 The Data Processor shall:

6.2.1 promptly notify Company if it receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and

6.2.2 ensure that it does not respond to that request except on the documented instructions of Company or as required by Applicable Laws to which the Data Processor is subject, in which case Data Processor shall to the extent permitted by Applicable Laws inform Company of that legal requirement before the Data Processor responds to the request.

# 7. Personal Data Breach

7.1 In accordance with GDPR Article 33, the Data Processor shall notify Company without undue delay upon Data Processor becoming aware of a Personal Data Breach affecting Company Personal Data, providing Company with sufficient information to allow the Company to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws and in particular GDPR Article 34.

7.2 The Data Processor shall co-operate with the Company and take reasonable commercial steps as are directed by Company to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

# 8. Data Protection Impact Assessment and Prior Consultation

The Data Processor shall provide reasonable assistance to the Company with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Company reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Company Personal Data by, and taking into account the nature of the Processing and information available to, the Data Processor.

# 9. Deletion or return of Company Personal Data

9.1 Subject to this section 9 Data Processor shall promptly and in any event within

10 business days of the date of cessation of any Services involving the Processing of Company Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Company Personal Data.

9.2 Data Processor shall provide written certification to Company that it has fully complied with this section 9 within 10 business days of the Cessation Date.

# 10. Audit rights

10.1 Subject to this section 10, the Data Processor shall make available to the Company on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Company or an auditor mandated by the Company in relation to the Processing of the Company Personal Data by the Data Processor.

10.2 Information and audit rights of the Company only arise under section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

# 11. Data Transfer

11.1 The Data Processor may not transfer or authorize the transfer of Company Personal Data to countries outside the UK and the EEA without the prior written consent of the Company. If Company Personal Data processed under this Agreement is transferred from within the UK or EEA to a jurisdiction outside the UK or EEA, the Parties shall ensure that the Company Personal Data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on UK approved standard contractual clauses for the transfer of personal data.

# 12. General Terms

12.1 **Confidentiality.** Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement (“**Confidential Information**”) confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

1. disclosure is required by law;
2. the relevant information is already in the public domain.

12.2 **Notices.** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement at such other address as notified from time to time by the Parties changing address.

1. **Governing Law and Jurisdiction**
	1. This Agreement is governed by the laws of England and Wales.
	2. Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.

# Your Company

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Data Processor Company

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_