

General Terms and Conditions - Controller to Controller Sharing

Where personal data is processed within the UK and/or 'Adequate' Countries.

GENERAL TERMS AND CONDITIONS

1.1 In addition to those defined terms set out elsewhere in the Agreement, the following definitions and rules of interpretation apply in these General terms and Conditions and the Agreement:

Agreement: means the agreement for the sharing of personal data between the Parties on a Controller to Controller basis, together with the General Terms and Conditions and (where applicable) the IDTA.

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

Controller, Data Controller, Data Processor, Data Subject, Personal Data, Processing, Processor and any derivatives thereof: have the meaning set out in the Data Protection Legislation.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the United Kingdom which apply to a Party including the UK GDPR; 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; and (where applicable) any other European Union legislation relating to Personal Data (including the EU GDPR) and all other legislation and regulatory requirements and any decisions and guidance from the relevant Supervisory Authority in force from time to time which apply to a party relating to the use of Personal Data (including the privacy of electronic communications).

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

Deletion Procedure: are the procedures by which the Parties shall delete Shared Personal Data from its systems as set out in the Agreement.

General Terms and Conditions: these terms and conditions for Controller to Controller Sharing, which form part of the Agreement.

EU General Data Protection Regulation or EU GDPR: Regulation 2016/679 of the European Parliament and of the Council of 27

April 2016 on the protection of the natural person with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Special Category Data: has the meaning set out in the Data Protection Legislation.

Shared Personal Data: means the Personal Data and/or Special Category Data (both as defined in the Data Protection Legislation) to be shared between the Parties under or in relation to the Agreement and which is set out in detail in the Agreement.

Standard Categories of Personal Data:

☐ Personal details, including any information that identifies the data subject and their personal characteristics, including: name, address, contact details, age, date of birth, sex, and physical description.

☐ Personal details issued as an identifier by a public authority, including passport details, national insurance numbers, identity card numbers, driving licence details.

☐ Family, lifestyle and social circumstances, including any information relating to the family of the data subject and the data subject's lifestyle and social circumstances, including current marriage and partnerships, marital history, details of family and other household members, habits, housing, travel details, leisure activities, and membership of charitable or voluntary organisations.

☐ Education and training details, including information which relates to the education and any professional training of the data subject, including academic records, qualifications, skills, training records, professional expertise, student and pupil records.

☐ Employment details, including information relating to the employment of the data subject, including employment and career history, recruitment and termination details, attendance records, health and safety records, performance appraisals, training records, and security records.

☐ Financial details, including information relating to the financial affairs of the data subject, including income, salary, assets and investments, payments, creditworthiness, loans, benefits, grants, insurance details, and pension information.

☐ Goods or services provided and related information, including details of the goods or services supplied, licences issued, and contracts.
etc.

Special category (sensitive) personal data concerns, reveals or is about:

- ☐ racial or ethnic origin
- ☐ political opinions
- ☐ religious or philosophical beliefs
- ☐ trade union membership
- ☐ genetic data
- ☐ biometric data (if used to identify a natural person)
- ☐ health
- ☐ sex life or sexual orientation
- ☐ criminal convictions and offences

Subject Access Request: has the same meaning as “Right of access to personal data” in Article 15 of UK GDPR.

Supervisory Authority: the relevant data protection authority in the territories where the Parties to the Agreement are established, which in the United Kingdom shall be the UK Information Commissioner.

SPoC: means a single point of contact nominated by either Party to address any data sharing issues on behalf of the relevant Party and as identified in the Agreement, with the term “SPoCs” being construed accordingly.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2 These General Terms and Conditions form part of the Agreement and shall have the same force and effect as if set out in full in the body of the Agreement.
- 1.3 The headings in the Agreement are included for convenience only and shall be ignored in construing the Agreement.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any Party shall include that Party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **in writing** or **written** includes email except in relation to a notice under Condition 23.1 which will be construed as per that Condition.

1.11 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

1.12 References to Clauses are to the clauses of the front end Agreement and references to Conditions are to clauses of these General Terms and Conditions.

1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.14 Except as set out in Clause 4 and 5 of the Agreement, in the event the terms of the Agreement conflict with the General Terms and Conditions, the terms of the Agreement shall apply.

2 PURPOSE

2.1 The Parties agree to only process Shared Personal Data for the Agreed Purposes.

2.2 The Parties shall not process Shared Personal Data in a way that is incompatible with the Agreed Purposes.

3 COMPLIANCE WITH NATIONAL DATA PROTECTION LAWS

3.1 Each Party must process the Shared Personal Data in compliance with applicable Data Protection Legislation at all times during the Term.

3.2 In the event that the applicable data protection law of each Party conflict, the requirements of the country that necessitates stricter or additional requirements to protect individuals' privacy and personal data shall be applied.

4 SHARED PERSONAL DATA

- a. 4.1 The Parties agree that:
 - for the purposes of the Data Protection Legislation, each Party shall be considered a Data Controller and shall comply with its obligations under the Data Protection Legislation as a Data Controller; and
 - b. they shall cooperate with each other in so far as reasonably necessary to enable each other to

perform their obligations under the Data Protection Legislation in respect of any Shared Personal Data processed as part of the Agreement.

- 4.2 Each Party shall appoint a SPoC who will work together to reach an agreement with regards to any issues arising from the data sharing and to actively improve the effectiveness of the data sharing initiative. The Parties may replace their designated SPoC on providing written notice on the other Party.

5 FAIR AND LAWFUL PROCESSING

- 5.1 Each Party shall ensure that it processes the Shared Personal Data fairly in accordance with the Data Protection Legislation, which shall include providing the Data Subjects with the necessary fair processing/privacy notice information required under the Data Protection Legislation.
- 5.2 Each Party shall ensure it processes the Shared Personal Data lawfully and in doing so, has established and recorded the Legal Basis for Processing.

6 DATA QUALITY

- 6.1 Each Party shall ensure that before transferring the Shared Personal Data to the other Party, that the Shared Personal Data are adequate, accurate, relevant and not excessive for the Agreed Purposes.
- 6.2 Shared Personal Data must be limited to the Shared Personal Data as described in the Agreement.

7 DATA SUBJECTS' RIGHTS

- 7.1 Each Party's SPoC shall be responsible for ensuring that any Subject Access Request or other requests relating to data subjects' rights which are received by them/their team under or in relation to the Agreement are identified and passed, in a timely manner, to the departments/individuals within their organisation that has the responsibility for responding to any such requests.
- 7.2 Each Party shall cooperate with each other in so far as reasonably necessary to enable each other to perform their obligations under the Data Protection Legislation or other applicable legislation, in respect of any Personal Data collected, held or processed as part of the Agreement.

8 DATA RETENTION AND DELETION

- 8.1 The Party receiving the Shared Personal Data shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.

- 8.2 Notwithstanding termination of the Agreement for any reason, the Parties shall continue to retain Shared Personal Data: (i) in accordance with any statutory or professional retention periods applicable in their respective countries and / or industry; or (ii) where the Parties are of the view (acting reasonably) that retaining the Shared Personal Data (in whole or in part) is necessary and can be justified in accordance with the Data Protection Legislation in which case the relevant Party shall specify its own retention period taking into consideration the requirements of the Data Protection Legislation.

- 8.3 Subject to Condition 8.2, the Party receiving the Shared Personal Data shall ensure that any Shared Personal Data are returned to the disclosing Party or destroyed securely in accordance with the Deletion Procedure in the following circumstances:

- a. on termination of the Agreement;
- b. on expiry of the Term of the Agreement; and/or
- c. once processing of the Shared Personal Data is no longer necessary for the Agreed Purposes.

- 8.4 Following the deletion of Shared Personal Data in accordance with Condition 8.3, the receiving Party shall notify the disclosing Party that the Shared Personal Data in question has been deleted.

9 TRANSFERS

- 9.1 For the purposes of this Condition 9, transfers of Shared Personal Data shall mean any sharing of Shared Personal Data by the receiving Party with a third Party, and shall include, but is not limited to, the following:
- a. storing Shared Personal Data on servers outside the United Kingdom;
 - b. sub-contracting the processing of Shared Personal Data to data processors located outside the United Kingdom; and
 - c. granting third Parties located outside the United Kingdom access rights to the Shared Personal Data.
- 9.2 The receiving Party shall not disclose or transfer the Shared Personal Data to a third Party located outside the United Kingdom and the EEA without: (i) the disclosing Party's prior written consent; and (ii) ensuring that such transfer is permitted under the applicable Data Protection Legislation unless such disclosure or transfer is a statutory requirement of the receiving Party.
- 9.3 Condition 9.2 will not apply to any data transfers carried out by one Party to the Agreement to the other Party in respect of Shared Personal Data.

10 SECURITY AND TRAINING

10.1 Each Party shall only provide the Shared Personal Data to the other by using secure methods as agreed and set out in the technical and organisational security measures described in the Agreement and shall only process such Shared Personal Data, once received, in accordance with the same.

10.2 Each Party must implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

10.3 It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures described in the Agreement together with any other applicable Data Protection Legislation.

10.4 The level, content and regularity of training referred to in this Condition 10 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.

11 DATA SECURITY BREACHES AND REPORTING PROCEDURES

11.1 Having considered the applicable Data Protection Legislation, the Parties confirm they have in place their own guidance that must be followed in the event of a Data Security Breach.

11.2 Parties are under a strict obligation to notify any potential or actual losses of the Shared Personal Data or any breach of security which may compromise the security of the Shared Personal Data to the other Party's SPoC as soon as possible and, in any event, within **24 hours** of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with the applicable Data Protection Legislation.

11.3 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

11.4 Notification of security breaches, as per Condition 11.2, should be made to each Party's relevant Information

Security/Information Governance team identified in the Agreement.

12 REVIEW AND TERMINATION OF AGREEMENT

12.1 The Agreement shall commence on the Commencement Date and continue for the Term unless terminated early in accordance with the Agreement.

12.2 The Parties shall use reasonable endeavours to review the effectiveness of this data sharing initiative every 12 months during the Term. The Parties shall continue, amend or subject to Condition 12.3 terminate the Agreement depending on the outcome of this review.

12.3 The review of the effectiveness of the data sharing initiative will involve:

- a. assessing whether the purposes for which the Shared Personal Data is being processed are still within the scope of the Agreed Purposes;
- b. assessing whether the Shared Personal Data is still as listed in the Agreement;
- c. assessing whether the legal framework governing data quality, retention, and data subjects' rights are being complied with; and
- d. assessing whether personal data breaches involving the Shared Personal Data have been handled in accordance with the Agreement and the applicable legal framework.

12.4 Notwithstanding Condition 12.2 and/or Condition 12.3, the Parties shall be entitled to terminate the Agreement early with immediate effect by serving written notice on the other Party in the following circumstances:

- a. where a Party has breached a material term of the Agreement and if capable of remedy, has failed to remedy the same within five (5) days of being requested to do so;
- b. if any other agreement which relates to, and incorporates the terms of, the Agreement terminates;
- c. If:
 - i the other Party becomes insolvent or unable to pay its debts as and when they become due,
 - ii an order is made or a resolution is passed for the winding up of the other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction),
 - iii a liquidator, administrator, administrative receiver, receiver or trustee is appointed in respect of the whole or any part of the other Party's assets or business,
 - iv the other Party makes any composition with its creditors,
 - v the other Party ceases to continue its business, or

- vi as a result of debt and/or maladministration the other Party takes or suffers any similar or analogous action;
- d. if a review undertaken under Condition 12.2 identifies that the other Party's performance under the Agreement, (while it may not constitute a breach of a material term), is not in accordance with the Agreement.

12.5 Each Party reserves its rights to inspect the other Party's arrangements for the processing of Shared Personal Data and to terminate the Agreement with immediate effect where it considers that the other Party is not processing the Shared Personal Data in accordance with the Agreement.

13 RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE SUPERVISORY AUTHORITY

13.1 In the event of a dispute or claim brought by a Data Subject or the Supervisory Authority concerning the processing of Shared Personal Data against either or both parties, the Parties will inform each other about any such disputes or claims as soon as reasonably practicable, and will cooperate with a view to settling them amicably in a timely fashion.

13.2 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Supervisory Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

13.3 Each Party shall abide by a decision of a competent court with jurisdiction, which is final and against which no further appeal is possible.

14 LANGUAGE

14.1 The Agreement is drafted in the English language. Any notice given under or in connection with the Agreement shall be in English. All other documents provided under or in connection with the Agreement shall be in English, or accompanied by a certified English translation.

14.2 The English language version of the Agreement and any notice or other document relating to the Agreement shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.

15 WARRANTIES

15.1 Each Party warrants and undertakes that it:

- a. has authority to share and/or transfer the Shared Personal Data to the other Party under and in accordance with the Agreement;
- b. will process the Shared Personal Data in compliance with all applicable Data Protection Legislation that apply to its personal data processing operations; and
- c. will take all appropriate steps to ensure compliance with the security measures set out in the Agreement and in these General Terms and Conditions.

15.2 Except as expressly stated in the Agreement, all warranties, conditions and terms relating to the subject matter of the Agreement, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

16 INDEMNITY

16.1 The Parties undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of the Data Protection Legislation and/or any of the provisions of the Agreement, except to the extent that any such liability is excluded under Condition 18.2.

16.2 Indemnification hereunder is contingent upon:

- a. the Party to be indemnified (the indemnified Party) promptly notifying the other Party (the indemnifying Party) of a claim;
- b. the indemnifying Party having sole control of the defence and settlement of any such claim; and
- c. the indemnified Party providing reasonable cooperation and assistance to the indemnifying Party in defence of such claim.

17 ALLOCATION OF COST

17.1 Each Party shall perform its obligations under the Agreement at its own cost.

18 LIMITATION OF LIABILITY

18.1 Neither Party excludes or limits liability to the other Party for:

- a. fraud or fraudulent misrepresentation;
- b. death or personal injury caused by negligence, fraud or breach of statutory duty;
- c. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- d. any matter for which it would be unlawful for the Parties to exclude liability.

18.2 Subject to Condition 18.1, neither Party shall in any circumstances be liable whether in contract, delict (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- a. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; or
- b. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time).

18.3 Condition 18.2 shall not prevent claims, for:

- a. direct financial loss that are not excluded under any of the categories set out in Condition 18.2(a), which shall include any penalties or fines issued by a Supervisory Authority; or
- b. tangible property or physical damage.

19 FORCE MAJEURE

19.1 Neither Party shall be deemed to be in breach of the Agreement if it is unable to carry out any provision of it for any reason beyond its control including (without limiting the generality of the foregoing) acts of God, legislation, fuel shortages, war, fire, flood, drought, virus outbreak, pandemic, failure of power supply embargo, civil commotion and employee action.

20 ASSIGNATION

20.1 Except as expressly provided for in the Agreement neither Party shall be entitled to: -

- a. assign or transfer any or all of its rights and/or obligations under the Agreement (or purport to do so); or
 - b. sub-license or sub-contract any or all of its obligations under the Agreement (or purport to do so);
- save, in either case, with the prior written consent of the other Party.

20.2 Notwithstanding Condition 20.1 the Party that is receiving the Shared Personal Data shall not transfer the Shared Personal Data to subcontractors and/or other third Parties unless and until an agreement has been entered into between the Party receiving the data and that subcontractor and/or third party which is no less onerous than the terms of the Agreement and complies with Data Protection Legislation.

21 GENERAL

21.1 Except as otherwise expressly provided in the Agreement none of the terms and conditions of the Agreement shall be

enforceable by any person who is not a Party to it.

21.2 Each provision of the Agreement shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and the remaining provisions of the Agreement shall continue in full force and effect.

21.3 No waiver by either Party of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed by or on behalf of that Party and no forbearance, delay or indulgence by either Party in enforcing the provisions of the Agreement shall prejudice or restrict the rights of that Party nor shall any waiver by either Party of any of the requirements hereof or any of its rights hereunder release the other from full performance of its obligations stated herein.

21.4 The Agreement and any documents referred to herein constitutes the entire understanding between the Parties in relation to the subject matter of the Agreement and supersedes and extinguishes all (if any) prior drafts, agreements, understandings, undertakings, representations, warranties and/or arrangements of any nature whatsoever (whether or not in writing) between the Parties in connection therewith.

21.5 Nothing in the Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in the Agreement shall be deemed to constitute one of the Parties as the agent of the other.

21.6 The Parties shall be entitled to amend any details of the Agreement at any time provided that any such amendment is recorded in writing and agreed by both Parties.

21.7 The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21.8 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

22 COUNTERPARTS

22.1 The Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either Party may enter into the Agreement by signing either of such counterparts.

23 SURVIVAL

23.1 Those provisions of the Agreement which by their nature or implication are required to survive expiry or termination of the Agreement shall so survive and continue in full force and effect, together with any other provisions of the Agreement necessary to give effect to such provisions.

24 NOTICES

24.1 A notice given to a Party under or in connection with the Agreement, other than a request in relation to data subjects' rights (Condition 7) or Security Breaches (Condition 11), shall be in writing and signed by or on behalf of the Party giving it and addressed to the registered office of a Party or to the email address of the relevant Party's SPoC. Delivery methods and deemed delivery times are as set out below:

Delivery method	Deemed delivery date and time
Delivery by hand	At time of delivery
Pre-paid first class recorded delivery post	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Email	From receipt of delivery confirmation.

25 DISPUTE RESOLUTION BETWEEN THE PARTIES AND GOVERNING LAW

25.1 Any dispute between the Parties arising out of any matter relating to the Agreement which cannot be resolved by the Parties SPoCs in respect of the arrangements referred to in the Agreement shall be referred to a Senior Officer (or equivalent) of each of the Parties.

25.2 If after all possible avenues of negotiation have been exhausted and the dispute cannot be resolved, then any proceedings relating to any claim or matter arising under or in connection with the Agreement or the legal relationships established by the Agreement shall be brought in the Scottish Courts. Scots law will apply to the Agreement and shall govern any disputes.