

AGREEMENT FOR THE SHARING OF PERSONAL DATA

Between

THE OMBUDSMAN SERVICE LIMITED, (registered in England and Wales No. 04351294) whose registered office is at 3300 Daresbury Park, Daresbury, Warrington, WA4 4HS. (**Ombudsman Services**)

And

(Customer)

Background

(a) The following agreement between Ombudsman Services and the Customer reflects the arrangements that they have agreed to put in place, to facilitate the sharing of Personal Data, for the investigation into a complaint brought by Consumers of the Customer and explains the purposes for which that Personal Data may be used.

(b) As such, the Parties agree to share the Personal Data on the terms set out in this Agreement and use the Personal Data on the terms set out in this Agreement.

1. INTERPRETATION

The following definitions and rule of interpretation apply in this agreement.

1.1 DEFINITIONS

Agreement: this Agreement, which is a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

ADR; means Alternative Dispute Resolution, consumers who are in dispute with the Customer are entitled to pass their complaint to Ombudsman Services and to make use of its services in order to seek to resolve it.

Applicable Data Protection Laws; means: 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 No. 2426) as amended; 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);

Confidential Information; means all information which is disclosed by one party to the other however conveyed whether before or after the date of this Agreement and would appear to a reasonable person to be confidential and which relates to the business affairs of the party disclosing it (or other companies within that party's Group) including products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the party disclosing it and all information derived from the above;

Consumer; means an individual acting as a domestic customer, or small business customer, who has bought, or sought to buy, goods or services from a company who is a member of the Ombudsman Services scheme for Alternative Dispute Resolution services provided by Ombudsman Services;

Data Sharing Code: the Information Commissioner's Data Sharing Code of Practice of May 2011, as updated or amended from time to time.

Data Protection Authority; the relevant supervisory authority in the territories where the parties to this Agreement are established.

Data Protection Breach; means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Personal Data transmitted, stored or otherwise Processed, as well as any breach of the security obligations set out in this Agreement;

Data Protection Legislation; all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; [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)]; and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.

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

Party; means the Customer and/or Ombudsman Services and Parties shall be construed accordingly;

Personal Data; means any personal data (as defined in the Data Protection Legislation) Processed by the Parties or any Sub-processor pursuant to or in connection with the Agreement;

Shared Personal Data; means any personal data (as defined in the Data Protection Legislation) shared by the Parties or any Sub-processor pursuant to or in connection with the Agreement;

Special Categories of Personal Data: the categories of Personal Data set out in the Data Protection Legislation.

Subject Rights Request: the exercise by a data subject of their rights under the Data Protection Legislation.

Sub-processor; means any Data Processor (including any third party and Supplier affiliate) appointed by the Parties to Process Personal Data on behalf of the Parties in connection with this Agreement;

Term; means the duration of any contract entered into by the Parties remains in effect;

"**Data Controller**", "**Data Processor**", "**Data Subject**", and "**Processing**" shall have the same meanings as in the Data Protection Legislation and "**Processed**" and "**Process**" shall be construed in accordance with the definition of "**Processing**";

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 Unless the context otherwise, requires, words in the singular shall include the plural and in the plural shall include the singular.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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

1.6 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies [in England and Wales from time to time including as retained, amended, extended, or re-enacted or otherwise given effect on or after 11pm on 31 January 2020 OR in EU member states [from time to time OR at the date of this agreement]].

2. PURPOSE

2.1 This Agreement sets out the framework for the sharing of Personal Data between the Parties as Data Controllers and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.

3. CONFIDENTIALITY AND DATA PROTECTION

3.1 Each party shall keep in strict confidence all Confidential Information and neither party shall use the Confidential Information (or any part of it) for any purpose other than to perform its' obligations under this agreement.

3.2 For the purposes of clause 3.1, above, information of a confidential nature is constructed to mean all confidential information relating to the business practices of Ombudsman Services which the disclosing party or its representative directly or indirectly discloses to the recipient party or its representative, before, on or after the date of this agreement. This includes:

- (a) the terms of this agreement;
- (b) all confidential or proprietary information relating to:
 - (i) the business, affairs, customers, clients, suppliers or plans, intentions, or market opportunities of the disclosing party; and
 - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the disclosing party;
- (c) any information, findings, data or analysis derived from Confidential Information; and
- (d) any other information that is identified as being of a confidential or proprietary nature.

3.3 Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the receiving party or its representatives in breach of this agreement;
- (b) it was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
- (c) it was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not under any confidentiality obligation in respect of that information;

(d) it was lawfully in the possession of the receiving party before the information was disclosed by the disclosing party; or

(e) the Parties agree in writing that the information is not confidential.

3.4 Each Party may disclose Confidential Information:

(a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out its obligations under this agreement; and

(b) as may be required by law, court order or any governmental or regulatory authority.

3.5 Each Party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses Confidential Information to comply with this clause 3.

3.6 The Parties shall comply with Applicable Data Protection Laws and their respective obligations. Each Party acknowledges that one Party (the data discloser) will regularly disclose to the other Party (the Data recipient) personal data for an agreed Purpose.

3.7 The Parties consider that data sharing is necessary under this agreement. The aim of the Parties data sharing is to facilitate the provision of ADR, and for the Ombudsman Services to make decisions within the ADR process, including the eligibility of the Consumer to use the services, to make any further decisions as to case management and to manage financial contributions made by the Customer.

3.8 The Customer, in its capacity as a Data Controller, hereby transfers to the Ombudsman Services Personal Data for the Ombudsman Services to Process as Data Controller for the purposes as set out at 3.7.

3.9 Each Party shall ensure that it processes all Personal Data fairly and lawfully during the term of the Agreement on the basis of one or more legitimising conditions clearly documented.

3.10 The Parties shall confirm to the other that they have a valid registration, if required by Data Protection Legislation, with its national Data Protection Authority which covers the intended data sharing pursuant to this Agreement.

3.11 If the Parties are no longer able to Process Personal Data in a manner that is consistent with this agreement, it shall immediately inform the other and advise of any steps it proposes to take to remediate any such inconsistency. If requested by the other, the Party shall immediately suspend any inconsistent Processing.

3.12 If required to do so by a Supervisory Authority, the Parties acknowledge and agrees that the other may disclose this agreement to such Supervisory Authority and that such disclosure will not constitute a breach of confidence.

3.13 The Parties shall implement appropriate technical and organisational measures in accordance with Article 32 of the UK GDPR and Data Protection Legislation and the Security Requirements to ensure the security of the Personal Data and protect it against any unauthorised and unlawful Processing, and against a Data Protection Breach.

3.14 The Parties shall ensure that the data shared is accurate and that appropriate internal procedures are in place for the transfer of the data. The Parties shall immediately inform the other if, in its opinion, performance of the Services or compliance with any instruction received infringes, or might reasonably be considered to infringe, the Data Protection Legislation.

3.15 The Parties agree to provide reasonable assistance as is necessary to each other to enable them to comply with or respond to requests for the right to be forgotten, rectification, and object and further to comply with the relevant request within the Data Protection Legislation statutory timescales.

3.16 The Parties shall provide reasonable assistance to the other Party with any data protection impact assessments which are required under Article 35 UK GDPR and with any prior consultations to any Supervisory Authority which are required under Article 36 UK GDPR, in each case solely in relation to Processing of Personal Data by the Parties and taking into account the nature of the Processing and information available to the Parties.

3.17 The Parties shall carry out adequate due diligence on each Sub-processor to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement including without limitation sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of UK GDPR or equivalent provisions of any Data Protection Legislation and provide evidence of such due diligence to the other Party where requested by one of the Parties or a Supervisory Authority.

3.18 Where each Party acts as a Data Controller in relation to the Processing of Personal Data under the Agreement, the Parties will not act as Joint Data Controllers for the purposes of Article 26 of the UK GDPR in relation to such Processing.

4. Severance

4.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

4.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

5. Changes to the applicable law

If during the Term the Data Protection Legislation change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that they will negotiate in good faith to review the Agreement in the light of the new legislation.

6. Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

7. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have [exclusive OR non-exclusive] jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Agreement or its subject matter or formation.

This AGREEMENT has been entered into on the date stated at the beginning of it.