

Guidance note for SGBs – using the data processing templates

Data processing agreement template wording

This template agreement wording is intended for use by SGBs when engaging third parties to process personal data on behalf of the SGB. It can also be entered into within group SGB structures – for example, between the SGB and any subsidiaries or a British governing body.

When using the template agreement wording to prepare an agreement for signing, SGBs will need to do the following before the agreement is signed:

1. On the cover page – insert the full name of the SGB and the full name of the supplier.
2. At the top of page 1 – the full legal designations of the SGB and the supplier should be inserted where highlighted as follows:
 - 2.1 if the SGB is incorporated as a company, the full company number needs to be inserted (for example “Company Number SC123456”). This also applies if the SGB has charitable status (for example, “Charity Number SC654321”) and the words “Scottish charity” need to appear in the designation (for example, “Scotland SGB registered as a Scottish charity”);
 - 2.2 if the SGB is incorporated as a Scottish Charitable Incorporated Organisation, these words should be inserted together with the SGB’s charity number;
 - 2.3 if the SGB has any trading names, these should be included in the designation (for example, “trading as [insert]”); and
 - 2.4 the addresses for both the SGB and the supplier to be inserted are the registered addresses (for example, the addresses that appear on the Companies Register and/or the Charity Register).
3. In clause 1.1 – insert a start date in the definition of “Commencement Date”. This is the date on which the agreement will become legally binding.
4. Clause 2 provides that the agreement expires once the “Purpose(s)” has / have been completed. Accordingly, SGBs should ensure that there is clarity around when this takes place. SGBs may instead prescribe a specific termination date by replacing the words “completion of the Purpose(s)” with “[INSERT DATE]” and insert a specific date before signing.
5. Clause 3.2 sets out the obligations on the supplier acting as a processor as required by the GDPR and new Data Protection Act. SGBs should read through these carefully to monitor compliance by the supplier during the Term.
6. Clause 4 relates to sub-processors, SGBs should ensure that the supplier seeks approval under this clause before it passes any of the personal data of which the SGB is a controller to another third party (for example, external payment providers that process payments for SGBs).
7. Clause 8 governs the review of the agreement and its termination. In particular, clause 8.3 gives SGBs the right to terminate the agreement by notice where the supplier is in material breach. If a SGB seeks to terminate an agreement under this clause, we would recommend that legal advice is sought before any action is taken.
8. Clause 9 sets out the actions required of the supplier at the end of the agreement as required by the GDPR and new Data Protection Act.
9. Notices under the agreement must be issued in accordance with clause 13 in order to be valid (for example, a notice of termination or breach).

10. SGBs should complete the number of pages in the signing block and insert the full name of both the SGB and the supplier where indicated before signing.
11. At the top of the Schedule, SGBs should complete the full name of both the SGB and the supplier.
12. Part 1 of the Schedule requires SGBs to identify the categories of personal data to be processed by the supplier. SGBs should ensure that all categories are included to clearly set out what the supplier will be required to process on behalf of the SGB.
13. Part 2 of the Schedule requires SGBs to set out the purpose of the processing of personal data (for example, to administer an electronic membership database on behalf of the SGB).

Except where highlighted in the template wording and as set out in this guidance note, SGBs should not amend the text without first obtaining legal advice.

Data processing clause template wording

This template clause wording is intended for use by SGBs within service agreements with suppliers who are providing services, which involve or are likely to involve the processing of personal data on behalf of the SGB.

This template clause wording includes automatic wording and SGBs will need to ensure that all of the clause references within the text when the template wording is inserted into a services agreement are updated. For example, clause 1.4.9 references clause "1.7" so if the clause is inserted into a services agreement as clause 8, this reference would need to be amended to refer to clause "8.7".

1. Definitions

In the definitions section of the services agreement, the definition of "Data Protection Legislation" should be included where appropriate. The clause also includes references to defined terms of "Business Days" and "Term". SGBs should amend these if not defined in the services agreement or insert appropriate definitions.

2. Clause

Clause 1.2 requires SGBs to identify the categories of personal data to be processed by the supplier. SGBs should ensure that all categories are included to clearly set out what the supplier will be required to process on behalf of the SGB. In particular, any sensitive / special categories of personal data must be listed if relevant. SGBs also need to list the categories of data subject to which the personal data relates.

Clause 1.3 requires SGBs to set out the purpose of the processing of personal data (for example, to administer an electronic membership database on behalf of the SGB).

Clause 1.4 sets out the obligations on the supplier acting as a processor as required by the GDPR and new Data Protection Act. SGBs should read through these carefully to monitor compliance by the supplier during the operation of the services agreement.

Except where highlighted in the template wording and as set out in this guidance note, SGBs should not amend the text without first obtaining legal advice.