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| SGBs data processing clause [TEMPLATE] |

*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 1.1.3 references clause "1.4" so if the clause is inserted into a services agreement as clause 8, this reference would need to be amended to refer to clause "8.4".*

***Except where highlighted in the template wording, SGBs should not amend the text without first obtaining legal advice.***

## Data processing clause [TEMPLATE]

1. **Processing of personal data**

**Definitions**

* 1. In this Clause 1:
     1. “**Applicable Law**” means applicable law of the United Kingdom;
     2. “**Controller**”, “**Data Protection Impact Assessment**”,“**Data Subject**”, “**Information Commissioner**”,“**International Organisation**”, “**Personal Data**”, “**Processor**” and “**Processing**” (including derivatives thereof) shall have the meanings given to them in Data Protection Legislation;
     3. “**Customer Personal Data**” means any Personal Data received from or on behalf of the Customer, or otherwise obtained, created, generated or compiled in connection with this Agreement, including the categories Personal Data which the Customer has identified for Processing by the Supplier under this Agreement, short particulars of which are set out in Clause [1.4];
     4. “**Data Protection Legislation**” means any Applicable Law relating to the Processing, privacy and use of Personal Data, including:
        1. the GDPR;
        2. the Data Protection Act 2018;
        3. any laws which implement or supplement any such laws; and
        4. any laws which replace, extend, re-enact, consolidate or amend any of the foregoing;
     5. “**GDPR**” means theGeneral Data Protection Regulation 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time); and
     6. “**Sub-Processor**” means any Processor engaged by the Supplier (or by any other Sub-Processor) for carrying out any Processing activities in respect of the Customer Personal Data.

**Processing**

* 1. For the purposes of the Data Protection Legislation, the Customer and the Supplier agree that the Customer shall be the Controller and the Supplier shall be the Processor of any Customer Personal Data Processed by the Supplier pursuant to this Agreement.
  2. The Supplier Processes the Customer Personal Data as necessary to deliver and provide the services.
  3. The Customer has defined that the following categories of Customer Personal Data will be collected and processed by the Supplier under this Agreement:
     1. [INSERT TYPES OF DATA TO BE PROCESSED BY THE SUPPLIER]
     2. [name and title];
     3. [addresses];
     4. [date of birth];
     5. [telephone number];
     6. [professional, commercial or business e-mail address]; and
     7. [Special Categories Personal Data (information about race and ethnic origin, political opinions, religious or philosophical convictions, trade union membership, health or sexuality)].
  4. The Customer has defined the following Data Subject categories from who the Customer Personal Data as defined in Clause [1.4] will be collected and processed by the Supplier under this Agreement for the following purposes:
     1. [INSERT CATEGORY OF DATA SUBJECT AND PURPOSE];
     2. [INSERT].
  5. The duration of the Processing by the Supplier shall be the term of this Agreement (or otherwise Agreement between the parties to this Agreement).

**Instructions**

* 1. The Supplier undertakes:
     1. unless required to do otherwise by Applicable Law, to Process the Customer Personal Data strictly in accordance with this Agreement, the Customer’s instructions from time to time and the Data Protection Legislation and notify the Customer immediately if it considers that any of the Customer’s instructions infringe Data Protection Legislation;
     2. if Applicable Law requires the Supplier to Process the Customer Personal Data other than in accordance with the Customer’s instructions or is likely to have a substantial adverse effect on the performance of the Supplier’s obligations and commitments in respect of the Customer Personal Data under this Agreement or otherwise prevents it from fulfilling the instructions received from the Customer under this Agreement, to notify the Customer of any such requirement before Processing the Customer Personal Data; and
     3. to maintain records of all activities carried out by the Supplier in relation to the Customer Personal Data. Such records shall be in the form prescribed by and contain the information described in the Data Protection Legislation.

**Security**

* 1. The Supplier shall implement and maintain (and at all times comply with) appropriate technical and organisational measures to ensure appropriate security of the Customer Personal Data and safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Customer Personal Data, all to the reasonable satisfaction of the Customer. Such measures shall include, but are not limited to:
     1. appropriate measures to ensure the ongoing confidentiality, integrity, availability and resilience of the Supplier's systems and services;
     2. appropriate measures to restore the availability and access to the Customer Personal Data in a timely manner in the event of a physical or technical incident;
     3. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Customer Personal Data; and
     4. insofar as possible, appropriate measures to assist the Customer in the fulfilment of the Customer’s obligations to respond to Data Subject Requests relating to the Customer Personal Data.
  2. Except as agreed by the parties as a written variation of this Agreement, the Supplier may not make any change to the security measures it applies to the Customer Personal Data from time to time.

**Using staff and Sub-Processors**

* 1. The Supplier shall:
     1. not engage any Sub-Processors to perform the obligations imposed on the Supplier under this Agreement without the prior written approval of the Customer and, where the Customer's prior written approval is given, ensure that such Sub-Processors are subject to written contractual obligations concerning the Customer Personal Data which are no less onerous than those imposed on the Supplier under this Agreement and promptly provide all relevant details and a copy of each contract to the Customer upon request;
     2. ensure that any of its employees who will have access to the Customer Personal Data have undergone data protection training and are aware of their obligations under the Data Protection Legislation, including but not limited to, a duty of confidentiality in respect of the Customer Personal Data;
     3. not disclose or allow access to the Customer Personal Data to any Data Subject or third party other than at the explicit request of the Customer or as may be specifically provided for in this Agreement; and
     4. remain fully liable to the Customer under this Agreement for all acts and omissions of each Sub-Processor and each employee as if they were its own.

**Assistance**

* 1. The Supplier undertakes to (at its own cost and expense) promptly:
     1. assist the Customer with all requests which may be received from Data Subjects in relation to the Customer Personal Data under the Data Protection Legislation and to notify the Customer of any such request within two (2) Business Days of receipt;
     2. provide the Customer with such information as the Customer may require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation, including contributing to audits and inspections conducted by the Customer or a third party appointed by the Customer under Clause [1.14];
     3. assist the Customer with any notifications to the Information Commissioner or Data Subjects where required under the Data Protection Legislation;
     4. provide the Customer with such assistance as the Customer reasonably requires in relation to the carrying out of a Data Protection Impact Assessment relating to the Processing of the Customer Personal Data, including where the Customer engages in a consultation with the Information Commissioner in relation to the Processing of the Customer Personal Data; and
     5. restrict any Processing, return or delete the Customer Personal Data immediately as directed by the Customer.

**International Transfers**

* 1. The Supplier shall not Process and/or transfer, or otherwise directly or indirectly disclose, any Customer Personal Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer (which may be refused or granted subject to such conditions as the Customer deems necessary).

**Breach**

* 1. The Supplier shall immediately (and in any event within twenty-four (24) hours):
     1. notify the Customer of any breach of the security measures required to be put in place by the Supplier pursuant to Clause [1.8] and / or any breach of the Data Protection Legislation by the Supplier, its Sub-Processors or employees;
     2. provide all information as the Customer requires to report the circumstances referred to in Clause [1.13.1] to the Information Commissioner and affected Data Subjects under the Data Protection Legislation; and
     3. notify the Customer if it receives a complaint, notice or any other communication concerning the Supplier's Processing of the Customer Personal Data.

**Audit**

* 1. The Customer is entitled to appoint an auditor (whether internal or independent), to inspect the Supplier's compliance with this Agreement and the Data Protection Legislation at any time during the term of this Agreement provided that the Customer ensures that any such auditor:
     1. has, in the view of the Customer, the necessary professional qualifications to conduct such an audit; and
     2. is bound by a duty of confidentiality in relation to the Customer Personal Data.

**Deletion/return**

* 1. Subject to Clause [1.16], on the expiry or earlier termination of this Agreement (howsoever caused), the Supplier will immediately:
     1. cease Processing the Customer Personal Data; and
     2. at the Customer's option and at the Supplier's sole cost and expense, either: (i) return to the Customer; or (ii) delete, all the Customer Personal Data wherever and in whatever manner it is held or stored.
  2. If and to the extent that the Supplier is obliged to retain any Customer Personal Data as a result of the Supplier being deemed to be a Controller of that Customer Personal Data and/or to comply with Applicable Law, the following provisions will apply:
     1. the Supplier may retain and not return or delete such Customer Personal Data, only to the extent and only for as long as is legally necessary to hold such Customer Personal Data in its capacity as Controller of that Customer Personal Data and/or to comply with Applicable Law; and
     2. the Supplier will, following expiry or earlier termination of this Agreement, be a Controller in relation to such Customer Personal Data retained by the Supplier.

**Indemnity and survival**

* 1. The Supplier shall indemnify and keep indemnified the Customer fully on demand against all losses arising from any breach by the Supplier or any Sub-Processors or third parties engaged by the Supplier, of this Clause [1] and/or as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of the Supplier's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Customer Personal Data Processed by the Supplier or any Sub-Processors.
  2. This Clause [1] shall survive termination or expiry of this Agreement for any reason.