

# Template: Joint Data Controller Agreement

## Notes on Joint Controllers under the UK GDPR

Article 26 of the UK GDPR states:

Joint controllers

- 1. Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.*
- 2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.*
- 3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.*

The Data Protection Act 2018, Section 58 states:

Joint controllers

- (1) Where two or more competent authorities jointly determine the purposes and means of processing personal data, they are joint controllers for the purposes of this Part.*
- (2) Joint controllers must, in a transparent manner, determine their respective responsibilities for compliance with this Part by means of an arrangement between them, except to the extent that those responsibilities are determined under or by virtue of an enactment.*
- (3) The arrangement must designate the controller which is to be the contact point for data subjects.*

Notes:

To be a Joint controller both parties must be determining the purposes of processing. The ICO refers to solicitors; accountants and other professional advisers as falling into this category. The Controller may also have statutory obligations to share personal data with particular organisations.

- They must determine who is responsible for the various obligations that Controllers have under the GDPR in particular:
- Who will provide fair processing information to the data subjects;
  - Who will take the lead in dealing with data subject rights?
  - UK law may determine who has responsibilities – see above.
- You should designate which controller will be the contact point for data subjects.
- You should advise the data subject of the essence of the arrangement.

NB the data subject can still exercise their rights in relation to each controller no matter what arrangements you put in place.

## JOINT DATA CONTROLLER AGREEMENT

between

(1) [ ] (the "**First Party**");

and

(2) [ ] (the "**Second Party**").

WHEREAS the First Party has procured the services of the Second Party and in the course of the provision of those services the Parties will share Information and act as Joint Data Controllers. Accordingly, the Parties wish to enter into an agreement to govern the terms of such Information sharing between them, and to set out their respective rights and obligations in relation thereto. [You may wish to put in more about the relationship between the parties here. This document is designed to cover the situation where data from the Controller is being shared with another party rather than data being shared through a common data base.]

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

### 1. Definitions and Interpretation

1.1 In this Agreement, the following words and expressions shall have the meanings ascribed to them in this clause 1.1:

**"Agreed Purposes"** the agreed purposes set out in clause 2.2;

**"Agreement"** means this Joint Data Controller Agreement;

**“Data Controller”** means the natural or legal person, public authority, agency or other body which, alone, or jointly with others, determines the purposes and means of the processing of personal data;

**“Data Discloser”** means the Party transferring Personal Data to the Data Receiver;

**“Data Receiver”** means the Party receiving Personal Data from the Data Discloser;

**“Data Subject”** means an identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

**“Information”** means all information, Personal Data, Special Category Data, non-personal data, documents or other material that is obtained from or in relation to a Data Subject pursuant to this Agreement;

**“Data Protection Law”** means the provisions of the Data Protection Act 2018, the UK General Data Protection Regulation (“UK GDPR”), the EU Directive 2002/58/EC on Privacy and Electronic Communications, as transposed into UK legislation, and any applicable decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, the Information Commissioner’s Office and any other applicable UK government departments, in each together with all laws implementing, replacing, amending or supplementing the same and any other applicable data protection or privacy laws;

**“Party”** means a party to this Agreement, and **“Parties”** means two or more of them;

**“Personal Data”** means any information relating to an identified or identifiable Data Subject, including, for the purposes of this Agreement, Special Category Data;

**“Shared Personal Data”** means the Personal Data and Special Category Data shared between the Parties in terms of this Agreement;

**“Special Category Data”** means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation and data relating to criminal convictions and offences; and

**“Term”** has the meaning ascribed to it in clause 12.1.

1.2 In this Agreement, unless the contrary intention appears;

1.2.1 the headings and captions in this Agreement are inserted for convenience only and shall be ignored in construing and interpreting this Agreement;

1.2.2 a reference in this Agreement to any clause or paragraph is respectively, except where it is expressly stated to the contrary, a reference to such clause or paragraph of this Agreement; and

1.2.3 references to any law shall, unless the context otherwise requires, be construed as including references to any subsequent law directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments, or other subordinate legislation made under the relevant law.

## **2. Purpose**

2.1 This Agreement sets out the framework for the sharing of Information between the Parties as Data Controllers and the procedures that the Parties shall follow and the responsibilities of each of the Parties.

2.2 The Parties shall only process Personal Data for the following agreed purposes (“Agreed Purposes”) and shall not process Shared Personal Data for any other purpose:-

- [Insert purposes particular to agreement or statutory provision]

2.3 For the purposes of this Agreement, the following types of Personal Data (Shared Personal Data) may be shared between the Parties during the Term of this Agreement:-

- [Insert Shared Personal Data particular to agreement or statutory provision]

## **3. Identity of Data Controller**

Each Party shall be a Joint controller with the other Party in relation to the Shared Personal Data.

## **4. Compliance with Data Protection Laws**

4.1 Each Party shall ensure compliance with Data Protection Law at all times during the Term of this Agreement.

4.2 Each Party shall ensure that it processes Personal Data only on the basis of one of the legal grounds permitted by Data Protection Law.

## **5. Security of Information**

Each Party shall ensure that it has implemented the appropriate technical and organisational security measures needed to ensure that its processing of Personal Data complies with this Agreement, and with Data Protection Law.

## **6. Transfer and Processors**

6.1 Neither party shall share or transfer Shared Personal Data in a way that is incompatible with the purpose of sharing as set out in this agreement and that it is carried out in a fair, lawful and transparent manner, in accordance with Data Protection Law.

6.2 If a Party uses a processor to process any Information or Shared Personal Data obtained under this Agreement, subject to clause 6.1, it shall ensure that it has in place a legally binding agreement with the processor to govern such processing. Such agreement must provide that the processor will carry out its processing activities in a manner that does not cause either Party to be in breach of its obligations under applicable Data Protection Law.

6.3 Both Parties shall, subject to clause 6.1, ensure that they do not transfer any Information or Shared Personal Data outside the European Economic Area or to an international organisation unless such transfer is permitted by Data Protection Law and provisions which are adequate and equivalent to the terms of this Agreement are in place in respect of the transfer of the Shared Personal Data.

## **7. Information to be Provided to Data Subjects**

7.1 The Data Discloser shall be responsible for providing the Data Subject with all information required by Data Protection Law to be provided to the Data Subject at the point of collection of that Personal Data. The Data Discloser will therefore be the point of contact for Data Subjects.

- 7.2 Both Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to the Data Subject in order for them to understand what personal data is collected, how it is processed, the purpose for which it is processed, when and why their personal data may be shared, to whom personal data may be transferred and their rights under applicable Data Protection Law.
- 7.3 It shall be the responsibility of the Party receiving a Subject Access Request (SAR) or any other request from a data Subject to exercise his or her rights under Data Protection Law to comply with it in respect of the Shared Personal Data held by that Party. The Party who received the SAR will seek the views of the other Party in relation to disclosure of information under a SAR within 7 calendar days of receiving a SAR.
- 7.4 Each Party shall keep a record of Data Subject Requests received by that Party and any information that was provided to the Data Subject and/or exchanged with the other Party. The Parties agree to provide such reasonable assistance to the Party receiving a Data Subject Request (within 7 calendar days of any written request for same) as is necessary for the receiving Party to comply with the Request.

## **8. Accuracy, Retention and Storage**

- 8.1 The Data Discloser shall ensure that the Shared Personal Data is up to date and accurate at the point at which it is disclosed to the Data Receiver. Where either party becomes aware that any Shared Personal Data is not accurate or up to date, that Party shall inform the other and that Party shall take steps to ensure that the Shared Personal Data is updated and/or rectified as appropriate.
- 8.2 The Parties shall not retain or process the Shared Personal Data for longer than is necessary to carry out the Agreed Purposes or in order to comply with any statutory, professional or other legal requirements.

- 8.3 On termination of this Agreement for any reason, the Data Receiver shall promptly (and in any event within 5 working days of termination) ensure that all Shared Personal Data held by it is permanently and securely destroyed so that it is no longer retrievable [*and/or deliver to the Data Discloser all Shared Personal Data disclosed by the Data Discloser together with all copies in any form and in any media in the Data Receiver's power, possession or control*]. The Data Receiver shall provide such information as is necessary to enable the Data Discloser to satisfy itself of the Data Receiver's compliance with this clause.

## **9. Complaints and Breaches**

- 9.1 The Parties to this Agreement are responsible for ensuring that their staff, including, but not limited to officers, employees, volunteers, directors, trustees and board members, are bound by this Agreement and adhere to its terms. The Parties are individually responsible for ensuring that all supporting policies and procedures necessary to comply with the Agreement are implemented within their own organisation.
- 9.2 Any breaches of this Agreement must be brought to the immediate attention of the other Party. The Party responsible for the breach must also advise the other Party of the breach and the outcome of any internal investigation carried out as a result. For the avoidance of doubt, a breach of this Agreement includes where the Personal Data has been lost, destroyed, disclosed, processed or used by a Party in a way that would require that Party to disclose this fact to the Information Commissioner's Office, and/or to the Data Subject, under Data Protection Law. The other Party shall provide all reasonable cooperation and assistance to the Party that has experienced a Personal Data Breach with a view to helping that Party comply with its breach reporting obligations under Data Protection Law.



- 9.3 Any complaint made by a Data Subject in relation to the way in which their Personal Data has been processed shall be handled, in the first instance, by the Party receiving the complaint. The Party receiving the complaint must advise the other Party of the complaint within 7 calendar days of the outcome of its investigation. If any Data Subject is not content with the outcome of the investigation, then the receiving Party should advise the Data Subject to contact the Information Commissioner's Office at the address below:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 0303 123 1113 (local rate)

Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

- 9.4 In the event that a dispute or claim is brought against a Party by a Data Subject or enforcement proceedings are taken by the Information Commissioner's Office in relation to any Personal Data processed under this Agreement, that Party shall inform and keep informed the other Party about the dispute, claim or proceedings and its progress in resolving the same. The other Party shall provide the Party being claimed against with all reasonable cooperation and assistance with a view to helping it settle the dispute or claim in a timely and amicable fashion.

## **10. Rectification, Blocking, Erasure and Destruction**

- 10.1 Each Party to this Agreement is responsible for ensuring that its data protection policy covers the procedure for responding to a notice by a Data Subject, an enforcement notice by the Information Commissioner's Office, or a court order

requiring rectification, blocking, erasure or destruction of the Shared Personal Data or any other steps to be taken by that Party.

- 10.2 Any notice or order in terms of clause 10.1 must be dealt with by the Party that receives or is served with any such notice or order.

## **11. Representations and Warranties**

11 Each Party represents and warrants to the other that:

11.1 it will process Shared Personal Data in compliance with Data Protection Law;

11.2 it will respond as soon as reasonably practicable to enquiries from Data Subjects and the Information Commissioner's Office in relation to Shared Personal Data and in accordance with the requirements prescribed by Data Protection Law;

11.3 where applicable, it will maintain a valid registration with the Information Commissioner's Office;

11.4 it will inform the other Party of the Data Protection Officer or individual within its organisation designated with responsibility for data protection;

11.5 the performance by it of its obligations hereunder has been duly authorised by all necessary corporate/organisational action, and this Agreement constitutes validly and legally binding obligations upon it, which are enforceable against it in accordance with their respective terms and conditions; and

11.6 the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder will not:

- (i) result in a breach of any provisions of its constitutional documents;

- (ii) result in a breach of any agreement to which it is a party;
- (ii) result in a breach of any court order or other direction given by a competent authority which is applicable to it; or
- (iii) result in a breach of any applicable laws.

## **12. Termination**

- 12.1 This Agreement shall be valid for a period of [x] years commencing from [DATE] (the “**Term**”).
- 12.2 The Term of the Agreement may be extended by the mutual written agreement of the Parties.
- 12.3 Unless terminated earlier under clause 12.1, or extended under clause 12.2, this Agreement shall automatically terminate on the expiry of the Term.

## **13. Liability and Indemnity**

- 13.1 In fulfilling its obligations under this Agreement each Party undertakes that it (or any personnel that it engages) shall exercise reasonable skill, care and diligence and that it shall not take any actions which would result in any loss being occasioned to the other Party, a Data Subject or any third party. This Clause shall survive the termination of this Agreement.
- 13.2 Each Party shall indemnify and keep indemnified the other Party against all reasonable fines, penalties, liabilities, costs, expenses and damages incurred or suffered by the other Party arising from any breach by the other Party of this Agreement, unless the same are entirely due to the wilful default or gross negligence of the affected Party. Such indemnification shall not include indemnification for actions, claims, losses, demands, proceedings, fines, penalties, liabilities, costs, expenses and damages which are indirect or consequential.

#### **14 Waiver, Amendments and Remedies**

- 14.1 No waiver, amendment or other modification of the Agreement shall be effective unless it is in writing and signed by both Parties.
- 14.2 For the avoidance of doubt, the remedies provided under this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

#### **15 Assignment and Subcontracting**

- 15.1 No Party shall assign, novate, transfer or subcontract its rights or obligations under this Agreement, or any part thereof, without the prior written permission of the other Party. Any attempt by either Party to assign, novate, transfer or subcontract any rights or obligations without such written consent of the other Party shall be void and without force and effect, and it shall not release the Party from its obligations and liabilities owed to the other Party as contained herein.

#### **16. Illegal, Invalid and Unenforceable Terms**

- 16.1 In the event that any one or more of the provisions contained in this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby and both Parties shall mutually enter into good faith negotiations to replace the invalid, illegal or unenforceable provision, with a provision which best reflects their mutual intent and interest under the Agreement.

#### **17. Force Majeure**

- 17.1 Neither Party shall be liable for any damages or penalty for any delay in performance of, or failure to perform any obligation hereunder when such delay or failure is due to the elements, acts of God, earthquake, fire, flood, war

(whether declared or undeclared), terrorism, embargo, civil commotion, labour disputes, or other causes beyond that Party's reasonable control. The Party whose performance is prevented by an act of force majeure shall resume performance as soon as is reasonably practicable after the condition of force majeure is no longer operative. A Party seeking to rely on an event of force majeure ("**Force Majeure Party**") under this provision shall within five calendar days of the first occurrence of the force majeure event inform the other Party ("**the Affected Party**") of the occurrence and the manner in which performance by the Force Majeure Party has been affected.

- 17.2 Upon the occurrence of a condition described in clause 17.1, the Force Majeure Party shall give written notice to the Affected Party describing such affected performance, and the Parties shall promptly confer, in good faith, to agree upon equitable and reasonable action to minimise the impact on both Parties of such condition. The Parties agree that the Force Majeure Party shall use reasonable endeavours to reduce the delay caused by the force majeure events and recommence the affected performance. If the delay caused by the force majeure event lasts for more than 30 calendar days, either party may terminate this Agreement on giving 30 days' written notice of termination to the other Party under this clause.

## **18. Entire Agreement**

- 18.1 This Agreement constitutes the entire Agreement between the Parties and supersedes any and all prior oral and written agreements, negotiations, representations, warranties, statements, understandings or undertakings between the Parties with respect to the subject matter hereof.

## **19. Independent Entities**

The Parties hereby agree and undertake that they are independent entities engaged in the conduct of their own business and no Party shall be deemed to be the agent, representative or employee of the other for any purpose

whatsoever. The Parties also agree and undertake that this Agreement does not create any right or authority to make any representation or warranty or to assume, create or incur any liability or obligation of any kind, express or implied, in the name of or on behalf of the other Party.

## **20. DISPUTE RESOLUTION**

- 20.1 The Parties hereby agree to act in good faith at all times to attempt to resolve any dispute or difference relating to the subject matter of, and arising under, this Agreement.
- 20.2 If the Representatives dealing with a dispute or difference are unable to resolve this themselves within twenty (20) Business Days of the issue arising, the matter shall be escalated to appointed named persons, at management level, for both parties, as escalation points who will endeavour in good faith to resolve the issue.
- 20.3 In the event that the Parties are unable to resolve the dispute amicably within a period of twenty (20) Business Days from date on which the dispute or difference was escalated in terms of Clause 20.2, the matter may be referred to a mutually agreed mediator. If the identity of the mediator cannot be agreed, a mediator shall be chosen by the Dean of the Royal Faculty of Procurators in Glasgow.
- 20.4 If mediation fails to resolve the dispute or if the chosen mediator indicates that the dispute is not suitable for mediation, and the Parties remain unable to resolve any dispute or difference in accordance with Clauses 20.1 to 20.3, then either Party may, by notice in writing to the other Party, refer the dispute for determination by the courts in accordance with Clause 21.
- 20.5 The provisions of Clauses 20.1 to 20.4 do not prevent either Party from applying for an interim court order whilst the Parties attempt to resolve a dispute.

**21. Applicable Law and Jurisdiction**

21.1 This Agreement shall be governed by and construed in accordance with the laws of Scotland.

21.2 Each party agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute in connection with this Agreement, and each party irrevocably submits to the jurisdiction of the courts of Scotland.

**22. Signatories**

This agreement is signed on behalf of each of the parties by its duly authorised representative as follows:-

**FIRST PARTY**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
POSITION

\_\_\_\_\_  
DATE

**SECOND PARTY**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
POSITION

\_\_\_\_\_  
DATE