

## Supplemental provisions to Clause 12.5 to Shepherd and Wedderburn LLP Terms of Business

### Data processing provisions

#### **A. S+W acting as a processor – compliance with UK GDPR**

- a. This Clause A only applies to the extent that you are a controller subject to the UK GDPR and we are acting as a processor on your behalf.
- b. Where we act as a processor on your behalf in respect of the Protected Data we shall:
  - i. except as required by law, process the Protected Data only in accordance with your documented reasonable and lawful instructions from time to time, for the purposes of providing the services and for no other purpose;
  - ii. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of processing the Protected Data taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing;
  - iii. ensure that persons authorised by us to process the Protected Data are under appropriate confidentiality obligations in respect of the Protected Data;
  - iv. notify you without undue delay after becoming aware of a personal data breach affecting Protected Data;
  - v. at your cost, provide reasonable assistance on your request to you in complying with the rights of data subjects and with your statutory obligations relating to data security, data breach notification, data protection impact assessments and related prior consultation procedures as set out in Articles 32 to 36 of the UK GDPR or taking into account the nature of processing and the information available to us;
  - vi. at your cost, make available to you such information as is reasonably necessary to demonstrate our compliance with this clause A;
  - vii. at your cost, allow you to appoint an independent auditor to audit and inspect our compliance with this clause A, subject to you and such auditor complying with clause A(d) below; and
  - viii. not transfer the Protected Data to a country outside the United Kingdom (other than to the European Economic Area) without your authorisation unless required by UK law. Where we are required by law to make such transfer we shall advise you of such legal requirement unless prohibited by law from doing so.
- c. Save only to the extent required by law or regulation or as required in order to defend any actual or possible legal claims and only in respect of Protected Data we shall, following termination of our appointment in accordance with clause 17 of our Terms of Business or after you cease to be a client of the firm, return to you or destroy, at your request, all Protected Data in our possession or control.
- d. You must give us reasonable prior notice of any request to undertake an audit or inspection of our processing of Protected Data. You must submit a detailed audit plan to us at least four weeks in advance of the proposed audit date. The audit plan must describe the proposed scope, duration, and start date of the audit. We will review the audit plan and inform you of any concerns or questions (e.g. any request for

information that could compromise our confidentiality obligations or our security, privacy, employment or other relevant policies). We will work co-operatively with you to agree a final audit plan and, once it is agreed, we will permit and contribute to such audit, by you (or an independent auditor mandated by you) for this purpose, subject to you:

- i. ensuring that all information obtained or generated by you or your auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the relevant data protection supervisory authority or as otherwise required by applicable law) and is only used for the purposes of meeting your audit requirements under the Data Protection Laws and/or confirming compliance with this clause A;
  - ii. ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to our business, our sub-processors' business (if applicable) and the business of our other clients; and
  - iii. paying our reasonable costs for assisting with the provision of information and permitting and contributing to inspections and audits.
- e. If you request us to transfer the Protected Data outside the United Kingdom, you shall ensure that such transfer is carried out in accordance with one of the mechanisms permitted for transfers of personal data outside the United Kingdom under the Data Protection Laws.
- f. If requested by us, you shall provide us with such evidence as we request to demonstrate that any documented instructions given by you are in compliance with the Data Protection Laws, including but not limited to circumstances where you instruct us to transfer the Protected Data outside the UK. If we believe that any instruction received from you is likely to infringe the Data Protection Laws we will notify you of such infringement or potential infringement and shall be entitled to cease to provide the relevant services until we have agreed appropriate amended instructions.
- g. You authorise us to engage such other sub-processors as we consider appropriate for the provision of the services to you. We shall maintain a list of the types of sub-processors we engage and shall update such list following any changes to the types of sub-processor engaged by us. We shall, on request by you, provide you with a copy of such list. If you require further details of any specific sub-processor following receipt of such list you may request such information. Any such requests for information about sub-processors engaged by us should be sent to our Head of Privacy at 1 Exchange Crescent, Conference Square, Edinburgh EH3 8UL or email [dataprivacy@shepwedd.com](mailto:dataprivacy@shepwedd.com). If you object to our use of a sub-processor on reasonable grounds you shall notify us promptly in writing. You acknowledge that the inability to use a particular sub-processor may result in delay in performing the services, inability to perform the services or increased fees. We shall not be responsible for any loss, damages, penalties, costs, interest or charges which you may so suffer or incur. We will notify you in writing of any change to the services or fees that would result from our inability to use a sub-processor to which you have objected. You may either agree such change in writing or terminate our appointment in accordance with clause 17 of our Terms of Business. Such termination shall not constitute termination for breach.
- h. We shall not authorise a sub-processor to process Protected Data, except under a

written contract and only where the sub-processor's contract incorporates terms which offer protections for the Protected Data that are the same as those set out in this clause A or reflect Article 28(3) of the UK GDPR.

- i. You acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use and process the Protected Data. Consequently, we will not be liable for any claim brought by an individual or any fine imposed on you or us by any regulatory body arising from any action or omission by us, to the extent that such action or omission resulted from your instructions, including but not limited to circumstances in which you have failed to procure the necessary consents to the processing.

**B. S+W acting as a processor – compliance with EU GDPR**

- a. This Clause B only applies to the extent that you are a controller subject to the EU GDPR and we are acting as a processor on your behalf.
- b. Where we act as a processor on your behalf in respect of the Protected Data we shall:
  - i. except as required by law, process the Protected Data only in accordance with your documented reasonable and lawful instructions from time to time, for the purposes of providing the services and for no other purpose;
  - ii. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of processing the Protected Data taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing;
  - iii. ensure that persons authorised by us to process the Protected Data are under appropriate confidentiality obligations in respect of the Protected Data;
  - iv. notify you without undue delay after becoming aware of a personal data breach affecting Protected Data;
  - v. at your cost, provide reasonable assistance on your request to you in complying with the rights of data subjects and with your statutory obligations relating to data security, data breach notification, data protection impact assessments and related prior consultation procedures as set out in Articles 32 to 36 of the EU GDPR or taking into account the nature of processing and the information available to us;
  - vi. at your cost, make available to you such information as is reasonably necessary to demonstrate our compliance with this clause B;
  - vii. at your cost, allow you to appoint an independent auditor to audit and inspect our compliance with this clause B, subject to you and such auditor complying with clause B(d) below; and
  - viii. not transfer the Protected Data to a country outside the European Economic Area other than the United Kingdom without your authorisation unless required by UK and/or EU law. Where we are required by law to make such transfer we shall advise you of such legal requirement unless prohibited by law from doing so.
- c. Save only to the extent required by law or regulation or as required in order to defend any actual or possible legal claims and only in respect of Protected Data we shall, following termination of our appointment in accordance with clause 17 of our Terms of Business or after you cease to be a client of the firm, return to you or destroy, at your

request, all Protected Data in our possession or control.

- d. You must give us reasonable prior notice of any request to undertake an audit or inspection of our processing of Protected Data. You must submit a detailed audit plan to us at least four weeks in advance of the proposed audit date. The audit plan must describe the proposed scope, duration, and start date of the audit. We will review the audit plan and inform you of any concerns or questions (e.g. any request for information that could compromise our confidentiality obligations or our security, privacy, employment or other relevant policies). We will work co-operatively with you to agree a final audit plan and, once it is agreed, we will permit and contribute to such audit, by you (or an independent auditor mandated by you) for this purpose, subject to you:
  - i. ensuring that all information obtained or generated by you or your auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the relevant data protection supervisory authority or as otherwise required by applicable law) and is only used for the purposes of meeting your audit requirements under the EU GDPR and/or confirming compliance with this clause B;
  - ii. ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to our business, our sub-processors' business (if applicable) and the business of our other clients; and
  - iii. paying our reasonable costs for assisting with the provision of information and permitting and contributing to inspections and audits.
- e. If you request us to transfer the Protected Data outside the United Kingdom or the European Economic Area, you shall ensure that such transfer is carried out in accordance with one of the mechanisms permitted for transfers of personal data outside the United Kingdom or the European Economic Area under the EU GDPR.
- f. If requested by us, you shall provide us with such evidence as we request to demonstrate that any documented instructions given by you are in compliance with the EU GDPR, including but not limited to circumstances where you instruct us to transfer the Protected Data outside the United Kingdom or the European Economic Area. If we believe that any instruction received from you is likely to infringe the Data Protection Laws and/or EU GDPR we will notify you of such infringement or potential infringement and shall be entitled to cease to provide the relevant services until we have agreed appropriate amended instructions.
- g. You authorise us to engage such sub-processors as we consider appropriate for the provision of the services to you. We shall maintain a list of the types of sub-processors we engage and shall update such list following any changes to the types of sub-processor engaged by us. We shall, on request by you, provide you with a copy of such list. If you require further details of any specific sub-processor following receipt of such list you may request such information. Any such requests for information about sub-processors engaged by us should be sent to our Head of Privacy at 1 Exchange Crescent, Conference Square, Edinburgh EH3 8UL or email [dataprivacy@shepwedd.com](mailto:dataprivacy@shepwedd.com). If you object to our use of a sub-processor on reasonable grounds you shall notify us promptly in writing. You acknowledge that the inability to use a particular sub-processor may result in delay in performing the services, inability to perform the services or increased fees. We shall not be responsible for any loss, damages, penalties, costs, interest or charges which you

may so suffer or incur. We will notify you in writing of any change to the services or fees that would result from our inability to use a sub-processor to which you have objected. You may either agree such change in writing or terminate our appointment in accordance with clause 17 of our Terms of Business. Such termination shall not constitute termination for breach.

- h. We shall not authorise a sub-processor to process Protected Data, except under a written contract and only where the sub-processor's contract incorporates terms which offer protections for the Protected Data that are the same as those set out in this clause B or reflect Article 28(3) of the EU GDPR.
  - i. You acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use and process the Protected Data. Consequently, we will not be liable for any claim brought by an individual or any fine imposed on you or us by any regulatory body arising from any action or omission by us, to the extent that such action or omission resulted from your instructions, including but not limited to circumstances in which you have failed to procure the necessary consents to the processing.
- C. Any defined terms used in this Addendum shall have the same meanings as set out in our Terms of Business.