

## Data Sharing Agreement

This Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20

### BETWEEN

BUSINESS SERVICES ORGANISATION (LEGAL SERVICES), (hereinafter referred to as  
“the DLS”)

Of 2 FRANKLIN STREET, BELFAST, BT2 8DQ

of the one part

### AND

[INSERT NAME AND TITLE OF COUNSEL e.g. Barrister-at-Law/King’s Counsel]

Of [INSERT ADDRESS]

of the other part

The DLS is the sole provider of legal services for the Health and Social Care Bodies in Northern Ireland. In the provision of those legal services, the DLS may provide Instructions to Counsel on behalf of its Clients to provide legal services in connection with Cases.

The purpose of this Agreement (“the Agreement”) is to ensure the lawful processing of Personal Data passing between the DLS and Counsel providing legal services for mutual Clients. This Agreement sets out the framework for the sharing of Personal Data between the parties as Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other. This Agreement will benefit Clients by allowing timely sharing of Personal Data and by providing Clients and Data Subjects with clarity about how Personal Data will be processed and securely transferred between the DLS and Counsel. The parties recognise that the DLS will regularly disclose Personal Data to Counsel and that, on occasion, Counsel will disclose Personal Data to the DLS.

For the purpose of this Agreement, the instructing solicitor is described as ‘the DLS’ and counsel instructed is described as ‘Counsel’ and collectively they are referred to as ‘the parties’.

The terms of this Agreement shall apply as appropriate to all Cases in which the DLS has provided Instructions to Counsel to provide legal services including Instructions provided prior to the date stated at the start of this Agreement.

- A. The DLS agrees to share Personal Data with Counsel on the terms set out in this Agreement. If Counsel shares Personal Data with the DLS, it will also be shared on the terms set out in this Agreement.
- B. Counsel agrees to use the Personal Data within the European Economic Area “the United Kingdom and EEA” (which comprises the countries in the European Union and Iceland, Liechtenstein and Norway) and on the terms set out in this Agreement.
- C. This is a free standing Agreement and does not incorporate any commercial business terms established by the parties under separate commercial Agreements.

## AGREED TERMS

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement:

**Agreed Purposes:** In connection with a Case: (i) the provision of legal advice or services; (ii) the provision of legal representation in any court, tribunal or similar forum; and (iii) securing payment of fees for legal services provided.

**Case** means the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Counsel is instructed to supply legal services.

**Client** means the DLS' client, being one or more of the Health and Social Care Bodies, for whose benefit or on behalf of whom Counsel is instructed by the DLS to supply legal services.

**Controller, Data Subject, Personal Data, processing (and related expressions including process, processed or processes shall be construed accordingly) and Appropriate technical and organisational measures:** have the meanings given to them in the Data Protection Legislation in force at the time.

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in Northern Ireland including the General Data Protection Regulation ("GDPR") ((EU) 2016/679), the Data Protection Act 2018 or any successor legislation and any other European Union legislation relating to personal data.

**Health and Social Care Bodies** means as defined in the Health and Social Care (Reform) Act (Northern Ireland) 2009, as amended.

**Instructions** means the briefs, instructions, requests for work to be done (and all accompanying materials), this Agreement and any other applicable terms and conditions, whether written or oral, given by the DLS to Counsel for the purposes of the supply of legal services by Counsel.

**Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the Shared Personal Data.

**Permitted Recipients:** (i) The parties to this Agreement; (ii) the employees, servants or agents of each party; (iii) any third parties engaged to perform obligations in connection with this Agreement; and (iv) any third party to whom it is necessary to allow access to the Shared Personal Data (as defined in clause 3 of this Agreement) for one or more of the Agreed Purposes as set out in this Agreement.

**Sensitive Personal Data:** has the meaning given in the Data Protection Legislation in force at the time and in particular has the same meaning as "special categories of personal data" in Article 9 of the GDPR and for the purposes of this Agreement

Criminal Offence Data (as defined in the Data Protection Act 2018) is to be treated in the same way as special categories of personal data.

**Shared Personal Data:** means the Personal Data and Sensitive Personal Data to be shared between the parties under this Agreement.

**Data Subject Request:** meaning a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**Term:** This Agreement shall commence on the date stated at the start of this Agreement and shall continue indefinitely thereafter.

- 1.2 The schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedule.
- 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 References in this Agreement to statutory provisions shall (where the context so admits and unless otherwise expressly provided) be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted (as the context requires) and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.
- 1.5 Any words following the terms “including”, “include” “in particular” or “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.6 In the case of any ambiguity between any provision contained in the body of this Agreement and any provision contained in the schedule, the provision in the body of this Agreement shall take precedence.
- 1.7 Any reference to writing or written includes email.
- 1.8 Unless otherwise required the reference to one gender shall include a reference to the other gender.
- 1.9 In the event of any inconsistency between this Agreement and any other terms and conditions between the parties, the terms of this Agreement shall prevail.

## **2. COMPLIANCE WITH NATIONAL DATA PROTECTION LAWS**

- 2.1 Counsel must ensure compliance with Data Protection Legislation at all times during the Term of this Agreement. Any material breach of the Data Protection Legislation by Counsel shall, if not remedied with 30 days of written notice from the DLS, allow the DLS to terminate Counsel’s Instruction in a Case(s) and/or Counsel’s appointment to the DLS Counsel Panel.

### **3. SHARED PERSONAL DATA**

3.1 The following types of Personal Data may be shared between the parties during the Term of this Agreement for any of the Agreed Purposes:

- 3.1.1 personal details (including contact and location details);
- 3.1.2 family details;
- 3.1.3 lifestyle and social circumstances;
- 3.1.4 financial details;
- 3.1.5 education, training and employment details;
- 3.1.6 information relating to the matter in which the Client is seeking legal advice, services or representation;
- 3.1.7 Any other Personal Data which is relevant and necessary to be shared for the Agreed Purposes.

3.2 The following types of Sensitive Personal Data may be shared between the parties during the Term of this Agreement for any of the Agreed Purposes:

- 3.2.1 racial or ethnic origin;
- 3.2.2 political opinions;
- 3.2.3 religious or philosophical beliefs;
- 3.2.4 trade union membership;
- 3.2.5 data concerning a natural person's physical or mental health or condition;
- 3.2.6 data concerning a natural person's sex life or sexual orientation;
- 3.2.7 genetic or biometric data used to uniquely identify a natural person;
- 3.2.8 the commission or alleged commission of any offence; and
- 3.2.9 any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.

### **4. PARTICULAR OBLIGATIONS RELATING TO DATA SHARING**

Counsel agrees to:

4.1 ensure that all necessary notices and consents are in place to enable the lawful transfer of the Shared Personal Data to any of the Permitted Recipients for any of the Agreed Purposes;

4.2 if requested, give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, where processing of the Shared Personal Data is no longer necessary for the Agreed Purposes, on the termination of their Instruction in a particular Case(s) or termination of Counsel's appointment to the DLS Counsel Panel, Personal Data relating to them may be retained by, or as the case might be may be transferred to, one or more of the Permitted Recipients;

- 4.3 process the Shared Personal Data only for the Agreed Purposes;
- 4.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients or otherwise as required by law;
- 4.5 ensure that any disclosure of the Shared Personal Data to any Permitted Recipients is in compliance with Data Protection Legislation;
- 4.6 ensure that Appropriate technical and organisational measures are adopted by them to ensure safekeeping against unauthorised or unlawful processing of the Shared Personal Data and against accidental loss, or destruction of, or damage to, the Shared Personal Data, including taking all such measures as may be required to comply with Article 32 of the GDPR and without prejudice to any other obligation in this clause 4.6 comply with the reasonable instructions of the DLS in that regard;
- 4.7 not transfer any Shared Personal Data outside the United Kingdom or EEA unless Counsel:
  - 4.7.1 complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
  - 4.7.2 ensures that:
    - (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or
    - (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or
    - (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.

## **5. ASSISTANCE TO THE DLS**

Counsel shall assist the DLS in complying with all applicable requirements of the Data Protection Legislation. In particular Counsel shall:

- 5.1 consult with the DLS about any notices given to Data Subjects in relation to the Shared Personal Data;
- 5.2 promptly inform the DLS about the receipt of any Data Subject Request;
- 5.3 provide the DLS with reasonable assistance in complying with any Data Subject Request;
- 5.4 not disclose or release any Shared Personal Data in response to a Data Subject Request without first consulting the DLS wherever possible;
- 5.5 assist the DLS, at the costs of Counsel, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security breach notifications, data privacy impact assessments and consultations with supervisory authorities or regulators;

- 5.6 notify the DLS without undue delay upon becoming aware of any breach of the Data Protection Legislation;
- 5.7 shall either securely and permanently delete or securely return Shared Personal Data and copies thereof to the DLS who provided the copies of the Shared Personal Data, where processing of the Shared Personal Data is no longer necessary for the Agreed Purposes, or on termination of Instruction in a Case(s) or termination of appointment to the DLS Counsel Panel, unless otherwise agreed between the parties or unless required by law or professional obligation to retain the Shared Personal Data, in which case it shall be retained no longer than is necessary for such purpose(s) and only that Shared Personal Data which is necessary shall be processed for such purpose(s).
- 5.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- 5.9 maintain complete and accurate records and information to demonstrate its compliance with this clause;
- 5.10 notify the DLS of any Personal Data Breach without undue delay (but in any event no later than 24 hours after becoming aware of the Personal Data Breach) and thereafter provide the DLS with such details as they reasonably require.

## **6. INDEMNITY**

Counsel will carry their own professional indemnity insurance. Counsel shall indemnify the DLS against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the DLS arising out of or in connection with breach of the Data Protection Legislation by Counsel its employees, servants or agents, provided that the DLS gives to Counsel prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage defend and/or settle it.

SIGNED \_\_\_\_\_

Counsel

SIGNED \_\_\_\_\_

Chief Legal Adviser/Assistant Chief Legal Adviser

For and on behalf of DLS

## **SCHEDULE**

**1 Subject-matter of processing:**

Personal Data related to the provision of legal services

**2 Duration of the processing:**

For as long as is necessary for the Agreed Purposes or until termination of Instruction in a Case(s) or termination of appointment to the DLS Counsel Panel unless otherwise as may be agreed between the parties or unless required by law or professional obligation to retain the Shared Personal Data, in which case it shall be retained no longer than is necessary for such purpose(s) and only that Shared Personal Data which is necessary shall be processed for such purpose(s).

**3 Nature and purpose of the processing:**

The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.

The purpose is as defined in the Agreed Purposes.

**4 Type of Data:**

**Personal Data may include:**

Personal details (including contact and location details)

Family details

Lifestyle and social circumstances

Financial details

Education training and employment details

Information relating to the matter in which the Client is seeking legal advice, services or representation

Any other Personal Data which is relevant and necessary to be shared for the Agreed Purposes.

**Sensitive Personal Data may include:**

Racial or ethnic origin;

Political opinions;

Religious or philosophical beliefs;

Trade union membership;

Data concerning a natural person's physical or mental health or condition;

Data concerning a natural person's sex life or sexual orientation;

Genetic or biometric data used to uniquely identify a natural person;

The commission or alleged commission of any offence; and

Any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.

## **5 Categories of Data Subjects:**

Client or other Health and Social Care Body former or current staff; actual or prospective patients/service users; family, carers, and next of kin of Data Subject; members of the public; plaintiff; claimant; defendant; respondent; debtor; solicitors; counsel; pupils; witnesses; experts; professional advisers; staff of Northern Ireland Courts and Tribunals Service, PSNI, Ombudsman, regulatory or investigatory bodies, legal aid, CRU, costs drawer, public registers such as land registry or registrar of deeds, external auditors, Embassies, Consulates, Schools, Northern Ireland Prison Service, Labour Relations Agency, Tracing and Service Agents, UKBA, insurance companies; anyone related to or ancillary to actual or potential proceedings and/or legal advices or services sought or given or to the Agreed Purposes.

## **6 Processing Instructions**

All Personal Data will be dealt with confidentially and with appropriate security measures in place to prevent unauthorised or unlawful processing, accidental loss, destruction or damage.

