

# CareComplianceManager Data Processing Agreement

## BACKGROUND

- (A) Under a written agreement (the "Service Agreement") between the Client (the Data Controller) and FOAM Studio Limited (the Data Processor) the Data Processor provides to the Data Controller the Services described in the Service Agreement.
- (B) The provision of the Services by the Data Processor involves processing the Personal Data described in the Data Processing Inventory on behalf of the Data Controller.
- (C) Under EU Regulation 2016/679 General Data Protection Regulation (the "GDPR") (Article 28, paragraph 3), the Data Controller is required to put in place an agreement in writing between the Data Controller and any organisation which processes personal data on its behalf governing the processing of that data.
- (D) The Parties have agreed to enter into this Agreement to ensure compliance with the said provisions of the GDPR in relation to all processing of the Personal Data by the Data Processor for the Data Controller.
- (E) The terms of this Agreement are to apply to all processing of Personal Data carried out for the Data Controller by the Data Processor and to all Personal Data held by the Data Processor in relation to all such processing.

## 1. Definitions and Interpretation

- 1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- 1.1.1. "Data Controller", "Data Processor", "processing", and "data subject" shall have the meanings given to the terms "controller", "processor", "processing", and "data subject" respectively in Article 4 of the GDPR; for the purposes of this Agreement, the "Data Processor" will be FOAM Studio Limited, a company incorporated and registered in England and Wales with

company number 06902180 whose registered office is at Clarendon - Marble Arch, 42 Upper Berkeley St, Marble Arch, London W1H 5PW, United Kingdom.

- 1.1.2. "ICO" means the UK's supervisory authority, the Information Commissioner's Office;
  - 1.1.3. "Personal Data" means all such "personal data", as defined in Article 4 of the GDPR, as is, or is to be, processed by the Data Processor on behalf of the Data Controller, as described in the Data Processing Inventory;
  - 1.1.4. "Services" means those services described in the Service Agreement to which this Agreement forms an addendum, which are provided by the Data Processor to the Data Controller and which the Data Controller uses for the purposes described in the Service Agreement;
  - 1.1.5. "Sub-Processor" means a sub-processor appointed by the Data Processor to process the Personal Data; and
  - 1.1.6. "Sub-Processing Agreement" means an agreement between the Data Processor and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as described in Clause 10.
- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
  - 1.3. Unless the context otherwise requires:
    - 1.3.1.1. words in the singular shall include the plural and in the plural shall include the singular;
    - 1.3.1.2. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
    - 1.3.1.3. a reference to one gender shall include a reference to the other genders;
    - 1.3.1.4. any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
    - 1.3.1.5. "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

- 1.3.1.6. "this Agreement" is a reference to this Agreement and each of the linked documents as amended or supplemented at the relevant time;
- 1.3.1.7. a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.3.1.8. a "Party" or the "Parties" refer to the parties to this Agreement.

## 2. Scope and Application of this Agreement

- 2.1. The provisions of this Agreement shall apply to the processing of the Personal Data described in the Data Processing Inventory, carried out for the Data Controller by the Data Processor, and to all Personal Data held by the Data Processor in relation to all such processing whether such Personal Data is held at the date of this Agreement or received afterwards.
- 2.2. The provisions of this Agreement supersede any other arrangement, understanding, or agreement (including, but not limited to, the Service Agreement) made between the Parties at any time relating to the Personal Data.
- 2.3. This Agreement shall continue in full force and effect for so long as the Data Processor is processing Personal Data on behalf of the Data Controller, and thereafter as provided in Clause 9.

## 3. Provision of the Services and Processing Personal Data

- 3.1. The Data Processor is only to carry out the Services, and only to process the Personal Data received from the Data Controller:
  - 3.1.1. for the purposes of those Services and not for any other purpose;
  - 3.1.2. to the extent and in such a manner as is necessary for those purposes; and
  - 3.1.3. strictly in accordance with the express written authorisation and instructions of the Data Controller (which may be specific

instructions or instructions of a general nature or as otherwise notified by the Data Controller to the Data Processor).

- 3.2. The Data Controller acknowledges that the Data Processor will engage the services of Sub-Processors, such as cloud storage providers and ticketing providers, as provided in Clause 10.
- 3.3. The Data Controller acknowledges that it must seek the explicit consent of the Data Subject in order to collect – and require the Data Processor to process – any “special categories” of data as defined in Article 9 of the GDPR.

#### 4. Data Protection Compliance

- 4.1. All instructions given by the Data Controller to the Data Processor shall be made in writing and shall at all times be in compliance with the GDPR and other applicable laws. These instructions include the Service Agreement and any processing required to deliver those Services. The Data Processor shall act only on such written instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).
- 4.2. The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data that cannot be accomplished via ordinary use of the Services, subject to the timetable set out in the Data Retention Schedule.
- 4.3. The Data Processor shall transfer all Personal Data that cannot be obtained via ordinary use of the Services to the Data Controller on the Data Controller’s request in the formats requested within a reasonable timescale, and in compliance with the Data Controller’s written instructions.
- 4.4. Both Parties shall comply at all times with the GDPR and other applicable laws and shall not perform their obligations under this Agreement or any other agreement or arrangement between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 4.5. The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.

- 4.6. The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Agreement are satisfactorily performed in accordance with any and all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.
- 4.7. The Data Processor shall provide all reasonable assistance (at the Data Controller's expense) to the Data Controller in complying with its obligations under the GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments, and in dealings with the ICO.
- 4.8. When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:
  - 4.8.1. not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") except where the Data Processor has established that the provisions applicable to transfers of Personal Data to third countries set out in Chapter 5 of the GDPR are in place in order to provide an adequate level of protection to any Personal Data that is transferred;
  - 4.8.2. not transfer any of the Personal Data to any third party without the written consent of the Data Controller and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in Clause 10;
  - 4.8.3. process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
  - 4.8.4. implement appropriate technical and organisational measures and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure. The Data Processor shall inform the Data Controller in advance of any changes to such measures;
  - 4.8.5. if so requested by the Data Controller, supply further details of the technical and organisational systems in place to safeguard

- the security of the Personal Data held and to prevent unauthorised access;
- 4.8.6. keep records of all processing activities carried out on the Personal Data in accordance with the requirements of Article 30(2) of the GDPR;
  - 4.8.7. make available to the Data Controller any and all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR;
  - 4.8.8. on reasonable prior notice, submit to audits and inspections and provide the Data Controller with any information reasonably required in order to assess and verify compliance with the provisions of this Agreement and both Parties' compliance with the requirements of the GDPR; and
  - 4.8.9. inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.

## 5. Data Subject Access, Complaints, and Breaches

- 5.1. The Data Processor shall, at the Data Controller's expense, assist the Data Controller in complying with its obligations under the GDPR. In particular, the following shall apply to data subject access requests, complaints, and data breaches.
- 5.2. The Data Processor shall notify the Data Controller without undue delay if it receives:
  - 5.2.1. a subject access request from a data subject; or
  - 5.2.2. any other complaint or request relating to the processing of the Personal Data.
- 5.3. The Data Processor shall, at the Data Controller's expense, cooperate fully with the Data Controller and assist as required in relation to any subject access request, complaint, or other request, including by:
  - 5.3.1. providing the Data Controller with full details of the complaint or request;
  - 5.3.2. providing the necessary information and assistance in order to comply with a subject access request;
  - 5.3.3. providing the Data Controller with any Personal Data it holds in relation to a data subject; and

- 5.3.4. providing the Data Controller with any other information requested by the Data Controller.
- 5.4. The Data Processor shall notify the Data Controller immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.

## 6. Appointment of a Data Protection Officer

The Data Processor has appointed a Data Protection Officer in accordance with Article 37 of the GDPR, who may be contacted at asdf@asdf.

## 7. Liability and Indemnity

- 7.1. The Data Controller shall be liable for, and shall indemnify (and keep indemnified) the Data Processor in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor and any Sub-Processor arising directly or in connection with:
  - 7.1.1. any non-compliance by the Data Controller with the GDPR or other applicable legislation;
  - 7.1.2. any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
  - 7.1.3. any breach by the Data Controller of its obligations under this Agreement, except to the extent that the Data Processor or Sub-Processor is liable under sub-Clause 7.2.

- 7.2. The Data Processor shall be liable for, and shall indemnify (and keep indemnified) the Data Controller in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Controller arising directly or in connection with the Data Processor's Personal Data processing activities that are subject to this Agreement:
- 7.2.1. only to the extent that the same results from the Data Processor's or a Sub-Processor's breach of this Agreement; and
  - 7.2.2. not to the extent that the same is or are contributed to by any breach of this Agreement by the Data Controller.
- 7.3. The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor under sub-Clause 7.1.
- 7.4. Nothing in this Agreement (and in particular, this Clause 7) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.
- 7.5. Any liability is subject to the terms set out in Clause 8 of the Service Agreement.

## 8. Intellectual Property Rights

All copyright, database rights, and other intellectual property rights subsisting in the Personal Data (including but not limited to any



updates, amendments, or adaptations to the Personal Data made by either the Data Controller or the Data Processor) shall belong to the Data Controller or to any other applicable third party from whom the Data Controller has obtained the Personal Data under licence (including, but not limited to, data subjects, where applicable). The Data Processor is licensed to use such Personal Data under such rights only for the purposes of the Services, and in accordance with this Agreement.

## 9. Confidentiality and Limitation of Access

- 9.1. The Data Processor shall maintain the Personal Data in confidence, and in particular, unless the Data Controller has given written consent for the Data Processor to do so, the Data Processor shall not disclose any Personal Data supplied to the Data Processor by, for, or on behalf of, the Data Controller to any third party. The Data Processor shall not process or make any use of any Personal Data supplied to it by the Data Controller otherwise than in connection with the provision of the Services to the Data Controller.
- 9.2. The Data Processor shall ensure that all personnel who are to access and/or process any of the Personal Data are contractually obliged to keep the Personal Data confidential.
- 9.3. The obligations set out in this Clause 9 shall continue for a period of 180 days after the cessation of the provision of Services by the Data Processor to the Data Controller.
- 9.4. Nothing in this Agreement shall prevent either Party from complying with any requirement to disclose Personal Data where such disclosure is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. In such cases, the Party required to disclose shall notify the other Party of the disclosure requirements prior to disclosure, unless such notification is prohibited by law.
- 9.5. The Data Processor shall ensure that access to Personal Data is granted only to those personnel involved in maintaining the Services in accordance with the Service Agreement.

## 10. Appointment of Sub-Processors

- 10.1. The Data Processor may continue to use any Sub-Processors to whom it already sub-contracts data processing tasks as at the time of this Agreement. The Data Processor maintains a list of Sub-Processors here.
- 10.2. In the event that the Data Processor appoints a new Sub-Processor, the Data Processor shall:
  - 10.2.1. enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Data Processor by this Agreement and which shall permit the Data Processor to enforce those obligations; and
  - 10.2.2. ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR; and
  - 10.2.3. notify the Data Controller in writing.
- 10.3. In the event that a Sub-Processor fails to meet its obligations under any Sub-Processing Agreement, the Data Processor shall remain liable to the Data Controller for failing to meet its obligations under this Agreement.

## 11. Deletion and/or Disposal of Personal Data

- 11.1. The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return any data that is not readily accessible through ordinary use of the Services to the Data Controller in the format(s) reasonably requested by the Data Controller. This will be done in line with the Data Retention Schedule after the earlier of the following:
  - 11.1.1. the end of the provision of the Services under the Service Agreement;  
or
  - 11.1.2. the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under this Agreement or the Service Agreement.

- 11.2. Following the deletion, disposal, or return of the Personal Data under sub-Clause 11.1, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds in line with the Data Processor's Data Retention Schedule, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.
- 11.3. All Personal Data to be deleted or disposed of under this Agreement shall be deleted or disposed of using secure methods.

## 12. Governing Law and Jurisdiction

- 12.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 12.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).