



## Ability Housing Association GDPR notice for suppliers and customers

**New data protection legislation came into force on the 25<sup>th</sup> May 2018, its aim being to protect the privacy of all EU citizens and prevent any data breaches of EU citizen's personal data. It will apply to all public or private business's processing personal data.**

As an existing customer of or supplier to Ability Housing Association it is important that you read the information below regarding changes to your existing contract or agreement with us to accommodate the General Data Protection Regulation (GDPR).

The established key principles of data privacy will still remain relevant in the new data protection legislation but there are also a number of changes under GDPR. Amongst the changes, the new GDPR specifies that any processing of personal data by a Data Processor should be governed by a contract with certain provisions included.

This will involve both your organisation and Ability updating our existing contract terms and conditions and ensuring we agree a schedule to clarify the roles and responsibilities between your organisation as the Data Controller and Ability Housing Association as the Data Processor.

Enclosed is our proposed 'Data Protection addendum' (which is based on the standard Crown Commercial Services clauses for ease of review). For the avoidance of doubt, the terms 'Customer' and 'Supplier' are clarified below

We kindly request that you forward this communication, along with the enclosed Data Protection Addendum, to an authorised signatory for your company. We request that the signed Data Protection Addendum is returned to us as soon as possible and in any event no later than 4<sup>th</sup> June 2018. Should you have any queries regarding this, we have a dedicated email address [gdpr@ability-housing.co.uk](mailto:gdpr@ability-housing.co.uk).

If you do not sign and return the enclosed Data Protection Addendum by 4<sup>th</sup> June 2018 but continue to work with Ability Housing, we will reserve the right to treat with you on the basis that you have agreed with the provisions of the addendum. Nevertheless, as it is a statutory requirement for both organisations to update their contracts as required and be able to evidence this, we would appreciate you returning a signed copy of the enclosed **Addendum** prior to 4<sup>th</sup> June 2018 to acknowledge your consent to the new provisions.

We thank you for your attention and please contact us on the email address with any queries.

Yours sincerely,

Alex Hughes

**Head of Human Resources**

**Data Protection Officer on behalf of Ability Housing Association**

## ADDENDUM TO IMPLEMENT LEGISLATIVE OBLIGATIONS RELATING TO DATA PROCESSING OF PERSONAL DATA AND DATA SUBJECTS

This Addendum is entered into on the date of signature of the last party hereto and is supplemental to all terms and conditions currently in place between the Customer/Supplier and Ability Housing Association (Ability) but replaces any provisions in such terms and conditions relating to the processing of Personal Data by Ability.

### IT IS HEREBY AGREED AS FOLLOWS:

1. The following definitions will apply:

**“Ability”** means Ability Housing Association, who is the counter-party to your agreement for the supply or receipt of goods or services, being a company with registration number 01261380 and a registered provider of social housing number LH2174;

**“Applicable Law”** means the laws of England and Wales (and any EU regulations from time-to-time applicable (i) whilst the United Kingdom remains a member of the European Union or (ii) subsequently under the terms of the European Union (Withdrawal) Bill);

**“Controller”** has the meaning set out in the Data Protection Legislation;

**“Customer”** means the counter- party set out in the signature block at the end of this Addendum where Ability supplies goods or services;

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by Ability hereunder, and/or actual or potential loss and/or destruction of Personal Data in breach of the Clause ‘Ability GDPR’, including any Personal Data Breach;

**“Data Protection Legislation”** means all applicable privacy or data protection laws and regulations (as amended, consolidated or re-enacted from time-to-time) which relate to the protection of individuals with regards to the processing of personal data to which a party is subject, including the Data Protection Act 1998 (as may be superseded) and GDPR (on and from 25 May 2018) for as long as any of the above are incorporated into Applicable Law together with any guidance and/or codes of practice issued from time-to-time by the Information Commissioner;

**“Data Subject”** has the meaning set out in the Data Protection Legislation;

**“Data Subject Access Request”** means 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;

**“EEA”** means the European Economic Area;

**“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

**“Original Agreement”** the terms and conditions currently in force between the parties;

**“Personal Data”** has the meaning set out in the Data Protection Legislation and includes (but is not limited to) special categories of personal data which reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, sex, sexual orientation, trade union membership or the processing of genetic or biometric data, for the purpose of uniquely identifying a natural person;

**“Personal Data Breach”** has the meaning set out in the Data Protection Legislation;

**“Processor”** has the meaning set out in the Data Protection Legislation;

**“Security Measures”** means appropriate technical and organisational measures which are set out in the service description (or other relevant documentation available) for the relevant products or services provided by the Processor;

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of Ability related to the Original Agreement.

**“Supplier”** means the counter- party set out in the signature block at the end of this Addendum where Ability receives goods or services;

2. In consideration of the ongoing provision of any services by Ability after 25th May 2018, the terms of this Addendum will be incorporated into any Original Agreement of whatever form.
3. Notwithstanding any provisions in the Original Agreement relating to the protection of individuals with regards to the processing of Personal Data, such provisions will be superseded in their entirety and replaced by the following new Clause 'Ability GDPR'.
4. The following new Clause Ability GDPR will be inserted into the Original Agreement, Ability standard terms and conditions or any other document governing the business relationship, as follows:

Ability GDPR 1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer/Supplier is the Controller and Ability is the Processor.

Ability GDPR 2 Ability shall notify the Customer immediately if it considers that any of the Customer's/Suppliers instructions infringe the Data Protection Legislation.

Ability GDPR 3 Ability shall provide reasonable assistance to the Customer/Supplier in relation to compliance with the Data Protection Legislation.

Ability GDPR 4 Ability shall, in relation to any Personal Data processed in connection with its obligations to the Customer/Supplier:

Ability GDPR 4.1 process that Personal Data only in accordance with the Schedule below, unless Ability is required to do otherwise by Applicable Law. If it is so required, Ability shall promptly notify the Customer/Supplier before processing the Personal Data unless prohibited by Applicable Law;

Ability GDPR 4.2 ensure that it has Security Measures in place (available on request) and the Customer/Supplier hereby confirms that such Security Measures are appropriate to protect against a Data Loss Event having taken into account the:

Ability GDPR 4.2.1 nature of the Personal Data to be protected;

Ability GDPR 4.2.2 harm that might result from a Data Loss Event;

Ability GDPR 4.2.3 state of technological development; and Ability

Ability GDPR 4.2.4 cost of implementing any additional measures;

Ability GDPR.4.3 In relation to the clauses above, the Controller is responsible (as between the parties and to Data Subjects and supervisory authorities) for:

Ability GDPR 4.3.1 ensuring that Data Subjects have given appropriate consent to the processing of any Personal Data by the Processor, or that a valid processing condition under Article 6.1 of the GDPR pertains;

Ability GDPR 4.3.2 ensuring the Security Measures meet the GDPR standard of appropriateness;

Ability GDPR.4.4 Ability will ensure that:

Ability GDPR.4.4.1 Ability personnel do not process Personal Data except in accordance with this Clause Ability GDPR (and in particular the Schedule below);

Ability GDPR.4.4.2 it takes all reasonable steps to ensure the reliability and integrity of any Ability or third party personnel who have access to the Personal Data and ensure that they: (i) are aware of and comply with Ability's duties under this clause; (ii) are subject to appropriate confidentiality undertakings with Ability or any Sub-processor; (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer/Supplier or as otherwise permitted hereunder; and (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

Ability GDPR.4.5 not transfer Personal Data outside of the EEA unless the prior written consent of the Customer/Supplier has been obtained and the following conditions are fulfilled:

Ability GDPR.4.5.1 the Customer/Supplier or Ability has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Customer/Supplier;

Ability GDPR.4.5.2 the Data Subject has enforceable rights and effective legal remedies;

Ability GDPR.4.5.3 Ability complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Customer in meeting its obligations); and

Ability GDPR.4.5.4 Ability complies with any reasonable instructions notified to it in advance by the Customer/Supplier with respect to the processing of the Personal Data;

**IT BEING ACCEPTED** by the Customer/Supplier that:

Ability GDPR.4.5.5 the Customer is liable for any complaints or claims by Data Subjects or third parties resulting from such access.

Ability GDPR.4.6 at the written direction of the Customer/Supplier, delete or return Personal Data (and any copies of it) to the Customer on termination unless Ability is required by Applicable Law or processing condition to retain the Personal Data.

Ability GDPR.5 Before allowing any Sub-processor to process any Personal Data related hereto Ability must give the Customer/Supplier:

Ability GDPR .5.1 at least 30 calendar days' notice in writing of the intended Sub-processor and processing;

Ability GDPR.5.2 confirmation that there is a written agreement with the Sub-processor which give effect to the terms set out in this Clause Ability GDPR such that they apply to the Sub-processor;

Ability GDPR.5.3 such information regarding the Sub-processor as the Customer/Supplier may subsequently reasonably require.

Ability shall not retain any liability for any acts or omissions of any Sub-processor.

Ability GDPR.6 Subject to Clause Ability GDPR.4, Ability shall notify the Customer/Supplier immediately if it:

Ability GDPR.7.1 receives a Data Subject Access Request (or purported Data Subject Access Request) relevant to the Customer/Supplier;

Ability GDPR.7.2 receives a request to rectify, block or erase any Personal Data relevant to the Customer/Supplier;

Ability GDPR.7.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

Ability GDPR.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data, relevant to the Customer/Supplier, processed hereunder;

Ability GDPR.7.5 receives a request from any third party relevant to the Customer/Supplier for disclosure of Personal Data where compliance with such request is required or purported to be required by Applicable Law; or

Ability GDPR.7.6 becomes aware of a Data Loss Event relevant to the Customer/Supplier.



Ability GDPR 7 Ability's obligation to notify under Clause DP.6 shall include the provision of further information to the Customer/Supplier in phases, as details become available.

Ability GDPR.8 Taking into account the nature of the processing, Ability shall provide the Customer/Supplier with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause DP.6 (within the timescales agreed between the parties) including by promptly providing:

Ability GDPR.8.1 the Customer/Supplier with full details and copies of the complaint, communication or request;

Ability GDPR.8.2 such assistance as is reasonably requested by the Customer/Supplier to enable the Customer/Supplier to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

Ability GDPR.8.3 the Customer/Supplier, at its request, with any Personal Data it holds in relation to a Data Subject;

Ability GDPR.8.4 assistance as requested by the Customer/Supplier following any Data Loss Event;

Ability GDPR.8.5 assistance as requested by the Customer/Supplier with respect to any request from the Information Commissioner's Office, or any consultation by the Customer/Supplier with the Information Commissioner's Office.

Ability GDPR.9 Ability shall maintain complete and accurate records and information to demonstrate its compliance with Article 30 of GDPR.

Ability GDPR.10 Ability shall provide details of its security measures and data processing activities to the Customer/Supplier or the Customer's/Supplier's designated auditor at reasonable times and on reasonable notice.

Ability GDPR.11 For the avoidance of doubt, notwithstanding anything to the contrary in any Original Agreement, each party accepts liability for loss of Personal Data to the extent that the loss of Personal Data is caused by:

- a material breach by such party of their data processing obligations under Applicable Law;
- a failure by such party to provide the Security Measures that it has agreed to provide in relation to such Personal Data

up to the sum of £1,000."

5. Notwithstanding anything to the contrary set out in any Original Agreement, to the extent that there is any duplication or conflict between definitions or clauses used in any Original Agreement and this Addendum, the definitions and clauses set out in this Addendum will apply and take precedence. In all other respects any Original Agreement as amended by this Addendum shall continue in full force and effect.
6. Each party confirms that their signatory set out below is a duly authorised representative and authorised to act on behalf of the relevant party. All the terms of Clause Ability GDPR are expressly confirmed and consented to by the Customer/Supplier hereunder.
7. This Addendum is governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

In witness of which the parties have agreed to this Addendum and executed this Addendum by their duly authorised representatives

For and on behalf of Customer/Supplier		For and on behalf of Ability	
Customer/Supplier Name	Fresh Interactive	Name	Alex Hughes
Authorised Person	Keith Farmer	Position	Data Protection Officer on behalf of Ability Housing Association
Position	Owner	Date	25 <sup>th</sup> May 2018
Date	25/5/2018		

