

## Appendix 1 -

## DATA PROCESSING AGREEMENT

**THIS AGREEMENT** is made the                    day of

### **BETWEEN**

**EXPERIAN LIMITED** whose registered office is at Landmark House, Experian Way, NG2 Business Park, Nottingham, NG80 1ZZ ("Experian ") and

[Insert Registered Social Landlord Name, having its registered office at, [Insert Address], ("the Client")

### **RECITALS**

- (A) The Client wishes to appoint Experian to act as data processor of certain data in order to permit Experian to analyse the Client Data for the Purpose and Experian has agreed to act as data processor on the terms of and subject to the conditions of this Agreement.
- (B) Paragraphs 11 and 12 of part II of Schedule 1 of the Data Protection Act 1998 place certain obligations upon a data controller to ensure that any data processor it engages provides sufficient guarantees to ensure that the processing of the data carried out on its behalf is secure.
- (C) This Agreement exists to ensure that there are sufficient security guarantees in place and that the processing of the Client Data by Experian complies with obligations equivalent to those of the 7th Data Protection Principle.

### **OPERATIVE PROVISIONS**

In consideration of the Client disclosing the Client Data (as defined herein) to Experian it is hereby agreed as follows:

#### **Definitions**

In this Agreement the following definitions shall have the following meanings unless the context otherwise requires:

**"CAIS"** means Experian's Credit Account Information Sharing Scheme.

**"CAIS Data"** means data contributed into CAIS by participating CAIS Members.

**"Confidential Information"** means any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer names & addresses, market opportunities, transactions, affairs and/or business of the parties and/or to their customers, suppliers, clients or group companies in or on any medium or format. For the avoidance of doubt, the Client Data shall be Confidential Information of the Client.

**"Client Data"** shall mean such data relating to tenants and potential tenants of the Client as the Client agrees Experian may process from time to time as provided to Experian by the Client and further described in Clause 3.

"**DPA**" shall mean the Data Protection Act 1998.

"**Experian Data**" means any of the data and/or databases supplied by Experian to the Client in connection with the Purpose.

"**Output**" means a summary of the results of the processing by Experian and the potential impact on the Client's tenants, which for the avoidance of doubt shall not include Personal Data.

"**Participating CAIS Members**" means those CAIS members who have authorised Experian to use CAIS Data for the Purpose.

"**Processing**" and "**Personal Data**" shall have the meanings specified in the DPA.

"**RSL**" means Registered Social Landlord of which the Client is one.

**1. Application**

This Agreement shall apply to all Client Data and shall continue in force for such time as Experian continues to process Client Data for the Client or (if earlier) until the date on which Experian and the Client enter into a full written agreement containing provisions similar to those set out in this Agreement in respect of data processing and/or other services.

**2. Purpose**

The purpose of the Agreement is to enable a collaboration between certain RSL's (including the Client), the Big Issue Invest and Experian, and in particular for Experian to conduct research into the potential for using rent payment data to develop more detailed credit scores of the Client's residents, which for the avoidance of doubt will involve processing by Experian of the Client Data with Experian Data (including CAIS Data) ("**Purpose**").

**3. The types of Client Data to be provided to Experian to undertake this research on behalf of the Client are:**

- 3.1 Client's resident's name
- 3.2 Client resident's address
- 3.3 Client resident's rental payment history
- 3.4 Client's resident's rent payable amount
- 3.5 Any other such data as may be reasonably required by Experian for the Purposes of this Agreement with the consent of the Client, any such additional processing to be carried out on behalf of the Client by Experian as 'data processor'.

**4. The Client will not provide Experian with any sensitive personal data (as defined by the DPA) for the purposes of this Agreement.**

## 5. Compliance and audit

- 5.1 Each party undertakes to the other that, in connection with the Client Data, it will at all times comply with the DPA (including the data protection principles referred to in the DPA) and any subordinate or associated regulations.
- 5.2 The Client as a registered data controller with the Information Commissioner's Office shall ensure that the data processing carried out shall be consistent with its responsibilities as data controller under the DPA.
- 5.3 In relation to the DPA the parties shall in addition to the general obligations under Clause 5.1:
  - 5.3.1 notify all relevant details of any processing of Personal Data to the Information Commissioner as set out in the DPA and only process such Personal Data in accordance with the terms of its notification under the DPA;
  - 5.3.2 comply with the rights of the individuals in relation to the Client Data as set out in the DPA.
- 5.4 Each party warrants that it has in place and undertakes to maintain appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of the other party's software and data and adequate security programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to process such data or on which any such software or data is stored.
- 5.5 Experian (as data processor under the DPA) agrees that it shall process the Client Data only in accordance with the instructions of the Client (as data controller under the DPA).
- 5.6 Experian shall permit the Client to enter its premises to ensure that Experian is complying with its obligations under this Agreement in relation to the use of the Client Data on condition that the Client shall:
  - 5.6.1 give reasonable notice of any such audit and conducts such audit during normal working hours;
  - 5.6.2 observe Experian's security and confidentiality procedures in relation to the protection of confidential information concerning any clients or customers of Experian;
  - 5.6.3 comply with Experian's reasonable regulations governing security and health and safety as have been notified to it; and
  - 5.6.4 take all reasonable steps to minimise disruption to Experian's business during such audit.
- 5.7 Experian shall delete the Client Data at the request of the Client at any time or on termination of the Agreement as set out in Clause 1 and Clause 11. Experian shall confirm in writing that all such Client Data has been securely deleted.

## 6. Confidentiality

- 6.1 Each party shall, in respect of the Confidential Information for which it is the recipient;
- 6.1.1 keep the Confidential Information strictly confidential and not disclose any part of such Confidential Information to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;
  - 6.1.2 take all reasonable steps to prevent unauthorised access to the Confidential Information;
  - 6.1.3 not use the Confidential Information other than for the purposes set out in this Agreement;
  - 6.1.4 agree wherever possible to securely delete all data on completion of the Purpose.
- 6.2 The parties may disclose the Confidential Information to, and allow its use in accordance with this Agreement by, the following (as long as the conditions in Clause 6.3 are met):
- 6.2.1 employees and officers of the recipient and its group companies who necessarily require it as a consequence of the performance of the recipient's obligations under this Agreement;
  - 6.2.2 the recipient's auditors and professional advisors solely for the purposes of providing professional advice and any other persons or bodies having a legal right or duty to have access to, or knowledge of, the Confidential Information in connection with the business of the recipient;
  - 6.2.3 in the case of Experian being the recipient, group companies of Experian who necessarily require it as a consequence of the performance of Experian's obligations under this Agreement.
  - 6.2.4 Experian may provide a copy of the Output to the Participating CAIS Members provided that each Participating CAIS Member is under a contractual obligation to treat the Output as Confidential Information on terms equivalent to those contained in this Agreement.
- 6.3 As a condition of the rights set out in Clause 6.2 the party wishing to exercise the rights must
- 6.3.1 ensure that any party to whom it discloses Confidential Information is under an obligation of confidentiality in relation to such Confidential Information; and
  - 6.3.2 procure that such persons observe the restrictions in this Clause 6.
- 6.4 The restrictions in Clause 6.3 do not apply to any information to the extent that it:

- 6.4.1 is or comes within the public domain other than through a breach of Clause 6.1;  
or
- 6.4.2 is in the recipient's possession (with full right to disclose) before receiving it from the other party; or
- 6.4.3 is lawfully received from a third party (with full right to disclose); or
- 6.4.4 is independently developed by the recipient without access to or use of the Confidential Information.
- 6.4.5 is required to be disclosed by law or by a court of competent jurisdiction.

## **7. Permitted Use of the Output**

- 7.1 The Client shall use the Output solely for the purpose of evaluating whether to (i) contribute to any database established by Experian in connection with the Purpose, and (ii) engage Experian to provide services to the Client in the future and shall not sell, transfer, sub-license, distribute, commercially exploit or otherwise make available to, or use for the benefit of, any third party any of the Output.
- 7.2 The Client agrees that Experian may permit Participating CAIS Members to use the Output solely for the purpose of assessing the potential benefit of using CAIS Data and RSL Data within Experian's Services.

## **8 Liability**

- 8.1 The liability of Experian to the Client in respect of any breach of Clause 5 shall be limited in aggregate to £500,000.
- 8.2 Experian shall not (save as set out in Clauses 8.1 and 8.5) have any liability (whether in contract, negligence, for breach of statutory duty or otherwise) to the Client arising out of or in connection with this Agreement.
- 8.3 The Client shall not (save as set out in Clause 8.5) have any liability (whether in contract, negligence, for breach of statutory duty or otherwise) to Experian arising out of or in connection with this Agreement.
- 8.4 Subject to Clause 8.5, neither party shall be liable to the other (whether in contract, negligence, for breach of statutory duty or otherwise) for:
  - 8.4.1 any indirect or consequential loss;
  - 8.4.2 the following types of financial loss; loss of profits; loss of earnings; loss of business or goodwill; even if that party had notice of the possibility of the other party incurring such losses;
  - 8.4.3 the following types of anticipated or incidental losses; loss of anticipated savings; increase in bad debt; failure to reduce bad debt; even if that party had notice of the possibility of the other party incurring such losses.

8.5 Neither party excludes or limits its liability to the other for any of the following (and nothing in this Agreement shall be construed as excluding or limiting such liability):

8.5.1 for breach of its obligations under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

8.5.2 for personal injury or death resulting from its negligence or that of its employees, agents and/or sub-contractors;

8.5.3 for breach of Clause 6;

8.5.5 for any matter which it would be illegal for that party to exclude and/or limit, or attempt to exclude and/or limit, its liability; or

8.5.6 for that party's fraud.

**9. Subcontractors**

Nothing in this agreement shall permit Experian to subcontract any part of its services associated with the processing of the data under this agreement to a 3<sup>rd</sup> party without the prior consent of the Client.

**10. Transfer of data overseas**

Experian shall have regard to the eighth principle of the DPA, and a transfer of personal data outside the EEA may only take place with the Client's prior written consent.

**11. Termination**

The agreement will remain in force from signature of this Agreement for a period of 12 months. The Client reserves the right to terminate the agreement at any time where, in its reasonable opinion, Experian has failed to carry out its obligations or if the processing falls short of what is expected under the terms of the agreement. The Client shall serve a notice of termination in writing and the notice will take effect immediately on receipt by Experian. For the avoidance of doubt the provisions of Clause 6 shall survive termination and continue in force until such time as the Confidential Information becomes public knowledge other than by a breach of this Agreement.

**12. Payment**

There will be no charge associated with the processing by Experian under this Agreement or otherwise.

**13. IPR**

13.1 All Intellectual Property Rights in the Client Data will remain vested in the Client (or its relevant licensors).

13.2 All Intellectual Property Rights in the Output (excluding any Client Data contained within the Output) will remain vested in Experian (or its relevant licensors).

**14. Governing Law**

14.1 This Agreement and all matters arising out of it shall be governed by, and construed in accordance with, the laws of England and Wales.

14.2 If any disputes arise out of, under, or in connection with this Agreement, the parties agree that such disputes shall be dealt with exclusively by the English courts.

	<b>Experian</b>	<b>Client</b>
<b>Signature of authorised signatory</b>		
<b>Name</b>		
<b>Position</b>		
<b>Date</b>		