Data Processing and Sharing Requirements Schedule

1. Definitions

1.1 In this Schedule, unless the context otherwise requires, the following words and expressions have the following meanings:

“the Act” means the Data Protection Act 1998 (as amended);

“Agreement” means any agreement for the supply of services entered into by the parties whether forming part of the contract to which this schedule is attached or otherwise;

“Data Controller” means the meaning set out in section 1(1) of the Act;

“Data Processor” means the meaning set out in section 1(1) of the Act;

“Data Subject” means an individual who is the subject of Personal Data;

“Personal Data” means the meaning set out in section 1(1) of the Act and relates only to personal data, or any part of such personal data, of which the Customer is the Data Controller and in relation to which the Contractor is providing services under the Agreement;

“Processing and process” have the meaning set out in section 1(1) of the Act.

1.2 For the purposes of this Schedule, the Financial Ombudsman Service Limited is referred to as the “Customer” and the Contractor (as referred to in the Shortened Terms & Conditions) will be referred to as the “Contractor”, together the “parties”.

2. Basis for Processing or Sharing

2.1 The basis for processing and sharing Personal Data under the Agreement is by virtue of the consent of the Data Subject (express or implicit) or in accordance with the terms of the Act and any other statutory obligations of the parties.

3. Obligations of the Contractor

3.1 Subject to clause 4, the parties acknowledge that for the purposes of the Act, the Customer is the Data Controller and the Contractor is the Data Processor of any Personal Data.
3.2 The Contractor shall process the Personal Data only to the extent, and in such a manner, as is notified to it by the Customer from time to time or is strictly necessary for the purposes of the Contractor’s duties and shall not process the Personal Data for any other purpose.

3.3 The Contractor shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in this Schedule.

3.4 The Contractor will keep a record of any processing of Personal Data it carries out on behalf of the Customer.

3.5 The Contractor shall promptly comply with any request from the Customer requiring the Contractor to amend, transfer or delete the Personal Data.

3.6 If the Customer requests that the Contractor collects any Personal Data on behalf of the Customer it will only do so in the form and manner prescribed by the Customer and will include a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be fair. The Contractor shall not modify or alter the form prescribed by the Customer in any way without the prior written consent of the Customer.

3.7 If the Contractor receives any complaint, notice or communication which relates directly or indirectly to the processing or sharing of the Personal Data or to either party’s compliance with the Act and the data protection principles set out therein, it shall immediately notify the Customer and it shall provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.

3.8 At the Customer’s request, the Contractor shall provide to the Customer a copy of all Personal Data held by it in the format and on the media reasonably specified by the Customer.

3.9 The Contractor shall implement appropriate technical and organisational measures to protect Personal Data against unlawful processing or sharing, or processing or sharing other than in accordance with the terms of this Schedule and against accidental loss, destruction or damage, including the encryption of all Personal Data stored in all digital or electronic portable storage devices such as laptops, mobile phones, USB sticks and other similar devices. The Contractor shall provide a written description of the technical and organisational methods employed by the Contractor for processing or sharing data if requested to do so by the Customer.

3.10 The Contractor shall promptly inform the Customer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Contractor will restore such Personal Data at its own expense.
3.11 The Contractor shall notify the Customer immediately if it becomes aware of any unauthorised or unlawful processing of Personal Data and in such circumstances shall comply with all requests of the Customer in dealing with the situation.

3.12 Upon termination of the Agreement for any reason, the Contractor shall cease processing any Personal Data and shall return all Personal Data to the Customer and any copies thereof or shall securely destroy all Personal Data if instructed to do so by the Customer and shall certify that this has been done.

4. Transfers outside the EEA

4.1 The Contractor shall not transfer the Personal Data to any party other than parties:

4.1.1 within the European Economic Area ("EEA");

4.1.2 within Guernsey, Jersey, the Isle of Man, Andorra, Switzerland, Canada, Israel, Argentina, Uruguay, the Faroe Islands, Australia or New Zealand; or

4.1.3 on the United States Safe Harbour list.

4.2 If the Contractor intends to transfer Personal Data to any party that does not fall within clauses 4.1.1 to 4.1.3 above then the Contractor must promptly notify the Customer and further terms and conditions may apply. Such further terms and conditions shall be notified to the Contractor by the Customer and the Contractor shall not so transfer the Personal Data until it has entered an additional agreement or indicated its acceptance of the further terms and conditions otherwise and to the satisfaction of the Customer.

5. Contractor's Employees

5.1 The Contractor shall ensure that access to the Personal Data is limited to:

5.1.1 those employees who need access to the Personal Data to meet the Contractor's obligations under this Agreement; and

5.1.2 in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.

5.2 The Contractor shall ensure that all employees:

5.2.1 are informed of the confidential nature of the Personal Data;

5.2.2 have undertaken training in the Act and other laws relating to handling personal data; and
5.2.3 are aware both of the Contractor's duties and their personal duties and obligations under such laws referred to in clause 5.2.2 and this Agreement.

5.3 The Contractor shall use its best endeavours to ensure the reliability of any of the Contractor's employees who have access to the Personal Data.

6. Rights of the Data Subject

6.1 The Contractor shall notify the Customer within 3 working days if it receives a request from a Data Subject for access to that person's Personal Data.

6.2 The Contractor shall provide the Customer with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.

6.3 The Contractor shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in this Schedule.

7. Rights of the Customer

7.1 The Customer is entitled, on giving reasonable notice to the Contractor, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Contractor.

7.2 The requirement under clause 7.1 to give notice will not apply if the Customer believes that the Contractor is in breach of any of its obligations under this Agreement.

7.3 If following an inspection the Customer believes that any employee of the Contractor shall cause or is causing the Contractor to be in breach of clause 5.2 or 5.3 then the Customer may request that the Contractor no longer uses such employee for the purposes of handling Personal Data under this Agreement.

8. Warranties

8.1 The Contractor warrants that:

8.1.1 it will process (and share) the Personal Data in compliance with the Act and all other applicable laws, enactments, regulations, orders, standards and other similar instruments; and

8.1.2 it will take such appropriate technical and organisational measures in order to ensure the safety and security of the Personal Data as may be specified from time to time by the Customer;

8.1.3 it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to,
personal data to ensure the Customer’s compliance with the seventh data protection principle.

9. **Indemnity**

9.1 The Contractor agrees to indemnify the Customer and keep indemnified and defend at its own expense against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Contractor or its employees or agents to comply with the Act or any of its other obligations under this Schedule.

9.2 The Contractor shall take out insurance sufficient to cover any payment that may be required under clause 9.1 and produce the policy and receipt for premium paid, to the Customer on request.

10. **Appointment of sub-contractors**

10.1 The Contractor may only authorise a third party (“sub-contractor”) to process the Personal Data:

10.1.1 subject to the Customer’s prior written consent where the Contractor has supplied the Customer with full details of such sub-contractor;

10.1.2 provided that the sub-contractor’s contract is on terms which are substantially the same as those set out in this Schedule; and

10.1.3 provided that the sub-contractor’s contract terminates automatically on termination of the Agreement for any reason.

11. **Data sharing**

11.1 The parties acknowledge that there may be circumstances in which Personal Data is transferred to the Contractor and the Contractor becomes a Data Controller in respect of that Personal Data. Furthermore the Contractor acknowledges that in such circumstances the Contractor will comply with all its obligations as a Data Controller under the Act, will determine the purposes for which the Personal Data is being processed and will be liable directly to the Data Subject and regulatory authorities in relation to its responsibilities as Data Controller.

11.2 The Contractor confirms that where Personal Data is shared with them in the circumstances envisaged by the clause above then it shall:

11.2.1 have in place an appropriately worded privacy and data protection policy;

11.2.2 where appropriate, it will directly inform the relevant Data Subjects that it is processing their Personal Data and is the Data Controller in respect of that Personal Data;
11.2.3 ensure that it has in place appropriate procedures for dealing with subject access requests or any other complaints or queries from Data Subjects;

11.2.4 have in place procedures and mechanisms for keeping all Personal Data accurate and up to date in accordance with its obligations as a Data Controller under the Act,

and the Contractor agrees to promptly supply copies of its policies, procedures, notices and requests (and such other information as may be reasonably required by the Customer) to the Customer upon request.

11.3 The Customer reserves the right to require the Contractor to inform the Customer in writing of the uses to which the Contractor intends to put the Personal Data and the ways in which it intends to process the Personal Data. Furthermore the Customer reserves the right to not share any Personal Data if it believes that such uses and purposes described by the Contractor are inappropriate or incompatible with the requirements of the Act.

11.4 If the Customer believes that the transfer of Personal Data may amount to data sharing as envisaged by this clause then the Customer may require the Contractor to:

11.4.1 complete the Customer’s data protection questionnaire or any other request for information;

11.4.2 enter into a new data sharing agreement which may, where appropriate, also be binding on other third parties with whom data is being shared (and for the avoidance of doubt in the event that a further such agreement is entered into, the terms of this Schedule and Agreement shall continue to apply).

11.5 For the avoidance of doubt the other terms of this Schedule shall continue to apply to the parties and in respect of Personal Data where it is being shared under this clause 11 as necessary, including for the avoidance of doubt clause 8 (Warranties) and clause 9 (Indemnity).

12. Review

12.1 The parties shall review the data processing (and sharing) arrangements set out in this Schedule on a regular basis and on no less than [six] month intervals.