GUIDE ON DATA PROTECTION CLAUSES FOR AGREEMENTS RELATING TO THE PROCESSING OF PERSONAL DATA

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Guide on Data Protection Clauses for Agreements relating to the Processing of Personal Data ("Guide")

1.   An organisation may engage another organisation to provide services relating to the processing of personal data (such as hosting or storage of data, payroll processing etc).   In this Guide, the organisation purchasing services will be known as the "**Customer**" while the organisation providing services will be known as the "**Contractor**". A Customer and a Contractor will usually enter into a written agreement to set out the services provided and the parties' obligations ("**Service Agreement**").

2.   This Guide provides sample data protection clauses that Customers may include in their Service Agreements with Contractors, for general reference. The sample clauses should be adapted to suit the Customer's particular circumstances and needs. For example, the sample clauses may be modified to take into account the Customer's operational and business requirements, the context of the Service Agreement and the other clauses of the Service Agreement dealing with similar or related issues (e.g. confidentiality clauses). Please read the explanatory notes in the next section of this Guide before using the sample clauses.

3.   A Contractor who processes personal data on behalf of, and for the purposes of, a Customer will likely be considered as a data intermediary[1] of the Customer under the Personal Data Protection Act 2012 ("**PDPA**"). Where the Contractor is processing personal data as a data intermediary *pursuant to a contract in writing*[2], the Contractor will not be subject to the obligations set out in Parts III to VI of the PDPA ("**Data Protection Obligations**") except for the obligations relating to protection[3] and retention[4] of personal data.[5]

4.   A Customer will be liable for any act done, or omission, by the Contractor in the course of processing personal data on behalf of the Customer where such act or omission amounts to a breach of any Data Protection Obligation.[6] When engaging Contractors to process personal data on their behalf and for their purposes, Customers should therefore ensure that their Service Agreements with the Contractors impose sufficient obligations on the Contractors so as to ensure the Customer's own compliance with the PDPA.

5.   For more information about the Data Protection Obligations, please refer to Parts III to VI of the PDPA and the advisory guidelines issued by the Personal Data Protection Commission ("**Commission**"). In particular, the Commission's Advisory Guidelines on Key Concepts in the PDPA ("**Key Concepts Guidelines**") elaborate on the key terms

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[1] Section 2(1) of the PDPA defines a 'data intermediary' as "an organisation that processes data on behalf of another organisation but does not include an employee of that other organisation".

[2] See Section 4(2) of the PDPA (*Application of Act*).

[3] See Section 24 of the PDPA (*Protection of Personal Data*).

[4] See Section 25 of the PDPA (*Retention of Personal Data*].

[5] An organisation is required to comply with all Data Protection Obligations in relation to personal data it is collecting, using, disclosing or processing for its own purposes. Further, an organisation that sends marketing messages to Singapore telephone numbers, whether for its own purposes or for another organisation, will have to ensure compliance with the obligations relating to the Do Not Call Registry in Part IX of the PDPA.

[6] See Section 4(3) of the PDPA (*Application of Act).*

in the PDPA relating to data intermediaries and explain the general issues surrounding various obligations which organisations have to comply with under the PDPA. Note, however, that each advisory guideline should always be read in conjunction with any other relevant advisory guidelines that the Commission has issued, or may from time to time issue.

6.   **Use of the sample clauses does not mean that you would be in compliance with the PDPA or any other law. You should seek professional legal advice if you are uncertain of your legal position or obligations under the law, or require assistance with the drafting of any Service Agreement (including the use of the sample clauses).**

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1. **DEFINITIONS**
 	
1.1   In this Agreement, unless the context otherwise requires, the following terms shall have the meanings assigned to them below:
 	
    1.1.1 "**Contractor**" means [*name of the Contractor*];
    1.1.2 "**Customer**" means [*name of the Customer*];
    1.1.3 "**Customer Personal Data**" means Personal Data which the Customer discloses to the Contractor, or which the Contractor processes on behalf of the Customer, including: [*you may wish to set out specific instances of personal data for clarity*];
    1.1.4 "**PDPA**" means the Personal Data Protection Act 2012; and
    1.1.5 "**Personal Data**" means data, whether true or not, about an individual who can be identified:
      (a) from that data alone; or
      (b) from that data and other information which the Contractor has or is likely to have access.
	Clause 1 of the Sample Clauses provides definitions of terms used in the Sample Clauses. If the Agreement already has a clause that sets out the definitions of terms (for example, an "Interpretation Clause"), it may be more appropriate to include the definitions in the Sample Clauses in that Interpretation Clause, especially if the terms are also used in other clauses of the Agreement.
	
	Defined terms such as Customer, Contractor and Agreement may be replaced with terms used in the rest of the Agreement (where applicable).
	
	Similarly, this clause and the following clauses may be renumbered as required.

2. **HANDLING AND PROTECTION OF PERSONAL DATA** 2.1 <u>Compliance with PDPA</u>. The Contractor shall comply with all its obligations under the PDPA at its own cost.	*Clause 2.1 of the Sample Clauses requires the Contractor to comply with all its obligations under the PDPA at its own cost.*

2.2   <u>Process, Use and Disclosure</u>. The Contractor shall only process, use or disclose Customer Personal Data:
    (a) strictly for the purposes of [fulfilling its obligations and providing the services required] under this Agreement;
    (b) with the Customer's prior written consent; or
    (c) when required by law or an order of court, but shall notify the Customer as soon as practicable before complying
	Clause 2.2 of the Sample Clauses ensures that the Contractor processes, uses or discloses Customer Personal Data only under certain permitted circumstances.
	
	Where possible, clause 2.2(a) should refer to the specific obligations of the Contractor that require the processing, use or disclosure of personal data. Hence the phrase "fulfilling its obligations and providing

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with such law or order of court at its own costs.	*the services required" may be amended or replaced as appropriate.* *Where a Contractor has to process, use or disclose Customer Personal Data in accordance with law or an order of court, Clause 2.2 (c) of the Sample Clauses requires the Contractor to notify the Customer as soon as practicable before complying with such law or order of court. This will give Customers some time to obtain legal or professional advice before its Customer Personal Data is processed, used or disclosed by the Contractor in accordance with the law or order of court.*
2.3 <u>Transfer of personal data outside Singapore</u>. The Contractor shall not transfer Customer Personal Data to a place outside Singapore without the Customer's prior written consent. [If the Customer provides consent, the Contractor shall provide a written undertaking to the Customer that the Customer Personal Data transferred outside Singapore will be protected at a standard that is comparable to that under the PDPA. If the Contractor transfers Customer Personal Data to any third party overseas, the Contractor shall procure the same written undertaking from such third party].	*Clause 2.3 of the Sample Clauses ensures that the Contractor does not transfer Customer Personal Data outside of Singapore without the Customer's consent. If the Agreement would require the transfer of Customer Personal Data outside of Singapore in the course of processing, this clause may be amended to specifically allow for such transfers.* *If the Customer provides consent for the transfer of Personal Data overseas, the Customer may wish to require that the Contractor provides a written undertaking to the Customer that the Personal Data transferred outside Singapore will be protected at a standard that is comparable to that under the PDPA.* *If the Contractor will be transferring the Customer Personal Data out of Singapore in the course of processing it on behalf of and for the purposes of the Customer, the Customer should take other steps, as appropriate, to ascertain and ensure that the overseas recipient of the personal data is bound by legally enforceable obligations to provide to the transferred Customer Personal Data a standard of protection that is at least comparable to that under the PDPA.*

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	Aside from obtaining a written undertaking, the Customer may also impose other types of legally enforceable obligations on the Contractor (and any third party overseas recipient) to provide to the transferred Customer Personal Data a standard of protection that is at least comparable to that under the PDPA. Examples of other types of legally enforceable obligations that can be imposed on the Contractor include binding corporate rules or any other legally binding instrument. *This clause can be adapted according to the type of legally enforceable obligation that is imposed.* *Please refer to Part III of the Personal Data Protection Regulations 2014 for the specific requirements that have been prescribed relating to the transfer of personal data outside of Singapore.*

2.4   Security Measures.
     2.4.1   The Contractor shall protect Customer Personal Data in the Contractor's control or possession by making reasonable security arrangements (including, where appropriate, physical, administrative, procedural and information & communications technology measures) to prevent unauthorised or accidental access, collection, use, disclosure, copying, modification, disposal or destruction of Customer Personal Data, or other similar risks. For the purposes of this Agreement, "reasonable security arrangements" include arrangements set out [below / in the attached Schedule A1] (which shall not be varied without the Customer's prior written consent):
      [*State the specific security measures that you want the Contractor to adopt or insert a separate Schedule listing the required security measures.*]
	Clause 2.4.1 of the Sample Clauses requires the Contractor to protect the Customer Personal Data in the Contractor's control or possession by making reasonable security arrangements to prevent unauthorised or accidental access, collection, use, disclosure, copying, modification, disposal or destruction of Customer Personal Data, or other similar risks. It also allows the Customer to set out the specific security procedures that the Customer wants the Contractor to comply with. The security procedures may be stated in the clause itself or in a separate Schedule, and the clause should be amended accordingly with the correct reference.
	
	Please note that the appropriate security measures to be implemented may include a combination of administrative, physical and/or technical measures. Examples of administrative measures may include requiring the Contractor's employees to be bound by confidentiality

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	obligations and requiring the Contractor to conduct regular training sessions for its staff to impart good practices in handling personal data etc. Physical measures may include requiring Contractors to store personal data in locked file cabinet systems and use privacy filters to prevent unauthorised personnel from viewing personal data etc. Technical measures may include requiring Contractors to adopt appropriate access controls, encrypt personal data and update computer security and IT equipment regularly etc. Please refer to the Advisory Guidelines on Key Concepts in the PDPA for more examples of appropriate security measures.
2.4.2 The Contractor shall only permit the authorised personnel set out in [*Schedule A2*] to access Customer Personal Data on a need to know basis.	*Clause 2.4.2 of the Sample Clauses requires the Contractor to permit the authorised personnel listed in a Schedule attached to the Agreement to access Customer Personal Data on a need to know basis. This clause is optional and may be used where the Customer wishes to have more stringent controls because sensitive personal data is involved.*
2.5 Access to Personal Data. The Contractor shall provide the Customer with access to the Customer Personal Data that the Contractor has in its possession or control, as soon as practicable upon Customer's written request.	*Clause 2.5 of the Sample Clauses requires the Contractor to provide the Customer with access to the Customer Personal Data. This will enable the Customer to respond quickly to a request for access to personal data made by an individual to the Customer under the PDPA. This clause may be amended or omitted as appropriate if the Customer has direct means to access the Customer Personal Data which is in the possession of the Contractor.*
2.6 Accuracy and Correction of Personal Data. Where the Customer provides Customer Personal Data to the Contractor, the Customer shall make reasonable effort to ensure that the Customer Personal Data is accurate and complete before providing the same to the Contractor. The Contractor shall put in place	*Clause 2.6 requires the Contractor to ensure that the Customer Personal Data in its possession or control is accurate and complete and to take steps to correct any errors. This allows Customers to ensure that their personal data are kept accurate and complete. To be clear, where the*

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	adequate measures to ensure that the Customer Personal Data in its possession or control remain or is otherwise accurate and complete. In any case, the Contractor shall take steps to correct any errors in the Customer Personal Data, as soon as practicable upon the Customer's written request.	*Customer provides the Customer Personal Data to the Contractor, the Customer would need to take steps to ensure that the Customer Personal Data is accurate and complete before providing the same to the Contractor. This clause may be amended or omitted as appropriate if the Customer itself is responsible for updating the Customer Personal Data which is in the possession of the Contractor.*
2.7	<u>Retention of Personal Data</u>. 2.7.1 The Contractor shall not retain Customer Personal Data (or any documents or records containing Customer Personal Data, electronic or otherwise) for any period of time longer than is necessary to serve the purposes of this Agreement.	*Clause 2.7.1 of the Sample Clauses ensures that the Contractor does not retain Customer Personal Data for any period of time longer than is necessary to serve the purposes of the Agreement.*
	2.7.2 The Contractor shall, upon the request of the Customer: (a) return to the Customer, all Customer Personal Data; or (b) delete all Customer Personal Data in its possession, and, after returning or deleting all Customer Personal Data, provide the Customer with written confirmation that it no longer possesses any Customer Personal Data. Where applicable, the Contractor shall also instruct all third parties to whom it has disclosed Customer Personal Data for the purposes of this Agreement to return to the Contractor or delete, such Customer Personal Data.	*Clauses 2.7.2 of the Sample Clauses further requires the Contractor to return or delete any Customer Personal Data immediately upon the Customer's request and provide the Customer with written confirmation that it no longer possesses any Customer Personal Data. These clauses should be considered together with Clause 2.7.1 and modified as necessary.*
2.8	<u>Notification of Breach</u>. The Contractor shall immediately notify the Customer when the Contractor becomes aware of a breach of any of its obligations in Clauses [*2.2 to 2.7*].	*Clause 2.8 of the Sample Clauses requires the Contractor to notify the Customer of any breach of Clauses 2.2 to 2.7 of the Sample Clauses. This will enable the Customer to react to such breach as well as take preventive steps.*
2.9	<u>Indemnity</u>. The Contractor shall indemnify the Customer and its officers, employees and	*Clause 2.9 of the Sample Clauses requires the Contractor to indemnify the Customer and its officers,*

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agents, against all actions, claims, demands, losses, damages, statutory penalties, expenses and cost (including legal costs on an indemnity basis), in respect of: (a) the Contractor's breach of Clauses [*2.2 to 2.7*]; or (b) any act, omission or negligence of the Contractor or its subcontractor that causes or results in the Customer being in breach of the PDPA.	*employees and agents for any breach of the Sample Clauses or any act, omission or negligence of the Contractor that causes or results in the Customer being in breach of the PDPA.*

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