

Sarah Gardner
Deputy Chief Executive
Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP

23 November 2020

Dear Ms Gardner

ICO Regulatory Sandbox

Your application: Single Customer View- exploration of data protection compliance including lawful bases

Thank you for your application to the ICO's Regulatory Sandbox ("**Sandbox**").

I am pleased to confirm that your application has been successful and we are interested in working with you in our Regulatory Sandbox in relation to your innovative service ("**Proposed Innovation**").

We now have up to one month to work with you to develop and finalise a Sandbox plan for your Proposed Innovation, agree the Sandbox mechanisms we will utilise, and establish how we will work together. A full set of terms and conditions for your consideration is included at Appendix A (the "**Terms and Conditions**"). Please read this letter and the Terms and Conditions carefully, as they both contain important information that you will need to understand and follow.

The Sandbox process will require resource and time commitments on both our parts, and where we require you to submit further information to us, it is imperative that this material is submitted promptly. In particular, where we request that you send information to us (including by responding to an email, letter or other correspondence from us), you must provide a written response to us within 2 weeks of receipt of our request, or within any other reasonable timescale which we request.

Acceptance into the next stage does not guarantee your progress through the Sandbox. You or we may wish to withdraw from the Sandbox, for example, if we are unable to agree to a feasible Sandbox plan, if we have any concerns about how the plan is being executed, or if there are certain requirements that you are unable to meet.

Comfort from enforcement

If, during the Sandbox period, in developing or testing your Proposed Innovation, you inadvertently contravene data protection law, this will not immediately lead to enforcement action. As set out in the ICO's Data Protection Regulatory Action Policy, we would always precede any potential enforcement action with a period of interaction with you, to fully establish the relevant facts. Only after such interaction would we decide whether or not to take any enforcement action.

If you: (i) report such actual or potential breaches of data protection law to us immediately; (ii) cease the relevant processing; and (iii) address any concerns

we may have in a timely and satisfactory manner, then we would not expect to take any formal enforcement action in respect of such incident.

This comfort from enforcement action is subject to you continuing a productive dialogue with the ICO through the Sandbox process and complying at all times with the Terms and Conditions. Having comfort from enforcement does not mean that you are exempt from having to comply with data protection law during your time in the Sandbox - on the contrary, you must continue to comply with such law in full – for instance, you should ensure that you and your Proposed Innovation are able to uphold and protect the rights of data subjects at all times. During your participation in the Sandbox, we expect that there will be ongoing discussions between us to ensure that any concerns regarding your compliance with data protection law are quickly addressed.

Scope of our feedback and support

Through your participation in the Sandbox you will be able to benefit from our advice and experience, as to how to develop and test your Proposed Innovation in a way that is compliant with UK data protection law.

The scope of our feedback and support in the Sandbox is based on our understanding of the data protection law framework in the UK. Our views do not bind any courts, and may not reflect the views of other data protection authorities. Being in the Sandbox will not prevent regulatory action by us or any other regulatory body or authority.

As explained in more detail in the Terms and Conditions (in particular, Clause 1.6), given the nature of the Sandbox, you remain responsible for your own compliance with all laws and regulations including data protection law, and we cannot accept liability to you for your participation in the Sandbox and the feedback we give. Clause 3 of the Terms and Conditions sets out the exact way in which our liability to you is limited.

Except for the comfort from enforcement set out in this letter, any advice or support given by us to you during the Sandbox period, will not prevent or restrict us from taking any future regulatory action, including enforcement. This could include issues which come to our attention through the Sandbox process, in particular any issues not fully disclosed by you during our discussions. Further details of the nature of the feedback we provide are set out in Clause 1 of the Terms and Conditions.

Confidentiality & communications

Clause 7 of the Terms and Conditions sets out the principal obligations between us relating to the treatment of confidential information during your time in the Sandbox.

In relation to communications regarding your participation, acceptance into the Sandbox does not imply any ICO endorsement of any aspect of your organisation, your Proposed Innovation, or your business model, and you should not make any communications to any party that explicitly or implicitly suggest otherwise (see Clause 8 of the Terms and Conditions).

We are required to comply with the Freedom of Information Act 2000 and as such can be asked to disclose certain information that we hold, which could include information which you give to us concerning you and/or your involvement in the sandbox. We will let you know if we receive a freedom of information request which relates to your information, and you may be required to assist us in providing information and co-operation, in order to enable us to respond to such a request.

A condition of your participation, is that you provide us with your consent to make public that you are participating in the Sandbox along with a short description of your proposition (see Clause 8.1 of the Terms and Conditions). We will consult with you about the short description we use ahead of publication.

Before the end of your participation in the Sandbox, we will also develop an exit report summarising your involvement in the Sandbox, including any challenges encountered and outcomes. This report will be drafted with your input in terms of the wording prior to publication in line with our terms and conditions.

Finally, your organisation is not permitted to communicate to any third party that you are in the Sandbox, before, during, or after your time in the Sandbox, without our express written and specific consent. This includes (but is not limited to) communications to any organisation, media outlet, existing or future customers, and data subjects. Please speak to your ICO Sandbox team contact if you wish to make any communication with a third party on any aspect of your involvement in the Sandbox.

Next steps

Please respond to this email by 7 December 2020 to confirm that you consent to us making public your participation in the Sandbox and that you agree in full to the requirements set out in this letter and the Terms and Conditions. Please sign a copy of this letter, and email a scanned copy to us.

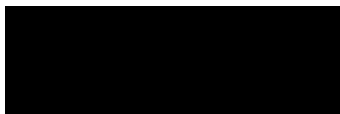
Once you have confirmed your consent to the terms of participation, you will be assigned a dedicated member of the Sandbox team, who will communicate with you on all aspects regarding your Sandbox plan. This contact will be in touch with you shortly to arrange a detailed planning meeting, ideally within November, in order to discuss your requirements in more detail.

We look forward to formally meeting with you.

Yours sincerely,

Anulka Clarke (Acting Director of Regulatory Assurance)

We would like to progress to the next stage of the Sandbox, we confirm our consent to the ICO making public our participation in the Sandbox and we agree to be bound by the Terms and Conditions and this letter.

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|-------------|---|------------|------------------------------------|
| Signed: |  | Date: | 25/11/20 |
| Print Name: | Sarah Gardner | Job Title: | Deputy CEO, Gambling Commission |

**Sandbox
Terms and Conditions**

1. Scope of the ICO's regulatory sandbox (the "sandbox")

- 1.1 These Terms and Conditions, include the terms set out in the sandbox entry letter (these "**Terms and Conditions**"). In consideration of the mutual obligations of the parties set out under these Terms and Conditions, the parties agree to be bound by these Terms and Conditions.
- 1.2 The support offered by the ICO ("**us**", "**we**"), to you, the organisation which is participating in the sandbox ("**you**", "**your**", or "**participant**") through the sandbox is solely in relation to the proposition for an innovative product or services, outlined in your application (the "**Proposed Innovation**"). The direct benefits provided by the ICO via the sandbox can only be applied to innovations, products or services to the extent that they are offered or provided in the United Kingdom.
- 1.3 We will use our reasonable skill and care in providing our feedback, steers, guidance, any exit report or document or other advice ("**Feedback**"). Unless we expressly document otherwise, our Feedback will be based on the specific information that you share with us and our understanding of the UK data protection law framework in force at the time. Only specific data protection law issues are open to the ICO's regulatory feedback and support through the sandbox.
- 1.4 As a result, our Feedback should not be viewed as a full examination or audit and will not identify all of the risks associated with the Proposed Innovation, your activities or all possible areas of non-compliance. This remains the case even if we raise issues that you have not expressly brought to our attention.
- 1.5 You and we agree to co-operate to help you and us get the most out of your participation in the sandbox. You agree to remain open and transparent with us at all times in relation to the Proposed Innovation including before, during and after your time in the sandbox. If you are aware of any information that you believe would affect the ICO's position, you must inform us immediately.
- 1.6 You agree that you remain responsible for your compliance, and your Proposed Innovation's compliance, with all legal and regulatory obligations, whether in respect of data protection law or otherwise.
- 1.7 You are not required to comply with the Feedback, and you are always free to take your own independent legal advice. Of course, if you choose not to follow our Feedback you might not be able to continue in the sandbox, and you might be acting in breach of data protection law and therefore you may not be protected by the comfort from enforcement set out in the entry letter.
- 1.8 The Feedback is to you only and is specific to your circumstances. It must not be shared with any other party (either in part or in full) without our express written permission. This does not prevent you from disclosing the Feedback to your employees, agents, consultants, advisors, representatives or sub-contractors, provided that they are subject to obligations to maintain the

confidentiality of the advice and not to disclose it to third parties, and that the Feedback is only used for the purposes of advising or assisting you.

- 1.9 Any Feedback is given without prejudice to any decision or action that we may take in the future, including any enforcement or other regulatory action. The positions reflected in the Feedback may change over time, for example on receipt of further information by us, or following a change in law, court judgments, regulatory guidance or ICO policy.
- 1.10 Being accepted into the sandbox does not prevent regulatory action by us or by any other competent data protection authority or by any other regulatory body or authority. The Feedback does not affect rights conferred on third parties (such as your customers), nor does it bind any courts, and may not reflect the views of any other data protection authority.

[To be included only where the participant is acting as a lead on behalf of a group:

- 1.11 You and we acknowledge that you are acting as a lead organisation, and the development of the Proposed Innovation is shared among the persons and organisations listed below. You acknowledge and agree that our relationship in relation to the sandbox is only with you. You agree to indemnify us from and against any claim or complaint brought by a third party, including those listed below, under or in relation to these Terms and Conditions or your participation in the sandbox.
- 1.12 List of persons and organisations you are working with on the Proposed Innovation:
- (A) [Add name, address and company number (if applicable).]

2. Sandbox safeguards

- 2.1 We may require safeguards to be built into the sandbox to protect the rights of data subjects. For example, you may need to provide disclosures and protections to data subjects, and may be required to have arrangements to compensate data subjects for any losses suffered in connection with particular tests. We will determine the appropriate safeguards on a case-by-case basis, with the aim of ensuring that protections are sufficient but at the same time not unnecessarily burdensome on you considering your sandbox activities. Failure to implement any such safeguards or protections may result in your involvement in the sandbox being terminated in line with these Terms and Conditions and/or in our taking formal enforcement action against you (and you therefore may not be protected by the comfort of enforcement set out in the entry letter).

3. The scope of the ICO's role in the sandbox

- 3.1 We will use reasonable care in our dealings with you in relation to the sandbox and your Proposed Innovation. However, given the nature of the sandbox and of our Feedback (and subject to clause 3.2), we do not accept any liability or responsibility for: (i) any opinions expressed or information included in any of our Feedback, (ii) the time it may take for us to provide any Feedback, and/or (iii) any other liability under or in relation to the sandbox, your

Proposed Innovation and/or these Terms and Conditions, whether in contract, tort (including negligence) or otherwise.

- 3.2 Nothing in these Terms and Conditions seeks to limit our liability in any way which is not permitted by law, including our liability to you for fraud or fraudulent misrepresentation.

4. Overview of the engagement process

- 4.1 The sandbox engagement process is flexible and is not designed to be a 'one size fits all' solution. We understand that each participant's journey through the sandbox will be unique, depending on the specific options used, the solution being tested and the extent of data subject involvement. The ICO case officer assigned to you will discuss this with you at the kick-off meeting.

- 4.2 We will collaborate and agree an approach for your journey through the sandbox (the "**Sandbox Plan**"), which may specify testing parameters, measures for outcomes, reporting requirements, safeguards, timescales, milestones and term of the sandbox. You must fully comply with your obligations set out in the Sandbox Plan. We will monitor your performance against the Sandbox Plan through regular review meetings, during which you will need to demonstrate, to our reasonable satisfaction, that you are on course to fulfil all of the requirements set out in the Sandbox Plan, by the applicable dates. As you progress through the Sandbox, we may from time to time, ask you to comply with further obligations which we reasonably consider to be necessary, which you must fulfil, in addition to the requirements set out in your Sandbox Plan.

- 4.3 As part of the Sandbox Plan, you will be required to develop and obtain the ICO's approval for an exit plan to ensure the sandbox can be closed down at any point whilst minimising the potential detriment to data subjects (the "**Exit Plan**").

5. Term of the sandbox

- 5.1 Unless extended by us, or terminated in accordance with these Terms and Conditions, your involvement in the sandbox terminates on the expiry of the agreed term under the Sandbox Plan. If the ICO ceases to operate the sandbox, your participation in the sandbox will automatically cease with immediate effect.

- 5.2 If you have not completed all of your required obligations in the Sandbox Plan by the end of the relevant term of your Sandbox Plan, we may, acting entirely in our discretion, either grant you an extension to your term in the sandbox or terminate your involvement in the sandbox. Furthermore, if at any time during your participation in the sandbox, we consider that you are not engaging with us in a sufficiently cooperative or collaborative manner, then we may, acting entirely in our discretion, and without prejudice to our other rights and remedies, temporarily suspend your involvement in the sandbox (for a period which we deem to be necessary) until we are satisfied that you have sufficiently addressed such concerns. However, when considering what action to take under this clause, we will always act reasonably and will take into account any extenuating circumstances which may have delayed or otherwise affected your progress within the sandbox.

- 5.3 Either you or the ICO may at any time, on two week's written notice, terminate your involvement in the sandbox.
- 5.4 The ICO may at any time terminate, with immediate effect, your involvement in the sandbox and cease providing Feedback and any other regulatory support if: (i) there is a conflict of interest as defined in clause 10; (ii) you commit a material or repeated breach of the Sandbox Plan or these Terms and Conditions, which is not capable of remedy; or (iii) the ICO (acting reasonably) determines that your conduct, either in the course of or outside of the sandbox, is contrary to the public interest or is likely to bring the ICO into disrepute, or is otherwise deemed by us to be contrary to the nature of the sandbox (including where in our opinion you consciously withhold information from us where you should reasonably have disclosed it, or where you take material action concerning the Proposed Innovation without informing or involving us, or where you otherwise act in a manner which we deem to be inappropriate).
- 5.5 As we may request, you must carry out and adhere to your Exit Plan upon the termination of the sandbox, either at the expiry of the agreed term or upon earlier termination however arising.
- 5.5 You acknowledge that due to the highly innovative nature of the sandbox, the ICO is entitled to suspend or terminate the sandbox project at any time should the sandbox trigger detrimental unexpected consequences for the ICO, applicants or data subjects.

6. Intellectual property

- 6.1 You will retain your intellectual property rights in, and responsibility for, all content and materials that you contribute to the sandbox, which either (i) already exist at the start of your involvement with the sandbox project; or (ii) are otherwise developed by you outside of the sandbox ("**Existing Intellectual Property**"). You will only submit Existing Intellectual Property that you have the right to share, use and develop, and you will fully comply with any third party licenses relating to the Existing Intellectual Property.
- 6.2 All intellectual property rights obtained, created or developed by you during your participation in the sandbox relating to your Proposed Innovation ("**New Intellectual Property**") will vest in you, subject to any contrary agreement you may have with a third party.
- 6.3 The ICO may use Existing Intellectual Property and New Intellectual Property as is reasonable to enable it to exercise its rights and perform its functions or obligations in connection with the sandbox (the "**Use**"), and you grant or must procure the grant of royalty-free and non-exclusive licences to the ICO, for the Use of the Existing Intellectual Property and the New Intellectual Property.
- 6.4 You warrant and undertake to ensure that the Use by the ICO of any Existing Intellectual Property and/or New Intellectual Property will not infringe the rights of any third party.
- 6.5 You agree to defend, indemnify, and hold harmless the ICO from and against any liability or loss (including, without limitation, any legal costs) incurred by the ICO as a result of, or in connection with, the ICO's Use of Existing Intellectual Property and New Intellectual Property.

7. Confidentiality

- 7.1 You must clearly identify to the ICO, in writing, which information you provide to us you consider to be your confidential information and provide clear reasons why you regard such information to be confidential ("**your confidential information**"). We will protect your confidential information as we do our own commercially sensitive information.
- 7.2 During the term of the sandbox and for so long as your confidential information remains confidential in nature and not available to the public, we will not use or disclose your confidential information without your prior written consent: (i) other than to provide Feedback or other support in connection with the sandbox or to fulfil any of the ICO's functions or obligations, including as set out in this clause 7; and/or (ii) unless permitted or required to do so by law, statutory directions, court orders or government regulations; and/or (iii) unless otherwise permitted under these Terms and Conditions.
- 7.3 The ICO may use information obtained from you (including your confidential information) to help develop and provide guidance, policies and resources (on an anonymised basis) to the public.
- 7.4 The ICO may disclose your confidential information to such of its employees, agents, consultants, advisors or representatives to the extent that such disclosure is reasonable in relation to the sandbox, including for us to provide Feedback, and for the purposes set out in this clause 7, provided always that such employees, agents, consultants, advisors or representatives are made aware of and comply with the obligations of confidentiality under these Terms and Conditions.
- 7.5 The ICO may disclose any information received from or relating to you, including your confidential information, to any regulator or public body in the UK or elsewhere (including, without limitation, the Centre for Data Ethics and Innovation), where such disclosure by the ICO is made for the purposes of: (a) verifying any claim made by you when applying for the sandbox; (b) facilitating the performance of the ICO's functions; or (c) complying with any specific legal or regulatory obligation.
- 7.6 We are bound by the Freedom of Information Act 2000 and as such can be asked to disclose certain information that we hold, which could include information which you give to us concerning you and/or your involvement in the sandbox. The ICO will endeavour to let you know if we are asked to share any information that relates to you and will seek to apply relevant exemptions from disclosure where appropriate.
- 7.7 Should you receive any confidential information belonging to the ICO, you will keep that information confidential and only use it for the purpose for which it was provided to you. You will protect that confidential information as you do your own confidential information. At any time, at our request you shall securely return or securely destroy our confidential information in your possession or control. The obligations in this clause 7.7 shall continue during the term of the sandbox and for so long afterwards as that confidential information remains confidential in nature and not available to the public.
- 8. Communications relating to the sandbox**

- 8.1 A condition of your participation in the sandbox is that you provide us with your consent to make public that you are participating in the sandbox along with a short description of your proposition. We will consult with you on the short description we use ahead of publication.
- 8.2 The ICO may also, at its discretion, make public anonymised, aggregated information on the sandbox and its participants.
- 8.3 Your involvement in the sandbox does not represent an approval or endorsement by the ICO of you or your Proposed Innovation. Neither you nor anyone acting on your behalf may make any statement or announcement, either expressly or by implication, that suggests that the ICO has approved, endorsed, or otherwise accepted that you or your Proposed Innovation complies with regulatory requirements as a result of your involvement.
- 8.4 Your organisation is not permitted to communicate to any third party that you are in the sandbox, before, during, or after the sandbox period, without the ICO's express written and specific consent. This includes, but is not limited to, communications to any organisation, media outlet, existing or future customers, and data subjects.
- 8.5 Following your exit from the sandbox, whenever or howsoever arising, we reserve the right to publish a statement or report, including on our website, summarising your involvement in the sandbox, including the outcomes of your time in the sandbox. Where reasonably possible, we will seek your input on the drafting of this statement and/or report and will seek to take such input into account, but for the avoidance of doubt, we retain the right, acting entirely in our own discretion, to publish the statement and/or report and to determine its contents, as well as a right to determine timescales for its publication.

9. Privacy and data protection

- 9.1 Unless otherwise agreed, any personal data (such as your staff's contact details) provided to the ICO as part of your participation in the sandbox will be processed by the ICO as a data controller in line with our privacy notice.
- 9.2 You are responsible for providing a copy of the ICO's privacy notice to any employees or other data subjects whose personal data you share with the ICO during your participation in the sandbox.
- 9.3 Given that the ICO will only be processing minimal amounts of business-related personal data in relation to your time in the sandbox, we do not at this stage deem it necessary to enter into a separate data sharing agreement with you. However, you must ensure that any transfer of personal data to the ICO is completed in compliance with applicable law (including applicable data protection law).
- 9.4 The ICO will implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including from unauthorised or unlawful processing of personal data, or accidental loss or destruction of, or damage to, that personal data, and will process all personal data received from you in compliance with the provisions and principles set out in data protection legislation.

- 9.5 You acknowledge and agree that your participation in the sandbox does not affect your responsibility or liability if personal data is corrupted, damaged or improperly used or disclosed by you in the course of the sandbox.

10. Conflict of Interest

- 10.1 You acknowledge and undertake to discuss at the application stage, and as and when one may arise, any actual or potential conflict of interest ("**conflict of interest**"). Such a conflict of interest may arise, for example, from any connections or associations that you or any of your employees may have with individuals at the ICO, which may include:

- (a) spouses, partners, children, parents or other relatives;
- (b) business partners, employees, managers or directors; and/or
- (c) any former ICO staff member who is employed by you, appointed to your board, or who has a substantial interest in you.

- 10.2 As a parallel internal process, we will (in line with the ICO Code of Conduct) declare any potential conflicts of interest with you as soon as reasonably practicable after they become apparent to us.

11. General

- 11.1 Your involvement in the sandbox does not create a joint venture, co-ownership, partnership or agency relationship between you and the ICO. Neither you nor the ICO will have the authority to incur, assume, or create, orally or in writing, any liability, obligation, or undertaking of any kind in the name of, or on behalf of, or in any way binding upon, the other.
- 11.2 We retain the right to amend these Terms and Conditions at any time by giving you reasonable notice in writing.
- 11.3 General words within these Terms and Conditions must not be given a restrictive meaning simply because they are followed by particular examples intended to be embraced by the general words.
- 11.4 Only you and we have rights under these Terms and Conditions. A person who is not a party to these Terms and Conditions, has no rights to enforce it or enjoy any benefits under it.
- 11.5 These Terms and Conditions, including the terms of the sandbox entry letter, constitute the whole and only agreement between us and you relating to your participation in the sandbox. You acknowledge that you have not relied on any representation made by or on behalf of the ICO which is not set out in these Terms and Conditions. If there is any conflict between the terms of the sandbox entry letter and the terms set out in this document, the terms set out in this document will prevail.

- 11.6 Remedies under these Terms and Conditions are cumulative and may be exercised concurrently or separately.
- 11.7 If any provision of the Terms and Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Terms and Conditions without modifying the remaining provisions.
- 11.8 Any waiver or relaxation, either partly or wholly, of any of the Terms and Conditions shall be valid only if it is communicated to the other in writing and expressly stated to be a waiver, and shall not constitute a waiver of any right or remedy arising from any other breach of the Terms and Conditions.
- 11.9 Any formal notice to be given under the Terms and Conditions shall be in writing and may be served by personal delivery, first class recorded post or, e-mail to the address of you or us (as applicable) set out in the sandbox entry letter, or such other address as you or we have notified to other for formal notices. Notices shall be deemed served on the next working day after delivery. An email shall be deemed delivered when sent unless an error message is received or, where an out of office message is received, on the date the out of office message states the recipient is to return.
- 11.10 Any matter, claim or dispute arising out of or in connection with these Terms and Conditions, whether contractual or non-contractual, is to be governed by and determined in accordance with English law. You and we irrevocably submit to the jurisdiction of the English courts.