

## **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 s otherwise, our Feedback will be based on the specific information that you share with us and our understanding of UK data protection law in force at the time, ie the Data Protection Act 2018, the UK GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003. We cannot provide Feedback on compliance with legislation in other jurisdictions, such as the EU GDPR. 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 it should not be viewed as a replacement for any independent legal advice you have or may wish to obtain. Of course, if you choose not to follow our Feedback, you may be acting in breach of data protection law and we would need to consider whether it was appropriate to use the powers available to us to take action.

The Feedback is only directly applicable to you and is specific to your circumstances at the time of your participation in the sandbox. 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.

- 1.8 Any Feedback is given without prejudice to, and does not fetter the ICO's discretion to subsequently take, any different regulatory position or decision 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.
- 1.9 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:*

- 1.10 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.
- 1.11 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 are proportionate, taking into account the activities involved in relation to the Proposed Innovation. 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 or in our taking formal enforcement action against you (or both) (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**

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.

- 3.1 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.
- 5.6 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 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; (ii) unless permitted or required to do so by law, statutory directions, court orders or government regulations; 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 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 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; 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.