

The First Mailing Ltd

Data Sharing and Non-Disclosure Agreement

THIS AGREEMENT is made by and between the parties listed in the Schedule on the date shown in the Schedule.

IT IS HEREBY AGREED AS FOLLOWS.

1. Definitions

In this Agreement:

1.1 'Confidential Information':

- (a) means any information disclosed by one Party (the "Disclosing Party - **Processor**") to any other Party (the "Receiving Party - **Sub-Processor**") or which is otherwise communicated to or comes to the attention of the Receiving Party whether such information is in writing, oral or in any other form or media and whether such disclosure, communication or coming to the attention of the Receiving Party occurs prior to or during this Agreement; and
- (b) includes, without limit:
- (i) any information which can be obtained by examination, testing or analysis of any hardware, any component part thereof, software or material samples provided by the Disclosing Party under the terms of this Agreement;
 - (ii) all information disclosed by one Party to any of the other Parties relating directly or indirectly to the Purpose;
 - (iii) the fact that the Parties are interested in or assessing the Purpose and/or are discussing the Purpose with each other; and
 - (iv) the terms of any agreement reached by the Parties or proposed by any of the Parties (whether or not agreed) in connection with the Purpose ;
 - (v) all knowledge, information or materials (whether provided in hardcopy or electronic or other form of media) whether of a technical or financial nature or otherwise relating in any manner to the business affairs of the Disclosing Party (or any parent, subsidiary or associated company of that party) software, samples, devices, demonstrations, know-how or other materials of whatever description, whether subject to or protected by copyright, patent, trademark, registered or unregistered design.

1.2 'Disclosing Party' shall have the meaning set out in clause 1.1 (a) above;

1.3 'Party' means each of the parties listed in paragraph 1 of the Schedule and 'Parties' shall be construed accordingly;

1.4 'Purpose' means the purpose set out in paragraph 2 of the Schedule;

1.5 'Receiving Party' shall have the meaning set out in clause 1.1 (a) above;

1.6 'Schedule' means the schedule to this Agreement which shall form part of this Agreement.

1.7 The singular shall include the plural and vice versa.

2. Undertakings

Subject to clause 5 below and in consideration of the disclosure of Confidential Information by the Disclosing Party, the Receiving Party agrees:-

- (i) to keep confidential and secure and not disclose to any third party, copy, reproduce, adapt, divulge, process, alter, publish or circulate any part of or the whole of any Confidential Information except with the prior written consent of the Disclosing Party; and
- (ii) not to combine any part of or the whole of the Confidential Information with any other information; and
- (iii) not to use Confidential Information disclosed to it under this Agreement for any purpose other than the Purpose; and
- (iv) to restrict access to the Confidential Information disclosed to it under this Agreement to those of its employees and officers who need to know the same strictly for the Purpose; and
- (v) to ensure that each employee and officer to whom Confidential Information is disclosed under this Agreement is, prior to such disclosure, informed of the terms of this Agreement and those under GDPR and agrees to be bound by them; and
- (vi) not to disclose the whole or any part of the Confidential Information to any third party without (a) the prior written consent of the Disclosing Party and (b) prior to disclosure to such third party procuring that the third party is bound by obligations which are no less onerous than those contained in this Agreement; and
- (vii) to ensure that the Confidential Information in its possession is stored securely and any electronic files are password protected and that physical access to it is controlled and monitored.
- (viii) This agreement supersedes any other prior written terms and conditions relating to the processing of data.
- (ix) It is determined the Receiving Party has taken adequate steps to ensure it is GDPR compliant and remains so.
- (x) The Receiving Party must act only on the written consent of the Data Controller/Disclosing Party
- (xi) The Receiving Party must insure people processing the data are subject to a duty of confidence
- (xii) The Receiving Party may not engage an additional Receiving Party without prior written consent of the Data Controller/Disclosing Party directly or indirectly.
- (xiii) The Receiving Party must be available to assist in dealing with article 28 obligations and make the Data Controller/Disclosing Party aware of anything which might infringe on GDPR compliance.
- (xiv) Nothing in this agreement relieves the Receiving Party of its own direct obligations under the GDPR

3. Purpose of Sharing

Data is provided to allow the Receiving Party to complete the task of:

- (i) The duration of this sub - processing is likely to be within a 10 working day period from the receipt of data.
- (ii) The type of personal data provided are the names and addresses in an electronic or hard copy format.
- (iii) The Receiving Party must display a clear data audit trail identifying what access individuals have to the data and to what degree they process the data and when it was altered.
- (iv) The data must remain GDPR compliant and in a format which is fit for purpose.

4. Security

To keep in an appropriate environment to ensure the security of data whilst being processed and that it is backed up to avoid theft, loss, damage or unauthorised access whilst in the care of the Receiving Party.

- (i) The Receiving Party must work with the Data Controller/Disclosing Party in meeting its obligations in relation to the security of the processing of the data by the employees or company agents.
- (ii) Advise any implications of data protection impact assessments which may affect the security of the data being processed
- (iii) The Receiving Party must also advise notification of any breaches within 24 hours to the Disclosing Party.
- (iv) Any spoils in the creation, print, overprint or production of any mailings using personal data must be securely destroyed or returned after completion and certificated.
- (v) Data provided to the Receiving Party should not be retained for any period after the completion of the contract. The data therefore should be securely destroyed with a record of its destruction provided when asked for. However, a record of the processing activity must be maintained in accordance with your GDPR obligations.

5. Exclusions

The protections and restrictions in this Agreement as to the use and disclosure of Confidential Information shall not apply to any information which the Receiving Party can show:-

- (a) is, at the time of disclosure hereunder, already published or otherwise publicly available; or
- (b) is, after disclosure hereunder published or becomes available to the public other than by breach of this Agreement; or
- (c) is rightfully in the Receiving Party's possession with rights to use and disclose, prior to receipt from the Disclosing Party; or
- (d) is rightfully disclosed to the Receiving Party by a third party with rights to use and disclose; or

- (e) is independently developed by or for the Receiving Party without reference or access to Confidential Information disclosed hereunder.

The Receiving Party shall not be in breach of Clause 2 if it can demonstrate that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory or judicial obligation.

6. Indemnity and Limitations of Liabilities

The Receiving Party may be subject to investigative and corrective powers of a supervisory authority such as the ICO. If you fail to meet your obligations under GDPR or any other data protection law then you may be liable to administration fines, penalties or to pay compensation.

The Receiving Party shall indemnify and keep indemnified The First Mailing Company Ltd from and against all costs, claims, losses, damages, expenses and other liabilities which arise out of or in connection with unauthorised disclosure, breach, updates, modifications or use of the confidential information or a part of it by the Receiving Party and by any person to whom the confidential information has been disclosed by the Receiving Party

7. No Right of Use

Nothing contained in this Agreement shall be construed as conferring upon the Receiving Party any right of use in or title to Confidential Information received by it from the Disclosing Party, other than as expressly provided herein.

8. No Obligation to Disclose, No Representations

Nothing in this Agreement shall be construed as

- (i) creating an obligation on any of the Parties to disclose particular information; or
- (ii) creating an obligation on the parties to negotiate; or
- (iii) as a representation as to the accuracy, completeness, quality or reliability of the information.

9. Individuals right for complaints

Should a subject access request be asked for, in direct relation to the contract undertaken by the Receiving Party will provide The First Mailing Co Ltd details for them to contact. Similarly if a complaint regarding the use of data for the contract is received they should be directed towards The First Mailing Co Ltd to deal with.

10. Term & Termination

- (i) Subject to clause 5, the obligations contained in clause 2 shall continue to apply for so long as the Receiving Party has in its possession or has procured that any third party authorized under this Agreement has in its possession any Confidential Information.
- (ii) The agreement shall be terminated by either party in writing, although the current contract of works must be completed in full prior to this, either party may terminate this Agreement upon giving one month's prior written notice to the other.

- (iii) The Receiving Party shall, on the request of the Disclosing Party, return to the Disclosing Party (whose property they shall remain) all documents and things containing Confidential Information, together with all relevant samples and models which it has in its possession pursuant to this Agreement.
- (iv) The Receiving Party will provide a destruction of data certificate to comply with GDPR

11. Miscellaneous

- 11.1.1 (a) No Party shall assign its rights and/or obligations pursuant to this Agreement without the prior written consent of the other Party;
- (b) In the event that there is a change of control in relation to one party, the other party may at its discretion terminate this Agreement on written notice such termination to take effect on the date specified in the notice;
- (c) For the purposes of this clause 11, 'control' in relation to a party means:
 - (i) holding more than one third of that party's voting rights;
 - (ii) having the right to remove or appoint a majority of that party's voting rights;
 - (iii) controlling alone or pursuant to an agreement with other members a majority of the voting rights in that party;
 - (iv) being a person who the directors of that party (or of another company who has control of that party) are accustomed to act in accordance with that persons directions or instructions.
- 11.1.2 No failure or delay by either party in exercising any rights, power or legal remedy available to it hereunder shall operate as a waiver thereof.
- 11.1.3 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.
- 11.1.4 This Agreement shall be construed and governed in all respects in accordance with the laws of England and the Parties hereby submit to the jurisdiction of the English courts.
- 11.1.5 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 11.1.6 The signing of this Agreement shall not be construed as the forming of an agency, joint venture, employment or partnership.

SCHEDULE

1. Parties

1.1 **The First Mailing Co Ltd, a company incorporated under the laws of England and Wales (no.3618405) of Glebe Road, Huntingdon, Cambridgeshire, PE29 7HH.**

1.2

Signed for and on behalf

The First Mailing Co Ltd

By its duly authorised representative



(Signature)

Stuart Searle

(Name)

Managing Director

(Title/position)

[Redacted]

(Date)

Signed for and on behalf

[Redacted]

By its duly authorised representative

[Redacted]

(Signature)

[Redacted]

(Name)

[Redacted]

(Title/position)

[Redacted]

(Date)