

Personal Information Protection Act 2016

Transfer Agreement – pre PIPA

Date: [date]

Parties:

- (1) [name] [of] [whose registered office] [principal place of business] is at [address] (“Transferor”); and
- (2) [name] [of] [whose registered office] [principal place of business] is at [address] (“Transferee”).

Preliminary:

- (A) The Transferor controls the use of personal information and wishes to transfer this to the Transferee for the provision of certain agreed services.
- (B) The Transferor and the Transferee have agreed the terms and conditions for the provision of such services and this Transfer Agreement forms part of that arrangement dealing with the use of personal information.

It is Agreed:

1. Definitions and Interpretation

The following terms shall have the following meanings:

“**Agreement**” means this Transfer Agreement;

“**Controller**” means an organisation that uses personal information and exercises an element of control over that use;

“**Individual**” means a natural person;

“**Joint Controller/Processor**” means an organisation that exhibits the characteristics of a Controller and a Processor;

“**Personal Information**” means any information about an identified or identifiable Individual;

“**PIPA**” means the Personal Information Protection Act 2016;

“**Principal Agreement**” means the terms and conditions agreed by the Transferor and the Transferee for the provision of the Services;

“**Privacy Law(s)**” means the obligations required by the PIPA and, to the extent applicable, the data protection or privacy laws of other countries identified and disclosed in writing by the Transferor to the Transferee;

“**Processor**” means an organisation that uses personal information solely at the instructions of the Transferor;

“**Security Breach**” means a breach of security leading to the loss or unlawful destruction or unauthorised disclosure of or access to personal information which is likely to adversely affect an individual;

“**Security Safeguards**” means in relation to Personal Information, the appropriate safeguards against risk, including loss, unauthorized access, destruction, use, modification or disclosure, or any other misuse and such safeguards shall be proportional to the likelihood and severity of harm threatened by the loss, access or misuse of the

Transferor Personal Information, the sensitivity of the Transferor Personal Information, and the context in which the Transferor Personal Information is held;

“**Services**” means those services provided by the Transferee to the Transferor as detailed in the Principal Agreement;

“**Sub-Transferee**” means any third-party organisation used by the Transferee in connection with the provision of the Services;

“**Transfer**” means the transfer of Transferor Personal Information from the Transferor to the Transferee, or any onward transfer of Transferor Personal Information from the Transferee to a Sub-Transferee, or between two establishments of the Transferee, or any other relevant onward transfer from the Transferee, where such transfer would be restricted and/or prohibited by the Privacy Laws and/or the terms of the Principal Agreement and/or other relevant agreement, relating to the Transferor Personal Information;

“**Transferor Personal Information**” means any Personal Information provided to the Transferee by the Transferor under the terms of the Principal Agreement and this Agreement; and

“**Use**” or “**Using**”, in relation to personal information, means carrying out any operation on personal information, including collecting, obtaining, recording, holding, storing, organising, adapting, altering, retrieving, transferring, consulting, disclosing, disseminating or otherwise making available, combining, blocking, erasing or destroying it.

2. The PIPA

2.1 The Parties understand that:

2.1.1 the PIPA has received Royal Assent and at the date of the Principal Agreement has not yet come into force;

2.1.2 once the PIPA comes into force the Transferor will be subject to its duties;

2.1.3 once the PIPA comes into force the Transferee (if domiciled in Bermuda) will be subject to its duties and may be required to accept additional contractual obligations by the Transferor; and

2.1.4 once the PIPA comes into force the Transferee (if not domiciled in Bermuda) will be required to accept additional contractual obligations by the Transferor.

2.2 The Parties agree that until the coming onto force of the PIPA this Agreement together with the Principal Agreement will govern the Use of the Transferor Personal Information by the Transferee.

3 Obligations of the Transferor

3.1 Transferor agrees and warrants:

3.1.1 that the Transfer of Transferor Personal Information and its Use by the Transferee complies with Privacy Law;

3.1.2 that it has instructed the Transferee and throughout the duration of the Principal Agreement will continue to instruct the Transferee to Use the Transferor Personal Information only on the Transferor’s behalf and in accordance with the applicable Privacy Law(s);

- 3.1.3 that after assessment of the requirements of the applicable Privacy Law(s), the Security Safeguards as notified by the Transferee to the Transferor are appropriate to protect Transferor Personal Information; and
- 3.1.4 to make available to the Individuals relevant details of the Transfer of Transferor Personal Information as required by the Privacy Law(s).

4. Obligations of the Transferee

4.1 Use of Transferor Personal Information:

Transferee agrees and warrants:

- 4.1.1 to act only as agreed with the Transferor when using the Transferor Personal Information;
- 4.1.2 to comply with all notified requirements with regard Privacy Laws in the Use of Transferor Personal Information;
- 4.1.3 not Use the Transferor Personal Information save in the discharge of the Services or for such other purposes as are lawful and fair;
- 4.1.4 to promptly inform the Transferor of its inability to comply with this Transfer Agreement in which case the Transferor is permitted to suspend the Transfer of Transferor Personal Information and / or terminate the Principal Agreement and this Agreement;
- 4.1.5 that it knows of no reason to believe that the legislation applicable to it prevents it from fulfilling the terms of this Agreement and that it has made full disclosure to the Transferor of any relevant laws and / or other circumstances that would negatively impact such fulfilment;
- 4.1.6 that it will promptly inform the Transferor of any change to the laws applicable to it that might negatively impact the fulfilment of the terms of this Agreement; and
- 4.1.7 that it has provided full disclosure of all relevant information that currently impacts its duties under this Agreement.

4.2 Transferee Personnel:

Transferee shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to Transferor Personal Information, ensuring in each case that access is strictly limited to those persons who need to know or access the relevant Transferor Personal Information, as strictly necessary for the delivery of the Services and to comply with the Privacy Laws in the context of that person's duties to the Transferee, ensuring that all such persons are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4.3 Security:

- 4.3.1 The Transferee shall ensure that Transferor Personal Information will be protected using the Security Safeguards agreed with the Transferor.

- 4.3.2 When discharging its duties under paragraph 4.3, Transferee shall:
- 4.3.2.1 monitor and audit its Security Safeguards at a level appropriate to accepted industry standards; and
 - 4.3.2.2 in addition it shall continue to make its own assessment of risk in its Use of the Transferor Personal Information and evidence such assessment(s) in writing (by way of a privacy impact assessment or such other formal means of risk assessment).
- 4.3.3 The risks and duties placed on the Transferee by paragraph 4.1 are subject to review and amendment by the Transferor notified in writing to the Transferee. Such review is subject to a test of reasonableness and if in complying with the review the revised Security Safeguards require additional expenditure by the Transferee, such expenditure shall be payable at cost by the Transferor.
- 4.4 Sub-Transferee:
- Transferee shall not appoint (or disclose any Transferor Personal Information to) any Sub-Transferee unless required by and/or authorised in writing by the Transferor.
- 4.5 Rights of Individuals:
- 4.5.1 Taking into account the nature of the Use and whether the Transferee is acting as a Processor or Joint Controller/Processor, Transferee shall assist the Transferor by implementing reasonably appropriate technical and organisational measures for the fulfilment of Transferor obligations to respond to Individual rights requests under the Privacy Laws.
- 4.5.2 Whether acting as a Controller, Processor or Joint Controller/Processor, Transferee shall:
- 4.5.2.1 promptly notify Transferor if it receives a request from an Individual under any Privacy Law in respect of Transferor Personal Information; and
 - 4.5.2.2 ensure that it does not respond to that request except on the documented instructions of Transferor or as required by such applicable laws to which the Transferee is subject, in which case Transferee shall, to the extent permitted by such applicable laws, inform Transferor of that legal requirement before the Transferee responds to the request.
- 4.6 Security Breach:
- 4.6.1 Transferee shall promptly notify Transferor upon Transferee becoming aware of a Security Breach affecting Transferor Personal Information and shall provide Transferor with sufficient information to allow the Transferor to meet any obligation to report the Security Breach to, and / or inform the Commissioner, any other relevant supervisory authority and the relevant Individual(s).
- 4.6.2 Transferee shall co-operate with the Transferor and take such reasonable steps as requested by Transferor to assist in the investigation, mitigation and remediation of any and each such Security Breach.

- 4.7 Audit / risk assessment / consultation:
 - 4.7.1 Transferee shall, solely in relation to the Transferor Personal Information, provide such reasonable assistance to the Transferor that it may carry out or respond to any:
 - 4.7.1.1 audit or internal review; and / or
 - 4.7.1.2 internal or third-party risk / privacy impact assessment / enquiry / question; and / or
 - 4.7.1.3 consultation / review / complaint with the Commissioner and / or other relevant supervisory authority.
 - 4.7.2 Such assistance shall include (but is not limited to):
 - 4.7.2.1 making available to the Transferor all information reasonably necessary for the purpose and / or
 - 4.7.2.2 permitting Transferor's employees or lawfully appointed agents access to relevant Transferee employees, premises and / or equipment.
- 4.8 Transfer:
 - 4.8.1 The Transferee may not without the prior written consent of the Transferor, transfer or authorize the transfer of Transferor Personal Information outside the agreed jurisdiction in which the Transferee is to provide the Services (Authorised Jurisdiction).
 - 4.8.2 If Transferor Personal Information is Transferred outside the Authorised Jurisdiction for any reason, the Transferee shall ensure that it is adequately protected to a level equivalent to this Agreement and shall promptly inform the Transferor.
- 4.9 Deletion or return of Transferor Personal Information:
 - 4.9.1 Transferee shall promptly and in any event within 10 business days of the date of cessation of the Services (or any part of them) involving the Use of Transferor Personal Information:
 - 4.9.1.1 delete and / or procure the deletion the Transferor Personal Information; and / or
 - 4.9.1.2 return the Transferor Personal Information.
 - 4.9.2 Transferee shall promptly thereafter provide written certification to Transferor that it has fully complied with this paragraph 3.8 and that neither it nor any Sub-Transferee, employee, agent or contractor who may have had access to Transferor Personal Information holds any Transferor Personal Information in its / their possession or control.
- 5. Liability / Indemnity**
 - 5.1 The Transferee hereby indemnifies the Transferor against any:
 - 5.1.1 damage claim made by an Individual relating directly to a breach of the Transferee's obligations referred to in clause 3; and / or
 - 5.1.2 fine or other financial penalty issued by the Commissioner or any Court, where

such any fine or other financial penalty relates directly to a breach of the Transferee’s duties, warranties or obligations referred to in clause 3;

save that no indemnity shall apply where the claim, fine and/or penalty is due to any act or omission of the Transferor.

5.2 The Transferee may not rely on a breach by a Sub-Transferee of its obligations so as to avoid liability.

6. General Terms

6.1 Confidentiality. Each party must keep this Agreement and information it receives about the other and its business (“Confidential Information”) confidential and must not use or disclose that Confidential Information without the prior written consent of the other except to the extent that:

6.1.1 disclosure is required by law;

6.1.2 the relevant information is already or becomes known to it by other lawful means.

6.2 Notices. All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address as notified from time to time.

6.2 In the event of a conflict between the provisions of the Principal Agreement and this Agreement, the provisions of this Agreement shall prevail.

7. Governing Law and Jurisdiction

7.1 This Agreement is governed by the laws of Bermuda.

7.2 Any dispute arising in connection with this Agreement, which the parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of Bermuda.

Signed by [name] for and on behalf of [name].:)))..... <p style="text-align: right;">Authorised Signatory</p>
Signed by [name] for and on behalf of [name]:)))..... <p style="text-align: right;">Authorised Signatory</p>