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UK GDPR Article 26 Where two or more controllers jointly determine the purposes and means of processing they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation. This template sets out these obligations where branch reps are using employer computer systems/equipment etc to conduct union business.

employer PROCESSING agreement TEMPLATE

Please amend as necessary – wording to replaced highlighted in red.

EMPLOYER AGREEMENT BETWEEN

PROSPECT & [the company]

**Parties to the Agreement**

1. For the purposes of this agreement Prospect is the controller of personal data for the purposes connected to its trade union activities in relation to [the company] and/or persons who work for [the company].
2. For the purposes of this agreement [the company] is the Processor and is responsible for the following: staff intranet, internet, email system and computer systems, including storage, security, and office productivity tools.
3. By this agreement [the company] agrees to process data on behalf of Prospect by providing data processing services as set out in Annex 1.

**Purpose of the Agreement**

1. This agreement is made for the purposes of ensuring compliance with the obligations as set out in UK General Data Protection Regulations (UK GDPR), and the Data Protection Act 2018.
2. Prospect and [the company] have agreed that they are each Controllers as defined under Article 24 of UK GDPR, as Prospect and the [the company] determine the purposes and means of processing of personal data in relation to their own activities.

**Personal data to be processed**

1. Prospect undertakes data processing for the purposes of providing trade union services to its members. The following types of personal data may be processed under this agreement:

* Personal details
* Contact details
* Employment details
* Education details
* Finance details

**Special category data**

Trade union membership; physical or mental health details; racial or ethnic origin; religious or other beliefs; sexual orientation; political opinions; offences or alleged offences.

1. The categories of data subjects whose personal data is processed is likely to include: union members; prospective union members; the employer and staff.
2. The type of processing undertaken under this agreement:

Trade union activities, including advice and assistance

Personal case work, including grievance, disciplinary and redundancy procedures

Health and safety issues

Industrial relations activities

Negotiations

Union communications

Maintenance of accounts and records

Surveys/ballots

**Lawful Basis**

1. UK GDPR provides explicit protection for trade unions to operate their membership data in respect of trade union activities under Article 6(a), 6(b), 6(c) and Article 6(f) Article 9(a), 9(b) Article 9(d), Article 9(f) and Article 9(h).
2. There is a legal requirement on the union to process members’ data for a range of legitimate trade union activities and to exercise rights in employment law.
3. Personal data gathered is held in the individual's membership file and/or case file (in hard copy or electronic format, or both), and on [the company] computer systems. The periods for which the Prospect holds personal data are contained in its privacy notices to individuals which can be viewed on Prospect’s website.
4. In addition, Article 9(h) provides protection for the work of trade union safety representatives. This is to ensure compliance with the Health and Safety at Work Act 1974.
5. Trade unions also provide training and certification to both members and non-members and in this case, as provided for in Article 6(b).
6. In some cases, Prospect may seek consent from members to enable the union to process personal data for one or more specified purposes, such as promotion of member benefits and services or the use of trusted partners.

**Duration and Retention of data after termination**

1. This agreement takes effect immediately upon the first use of the Services by Prospect (or Prospect’s employees or representatives).
2. This agreement will remain in force until terminated by one party by giving to the other a minimum of 28 days’ written notice.
3. In the event that this contract is terminated under clause 16, the [the company] will allow access to any data which is held on behalf of Prospect for the period of one month beginning with the date of expiry of the notice given under clause 16, after which the data will be deleted. [The company] will notify Prospect in writing before deleting the data.

**Processing instructions**

1. Subject to clause 20, in providing the services to Prospect, the [the company] will act only on the written instructions of Prospect, either as set out in this Agreement or after notifying the Prospect in accordance with clause 34 that different action is required.

1. Both parties undertake to provide each other with whatever information it needs to ensure that both parties are meeting their Article 28 obligations.
2. The [the company] will not be bound by clause 18 if required by law to act without instructions. In these circumstances, the [the company] will inform Prospect before processing the data, unless that is itself prohibited by law.

**Confidentiality**

1. The [the company] will ensure that all staff who process personal data on behalf of Prospect are subject to a duty of confidence, through their terms and conditions of employment or engagement.

**Data security**

1. [the company] acknowledges that, in providing the Services, it is subject to the same requirements as Prospect to keep the personal data that it is processing securely, as set out in Article 32 of the UK GDPR. The [the company] will take all appropriate technical and organisational measures to ensure that its processing complies with Article 32.

**Data Subject Rights**

1. Taking into account the nature of the processing both parties shall assist the other by implementing appropriate technical and organisational measures, insofar as this is possible, in order to assist with each parties’ obligations to respond to requests to exercise Data Subject rights under UK GDPR.
2. In the event that that either party receives a request by a data subject to access their data or to exercise another right under the UK GDPR, each party will provide all reasonable assistance to the other in complying with that request.

**Personal Data Breach**

1. Both parties to this agreement will inform the other without undue delay on becoming aware of a data breach affecting their personal data. Each party will assist the other, if necessary, to undertake an investigation and to meet any obligations to report or inform data subjects of the data breach.

**Other Assistance**

1. Both parties to this agreement will provide reasonable assistance with any data protection impact assessments, taking into account the nature of processing and the information available, which is each party reasonably considers to be required in order to meet its obligations under UK GDPR articles 35 or 36.
2. [The company] will provide such co-operation as is reasonable with any audit or inspection into its provision of the Services which may be carried out by Prospect or by an auditor appointed by Prospect.  The conduct and scope of any audit or inspection shall be agreed in advance between the parties in writing.
3. [The company] will provide Prospect with whatever information held by [the company] that Prospect needs and is reasonable for [the company] to provide, to ensure that both parties are meeting their obligations under Article 28 of the UK GDPR.
4. The [the company] will immediately inform Prospect if the [the company] is asked to do something infringing the UK GDPR or other data protection law of the United Kingdom.

**Other**

1. This agreement constitutes the entire agreement between the parties relating to the provision of the Services as listed in the Annex for the purposes of Article 28 of the UK GDPR. This agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, specifically about the provision of the Services for those purposes. For the avoidance of doubt, the User Responsibilities (as amended from time-to-time) for computer and telecommunications equipment and services, provided by [the company] to persons who work in or for the company, does not form part of, and remains unaffected by, this agreement.
2. [The company] will give written notice to Prospect of any intention to change the terms of this agreement, including any change to the service description, or to take different action under clause 18, or to engage a sub- processor as mentioned in clause 24. Prospect will be deemed to have agreed to the changes to the terms of the agreement, to the different action or (as the case may be) to the engagement of a sub-processor upon the first use of the Services by Prospect (or by Prospect’s employees or agents) after the expiry of seven days from any such notice being given.
3. For the purposes of this agreement, a notice shall be deemed to be in writing if it is in electronic form contained in or attached to an email message; and any such notice sent by email shall be deemed to have been given—
4. in the case of a notice given by [the company] to Prospect, at the time it is transmitted to [the company] email address; and
5. in the case of a notice given by Prospect to [the company], at the time it is transmitted to this email address: email address
6. This agreement will be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the jurisdiction of the courts of England and Wales.
7. The provisions of clauses 17, 33, 35, 36 and this clause 37 will survive the expiry or prior termination of this agreement.

Signed for and on behalf of [the company]

Name: ……………………………………

Signature: ……………………………. Dated: …………………………

Signed for and on behalf of Prospect

Name: …………………………………….

Signature: ………………………………. Dated: …………………………

**ANNEX 1**

## Data processing services provided by [the company] to Prospect

The following table shows the data processing services carried out by [the company] on behalf of Prospect for purposes relating to Prospect’s trade union workplace activities.

*Please amend this schedule as necessary*

|  |  |
| --- | --- |
| **Service** | **Description** |
| Office productivity tools | *List the office software you use ie Microsoft Office 365* |
| Email, calendaring and communication tools | *List the email system used.* |
| Personal file storage | *List how files are stored ie file server maintained by the company* |
| Shared file storage | *List shared file storage* |
| Cyber-security | *Amend as necessary.*  *In order to protect its systems, the [the company] uses a range of cyber-security tools including: intrusion detection and prevention tools; anti-malware tools; and email filters. The [the company] carries out scans for vulnerabilities and weak passwords and conducts investigations.* |
| IT support | *Amend as necessary.*  *The [the company] provides IT support services and may use tools to backup and migrate data. These services also include the secure destruction of IT equipment.* |

**ANNEX 2**

*List sub-processors used by the company, if appropriate.*