

## SMARTNUMBERS DATA SHARING TERMS

These terms govern the sharing of data between Smartnumbers and the Customer for the purposes of fraud prevention.

### 1. Definitions and Interpretation

#### *Definitions*

- 1.1 In these Data Sharing terms, the following terms will, unless the context otherwise requires, have the following meanings:

"**CLI**" means calling line identification.

"**CLI Data**" means CLI data disclosed by Smartnumbers to Customer for the purposes of enabling Customer to handle confirmed fraud events, and which is processed in relation to this Agreement.

"**Consortium Data**" has the meaning given in clause 3.1

"**Consortium Member**" means a customer which has elected to participate in the Smartnumbers Consortium Service.

"**Consortium Service**" means Smartnumbers' counter-fraud service for telephony channels which enables the sharing of personal data and other information with Smartnumbers and between Consortium Members.

"**Customer**" means the company or organisation using the Smartnumbers services to which these Data Sharing terms apply.

"**Customer Data**" has the meaning given in clause 3.8.

"**Data Protection Laws**" mean all applicable laws and regulations (including any applicable instruments, codes of practice, guidance notes, decisions or recommendations as are issued by any relevant Regulatory Authority) applicable to personal data, including:

- (a) in the European Union ("**EU**"), the General Data Protection Regulation 2016/679 (the "**EU GDPR**"), the Privacy and Electronic Communications Directive 2002/58/EC, and all national legislation implementing or supplementing the foregoing; and
- (b) in the United Kingdom ("**UK**"), the EU GDPR as implemented in the Data Protection Act 2018 (the "**UK GDPR**"); the Data Protection Act 2018; and the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("**ePrivacy Regulation**").

"**Regulatory Authority**" means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering, or enforcing Data Protection Laws.

"controller", "data subject", "personal data", "personal data breach", "process/processing", "processor", "supervisory authority" and "technical and organisational measures" and other terms defined in Data Protection Laws will have the meanings given to them in the Data Protection Laws.

"**Shared Personal Data**" means all data defined as 'personal data' under Data Protection Laws and which is (i) exchanged between the parties (directly or indirectly), or otherwise processed, in relation to this Agreement and (ii) processed by either party as a controller.

## 2. Applicability

2.1 Notwithstanding any other clause in these Data Sharing terms, where the parties process:

- (a) Consortium Data, then clause 3 applies to such processing; or
- (b) CLI Data, then clause 4 applies to such processing.

## 3. Smartnumbers Consortium

3.1 "**Consortium Data**" means all data, including Shared Personal Data exchanged between the parties via or for input into the Consortium Service, and may include:

- (a) data relating to persons known or suspected to be committing fraud and high-risk callers (a "**fraudster**"), including:
  - (i) *Basic identification information*: known or provided full name or alias, or any alias assigned by a Consortium Member and phone number(s);
  - (ii) *Supplemental attributes*: information attributed to a fraudster by a Consortium Member, which may include assumed: accent(s), specific or regional location, age range, voice pitch, gender, or other potentially identifying information, matched 'denylist' status (whether on other Consortium Member's denylists or not) and network CLI data;
  - (iii) *Method*: type(s) of method used to commit attempted fraud (or other activity);
  - (iv) *Fraud category*: category(ies) of fraud that a fraudster has been associated with;
  - (v) *Audio Data*: audio recordings / voice clips of calls made to Company's customer call centre; and
  - (vi) *Consortium intelligence*: Consortium Member feedback or chat messages (which may be free text); and
- (b) data relating to telephony fraud and personal data breach market trends and related information.

## **Consortium Purposes**

- 3.2 The parties wish to exchange Consortium Data for the purpose of enabling Smartnumbers to provide, maintain and improve the Consortium Service, including:
- (a) to enable Smartnumbers and other Consortium Members to investigate fraudulent and potentially fraudulent activity.
  - (b) to enable the Customer to contribute Shared Personal Data and other information to Consortium Data;
  - (c) to maintain, update and verify Consortium Data, including cross-referencing or matching Consortium Data contributed by the Customer with other Consortium Data;
  - (d) to share Consortium Data between Smartnumbers and Consortium Members;
  - (e) to enable Smartnumbers to analyse and develop the Consortium Service;
  - (f) to enable Smartnumbers to produce aggregated and/or anonymised reporting; and
  - (g) for such other purposes as may be agreed by the parties in writing (including by email).
- 3.3 Customer may provide Smartnumbers with Consortium Data which it wishes to use the Consortium Service in relation to.
- 3.4 Customer may also use the Consortium Service to store and manage its internal fraud handling protocols; such information is not personal data and is not automatically shared between Consortium Members.

### **Smartnumbers' Consortium Service obligations**

- 3.5 Smartnumbers:
- (a) will make available the Consortium Service, with reasonable skill and care, for the term of the Agreement, subject to these Data Sharing terms;
  - (b) will use commercially reasonable endeavours to make the Consortium Service available 24 hours a day, seven days a week, except for planned maintenance or unscheduled maintenance;
  - (c) warrants that it has and will maintain all necessary licences and permissions necessary for the performance of its obligations under these Data Sharing terms; and
  - (d) may enter into similar agreements with third parties, and may independently develop, use, sell or license documentation, products and/or services which are similar to those provided under these Data Sharing terms.

3.6 Smartnumbers:

- (a) does not warrant that Customer's use of the Consortium Service will be uninterrupted or error-free, or that the Consortium Service and/or the information obtained by Customer through the Consortium Service will meet Customer's requirements; and
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Consortium Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.7 Smartnumbers' obligations under this clause 3 will not apply to the extent of any breach, failure or other non-conformance which is caused by Customer's use of the Consortium Service contrary to Smartnumbers' instructions, or modification or alteration of the Consortium Service by any party other than Smartnumbers or Smartnumbers' duly authorised contractors or agents.
- 3.8 In the event of any loss or damage to information input into the Consortium Service by the Customer ("**Customer Data**"), Customer's sole and exclusive remedy against Smartnumbers will be for Smartnumbers to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Smartnumbers in accordance with the archiving procedures. Smartnumbers will not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Smartnumbers to perform services related to Customer Data maintenance and back-up for which it will remain fully liable).
- 3.9 Customer may request in writing that Smartnumbers delete any specified Customer Data from the Consortium Service. Smartnumbers will, as soon as reasonably practicable following such request, delete the relevant Customer Data from the Consortium Service (other than to the extent otherwise required to comply with applicable law, in which case Smartnumbers will delete such Customer Data once permitted by applicable law).
- 3.10 Smartnumbers will otherwise retain the Consortium Data for so long as is necessary for its use in the Consortium Service, including following the termination of the Agreement.

**Information provided by Consortium Members**

- 3.11 Customer acknowledges that the Consortium Service may enable or assist it to access information (including personal data) provided by, or correspond with, third parties via the Consortium Service and that it does so solely at its own risk.
- 3.12 Smartnumbers makes no representation, warranty or commitment and will have no liability or obligation whatsoever in relation to such information. Smartnumbers may take reasonable steps to verify information provided by third parties via the

Consortium Service, but it may not be complete, accurate or up to date (and Smartnumbers will have no liability in this regard).

- 3.13 Smartnumbers does not endorse or approve any information which may be provided by a third party via the Consortium Service (including via any direct communication or chat functionality).

### **Proprietary Rights**

- 3.14 Customer acknowledges and agrees that Smartnumbers and/or its licensors own all intellectual property rights in the Consortium Service. Except as expressly stated herein, these Data Sharing terms do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Consortium Service.

### **Data Sharing Limitations**

- 3.15 Customer will ensure that only persons authorised by Customer to use the Consortium Service have access to Consortium Data and that any persons whom it authorizes to access the Consortium Data are under appropriate obligations of confidentiality.
- 3.16 Customer will not disclose Consortium Data, or any information derived from Consortium Data to any third parties outside of the Consortium Service (other than to the extent required to comply with applicable law, in which case Customer will notify Smartnumbers of such requirement prior to disclosure, unless prohibited from doing so by applicable law).

### **Confidentiality**

- 3.17 All Consortium Data exchanged between the parties is shared confidentially for use in the Consortium Service and will be maintained confidentially within the Consortium Service and subject to these Data Sharing terms.
- 3.18 Each party will, subject to sharing Confidential Information with other Consortium Members via the Consortium Service in compliance with these Data Sharing terms:
- (a) keep confidential all Confidential Information of the other party which it receives in connection with these Data Sharing terms;
  - (b) not copy or reproduce any part of it without the prior written approval of the other party, except as strictly necessary for the performance of its obligations under these Data Sharing terms;
  - (c) apply to it no lesser security measures and degree of care than those which it takes in protecting its own Confidential Information and, in any event, no less than that which a reasonable person or business would take in protecting its own confidential information;

- (d) only use such Confidential Information as strictly necessary for the performance of, or exercise of its rights under, these Data Sharing terms;
  - (e) subject to clause 3.16, not disclose such Confidential Information to any third party (other than its professional advisers, officers, employees, agents, contractors and sub-contractors on a 'need to know' basis as strictly required for the purposes of these Data Sharing terms and subject to each such person being bound by an obligation of confidentiality equivalent to this clause 3.18 and clause 3.19); and
  - (f) promptly, upon request and, in any event, upon termination of these Data Sharing terms (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party, certify in writing that it has done so.
- 3.19 Either party may disclose the other's Confidential Information to the extent required by law or by any court, tribunal, Regulatory Authority or other authority with competent jurisdiction to order its disclosure (but only to the extent of such requirement).

#### **Smartnumbers as Processor**

- 3.20 To the extent that Smartnumbers acts as Customer's processor in relation to any personal data which is shared between two or more Consortium Members via the Consortium Service chat functionality, the parties agree to comply with the Data Protection provisions of the Agreement for the supply of the services and all applicable Data Protection legislation.

#### **4. CLI Data**

- 4.1 Customer may provide Smartnumbers with unique call IDs ("**UCIDs**") from calls with withheld numbers which have transited through Smartnumbers' 'Protect' service and are associated with confirmed fraud events within Customer.
- 4.2 Smartnumbers may provide Customer with CLI Data relevant to such UCIDs. Smartnumbers (as a provider of electronic communications services under PECR) authorises Customer to collect and use the CLI Data for the specific and limited purpose of enabling Customer to prevent and detect fraud, pursuant to Regulation 8(2) PECR, provided that Customer will:
- (a) Write to Smartnumbers for each request (or group of requests) documenting Customer's confirmation that the numbers requested are for confirmed fraud cases only (and Smartnumbers will log such requests as a record of the requests made and CLI Data disclosed);
  - (b) be permitted to use the CLI Data solely for the purpose of preventing further fraudulent activity by a person already known to have engaged in fraud;
  - (c) only permit access the CLI Data to authorised Customer personnel working within the Customer Fraud and Financial Crime Division;

- (d) implement appropriate technical and organisational security measures to protect the confidentiality and security of the CLI Data, including as required under Data Protection Laws; and
- (e) except where necessary to retain such CLI Data to comply with applicable law, delete or return to Smartnumbers all CLI Data either:
  - (i) at the written request of Smartnumbers; or
  - (ii) when the CLI Data is no longer required by Customer,

## 5. Customer Obligations

### 5.1 The Customer will:

- (a) provide Smartnumbers with:
  - (i) all necessary co-operation in relation to these Data Sharing Terms; and
  - (ii) information, including Shared Personal Data, which is required for its use of the relevant services (including, subject to clause 3.3, the Consortium Service);
- (b) without affecting its other obligations under these Data Sharing terms, comply with all applicable laws and regulations with respect to its activities under these Data Sharing terms;
- (c) carry out all other Customer responsibilities set out in these Data Sharing terms in a timely and efficient manner;
- (d) ensure that persons authorised by Customer to use the Service (a "**User**") use the Service in accordance with these Data Sharing terms, and will be responsible for any such User's breach of these Data Sharing terms;
- (e) provide all necessary notices and obtain and maintain all necessary licences, consents, and permissions necessary for Smartnumbers, its contractors and agents to perform their obligations under these Data Sharing terms lawfully.
- (f) ensure that its network and systems comply with the relevant specifications provided by Smartnumbers from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in these Data Sharing terms, solely responsible for procuring, maintaining and securing its own network connections and telecommunications links from its own systems to Smartnumbers' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

### 5.2 The Customer owns all right, title and interest in and to all of the Customer Data and has sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

## **6. Independent Controller Obligations**

6.1 Each party is a separate controller in respect of Shared Personal Data.

6.2 In respect of Shared Personal Data, each party will:

- (a) comply with Data Protection Laws and these Data Sharing terms,
- (b) on request, provide the other party with reasonable cooperation and assistance to ensure compliance with the other party's obligations under Data Protection Laws;
- (c) not do or permit anything to be done which might lead to a breach by the other party of its obligations under Data Protection Laws;
- (d) if it becomes aware of a personal data breach affecting Shared Personal Data, notify the other party as soon as practicable and, on request, provide the other party with reasonable cooperation and assistance in relation to any notifications to data protection authorities or to data subjects which are required under Data Protection Laws;
- (e) if it receives any complaint, notice or communication from a Regulatory Authority which relates to the other party's processing of Shared Personal Data, promptly forward the complaint, notice or communication to the other party (to the extent permitted by law) and, on request, provide the other party with reasonable cooperation and assistance in relation to the same; and
- (f) on request, provide the other party with reasonable cooperation and assistance in fulfilling data subject rights requests in accordance with Data Protection Laws.

6.3 Each party will, in relation to Shared Personal Data, implement appropriate technical and organisational security measures:

- (a) to protect the security and confidentiality of such personal data;
- (b) to protect such personal data against a personal data breach; and
- (c) as required under Data Protection Laws to ensure a level of security appropriate to the risk for such personal data, including as appropriate: (A) the pseudonymisation and encryption of personal data; (B) the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services; (C) the ability to restore the availability and access to the personal data in a timely manner; and (D) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring and maintaining the security of the processing.

## **7. Joint Controller Obligations**

7.1 The parties act as joint controllers when processing Shared Personal Data in the course of using the Consortium Service.



- 7.2 Where the parties act as joint controllers, the parties will comply with their controller obligations under clause 6 of these Data Sharing terms and Customer will ensure that it complies with Articles 13 and 14 of the UK GDPR (or EU GDPR, as applicable) with respect to the processing of Shared Personal Data.

## **8. Liability**

- 8.1 Except as expressly and specifically provided in these Data Sharing terms, all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from these Data Sharing terms.
- 8.2 Nothing in these Data Sharing terms excludes the liability of either party:
- (a) for death or personal injury caused by the other party's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 8.3 Subject to clause 8.2, Smartnumbers will not in any circumstance be liable, whether in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise for any: loss of profit; loss of sales, turnover, revenue or business; loss of customers or contracts; loss of or damage to reputation or goodwill; loss of opportunity; loss of anticipated savings; loss of any software or data; loss of use of hardware, software or data; loss or waste of management or other staff time; or indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 8.4 Subject to clauses 8.2 and 8.3, the total aggregate liability of either party arising out of or relating to these Data Sharing terms or its subject matter and to anything which the party has done or not done in connection with the same (whether in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise) will be limited to a maximum of 100% of the charges paid for the service in the preceding twelve month period.
- 8.5 Subject to clause 8.2, Smartnumbers will not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of:
- (a) the use of the Consortium Service except for its normal intended purpose;
  - (b) any adaptation or modification of the Consortium Service, or integration or combination with any other services not supplied by Smartnumbers;
  - (c) any defect arising in any Consortium Service as of misuse, wilful damage, negligence on the part of anyone other than Smartnumbers, abnormal operating conditions or any failure by Customer or third parties to follow any instructions of Smartnumbers as to installation, use or maintenance;
  - (d) the compliance by Smartnumbers with any specification or instructions provided by or on behalf of Company; and/or
  - (e) use of or reliance on any personal data or other information from any Consortium Member.

## **9. Survival**

Notwithstanding the termination or expiration of the Agreement, the following provisions of these Data Sharing terms will survive and remain in full force and effect: 1 (Interpretation), 3.6, 3.7, 3.8, 3.9 and 3.10 (regarding the Consortium Service), 3.14 (Proprietary rights), 3.17 (Confidentiality), and 8 (Liability) and this clause 9 (Survival).