

## APPENDIX 1: CONTRACT TERMS & CONDITIONS (DATA PROCESSING)

Below and in Annex A to this Appendix are set out the terms and conditions on data and information processing in connection with the Expert Services.

Term	Definition
Authority	The Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ
Authority Data	means a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are supplied to the Service Provider by or on behalf of the CMA or which the Service Provider is required to generate, process, store or transmit pursuant to this Retainer; or b) any Personal Data for which the Authority is the Controller
Controller	Shall have the meaning given in GDPR
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Retainer, and/or actual or potential loss and/or destruction of Personal Data in breach of this Retainer, including any Personal Data Breach
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
Data Protection Legislation	means (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all Applicable Laws about the Processing of Personal Data and privacy
Data Protection Officer	shall have the meaning given in GDPR
Data Subject	shall have the meaning given in GDPR

Data Subject Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
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DPA 2018	means Data Protection Act 2018
EIR	The Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
FoIA	The Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
UK GDPR or GDPR	means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679)
Joint Controllers	means where two or more Controllers jointly determine the purpose and meaning of Processing
LED	means Law Enforcement Directive (Directive (EU) 2016/680)
Party or Parties	means a Party or Parties to this Retainer e.g. the Authority and the Service Provider
Personal Data	shall have the meaning given in GDPR
Personal Data Breach	shall have the meaning given in GDPR
Processor	shall have the meaning given in GDPR
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of the obligations under this Retainer

Protective Measures	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it, including those outlined in Appendix 1, Annex A (Processing, Personal Data and Data Subjects)
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Retainer	The written agreement between the Authority and the Service Provider consisting of the retainer letter and Appendix 1, 2 and 3
Service Provider	Frontier Economics Limited who undertakes to render such Expert Services to the Authority in accordance with the terms of the Retainer
Service Provider Personnel	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under the Retainer
Sub-processor	means any third-party appointed to process Personal Data on behalf of the Service Provider related to the Retainer
Working Day	means a day which is not a Saturday, a Sunday or a bank or public holiday in England

## 1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor. The only processing that the Processor is authorised to do is listed in Annex A to this Appendix (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controllers, include:
  - 1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Expert Services;

- 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Retainer:
  - 1.4.1 process that Personal Data only in accordance with Annex A (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
  - 1.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 1.4.3 ensure that:
    - (a) the Processor Personnel do not process Personal Data except in accordance with this Retainer (and in particular with Annex A (Processing, Personal Data and Data Subjects));
    - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (i) are aware of and comply with the Processor's duties under this clause;
- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
- (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Retainer; and
- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) The Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (d) The Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

1.4.5 at the written direction of the Authority, delete or return Personal Data

(and any copies of it) to the Authority on termination of the retainer unless the Service Provider is required by law to retain the Personal Data.

- 1.5 Subject to Clause 1.6 the Processor shall notify the Controller immediately if it:
  - 1.5.1 receives a Data Subject Request (or purported Data Subject Request);
  - 1.5.2 receives a request to rectify, block or erase any Personal Data;
  - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Retainer;
  - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under Clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - 1.7.1 The Controller with full details and copies of the complaint, communication or request;
  - 1.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- 1.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 1.7.4 assistance as requested by the Controller following any Data Loss Event; and
  - 1.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 1.8.1 The Controller determines that the processing is not occasional;
  - 1.8.2 The Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 1.8.3 The Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Retainer, the Processor must:
  - 1.11.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 1.11.2 obtain the written consent of the Controller;

- 1.11.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 1 such that they apply to the Sub-processor; and
  - 1.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Controllers may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Retainer).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Retainer to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers as identified in Annex A (Processing, Personal Data and Data Subjects) in accordance with GDPR Article 26.

## APPENDIX 1, ANNEX A (PROCESSING, PERSONAL DATA AND DATA SUBJECTS)

The final decision as to the content of this Annex shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [REDACTED]  
[REDACTED]@cma.gov.uk
2. The contact details of the Processor's Data Protection Representative are: [REDACTED]  
[REDACTED]frontier-economics.com
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex A (Processing, Personal Data and Data Subjects).

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor in accordance with Clause 1.1, APPENDIX 1: CONTRACT TERMS & CONDITIONS
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the Retainer to provide a service to the competition and market authority for its obligation to protect members of the public for consumer related issues.
Duration of the processing	For the duration of the Retainer.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose is to enable the Authority to conduct its statutory obligation to protect consumers.</p>

Type of Personal Data being Processed may include (but are not limited to)	Name, address, telephone number, images.
Categories of Data Subject may include (but are not limited to)	Staff (including volunteers, agents, and temporary workers), customers, clients, suppliers, patients, students, pupils, members of the public, users of a particular website etc.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	All personal Data should be returned or securely destroyed upon termination of the Retainer.

## **APPENDIX 2: CONFLICT OF INTEREST**

1.1 The Conflict of Interest provisions in this Retainer are located at:

- (a) Clauses 19, 20 and 21
- (b) Appendix 2: Conflict of Interest
- (c) The Conflict of Interest Assessment and the Conflicts of Interest Declaration at Appendix 3

1.2 A potential or actual conflict of interest could arise in connection with this Retainer, for instance where Frontier Economics Limited and/or the Expert is carrying out, or has previously carried out work for or on behalf of any companies under investigation by the Authority in the relevant case, whether directly or indirectly.

1.3 Notwithstanding the above, the Expert will notify the Authority of any actual or potential conflicts of interest that might affect the Expert and/or Frontier Economics Limited and of the impact the Expert and/or Frontier Economics Limited considers such conflict may have on the Expert's ability to provide independent expert advice with seven days of said conflict arising.

1.4 Further, in respect of each conflict which the Expert has identified a mitigation strategy must be developed which explains how the adoption of such strategy can prevent the conflict occurring or mitigate the impact of the conflict on the Expert. The strategy must be proportionate and appropriate to the risk involved and may include aspects such as physical separation of staff, protection of information, control of personnel and management separation.

1.6 The Authority will determine whether the measures outlined are sufficiently robust to mitigate the identified conflict to its satisfaction. The Authority will also consider whether the measures outlined to deal with conflicts that might arise during the course of the Retainer are sufficiently robust.

## APPENDIX 3: CONFLICT OF INTEREST ASSESSMENT AND DECLARATION

### CONFLICT OF INTEREST ASSESSMENT

#### Response Guidance:

An actual or potential conflict of interest could arise in connection with this Retainer, for instance, where the Expert and/or Frontier Economics Limited is carrying out, or has previously carried out work for or on behalf of any companies under investigation by the Authority in the Investigation, whether directly or indirectly. To assist, the relevant companies are listed below.

CMA CASE [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

You are required to notify the Authority of any actual or potential conflicts interest that might affect the Expert and/or Frontier Economics Limited and of the impact the Expert and/or Frontier Economics Limited consider such conflict may have on the Expert's ability to provide independent expert advice.

Question 1 requires you to respond "Yes" if there is an actual or potential conflict, or "No" to confirm that there is no actual or potential conflict.

Question 2 requires you to develop a mitigation strategy and explain how the adoption of such strategy can prevent the conflict occurring, or mitigate the impact of the conflict, on you or your organisation in respect of each conflict which identified. The mitigation strategy must be proportionate and appropriate to the risk involved, and may include aspects such as physical separation of staff, protection of information, control of personnel and management separation.

Question 3 requires you to set out your proposed arrangements for identifying and managing any actual or potential conflicts of interest that might arise during the course of the Retainer.

Where you answer "Yes" to Question 1, the Authority will determine whether the measures proposed are sufficiently robust to mitigate the identified conflict to its satisfaction. The Authority will also consider whether the measures

proposed to deal with conflicts that might arise during the course of the Retainer are sufficiently robust.

Question number	Question	Response
1	In accordance with Appendix 2 of this Retainer and the guidance above, please confirm whether there is an actual or potential conflict of interest.	Frontier confirms that no actual or potential conflict exists.
2	If you have answered “Yes” to question 1, please provide details.	N/A
3	Please provide details of how you propose to deal with any conflicts of interest that might arise during the course of the Retainer.	<p>In the event that a conflict was to emerge during the course of our work we have internal procedures in place to both identify and then manage such a conflict.</p> <p>Our policy is that each of our consultants, and Frontier Economics itself, should comply with the relevant professional obligations in the areas and countries we’re working in, including those concerning conflicts. To that end we have established procedures to help us identify and, if necessary, deal with potential legal, professional and commercial conflicts.</p> <p>Before we undertake any new work we run internal and external checks to comply with anti-money laundering and other regulatory requirements and to identify and resolve possible technical and/or commercial conflicts, taking into account jurisdictional requirements.</p> <p>As a rule, we clear or resolve conflict issues within 24-48 hours although this can vary depending on the circumstances. Where we do identify a potential conflict, whether it is legal or commercial, the Director concerned</p>

		will contact our client to discuss the position and any available options. Here, as at every other stage of the process, we take the issue of confidentiality very seriously.
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## SCHEDULE 1: THE RELEVANT COMPANIES

CMA CASE [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

## **SCHEDULE 2: CONFLICT OF INTEREST DECLARATION**

### **COMPETITION AND MARKETS AUTHORITY**

1. I/We confirm that there is no conflict of interest, except as disclosed to the Authority on behalf of the Expert. The acceptance of the following shall be taken as confirmation that no such conflicts of interest exist.
2. I/We shall ensure that actual or potential conflicts do not arise whilst providing the Expert Services. In particular, unless otherwise agreed with the Authority:
  - (i) For the duration of the Investigation and any related litigation we shall not undertake or actively seek any work for any organisation that is directly related to the subject matter of the Investigation and any related litigation. We agree that work which is indirectly related other than that laid out in the Contract may only be undertaken with the Authority's written consent which shall not be unreasonably withheld.
  - (ii) I/We confirm that any individuals providing the Expert Services in relation to the Investigation, as applicable, shall not carry out any other work related to the subject-matter of the Investigation for any other client for the duration of the Investigation and any related litigation.
  - (iii) I/We confirm that individuals providing the Expert Services to the Authority and their immediate families do not own or have a beneficial interest in the shares of the relevant companies unless such holdings are independently managed (e.g. by a unit trust or pension fund).

(iv) All information acquired by the individuals providing the Expert Services shall be treated as confidential to the Authority both for the duration of the Retainer and thereafter. The individuals providing the Expert Services shall not communicate any such information to third parties or other individuals within their firm unless it has already entered the public domain by other means. All documents supplied to us in connection with the Expert Services and this Retainer, copies of any part of such documents, whether in electronic or material form, and any documents prepared by the Authority which are based on material supplied in connection with the Expert Services, must be returned to the Authority at the end of the Investigation or any related litigation, or sooner if requested.

3. The Authority may terminate this Retainer at any time should it become of the

opinion that an actual or potential conflict of interest on our part has arisen. I/We shall be entitled to remuneration on the basis set out in the Retainer up to the date of termination save in circumstances where we are in breach of our obligations under the Retainer.

4. It shall be our responsibility to ensure that no conflict of interest arises which

might be said to prejudice our independence and objectivity in performing the Expert Services. This responsibility includes all of our senior staff (e.g. directors, and partners) or our personnel whose involvement in providing the Services to the Authority is not purely mechanical or clerical. If we are at any time in doubt about whether any conflict of interest may exist or arise, I/we shall notify the Authority forthwith and comply with any directions given with a view to avoiding the conflict.

5. Unless otherwise agreed with the Authority during the period of the Retainer, and for an agreed period after it ends, we would, except with the prior written consent of the Contract Manager, be debarred from working for, or having any other interest in, any of

the relevant companies. This requirement is made to avoid conflicts of interest.

6. Signing this Conflict of Interest Statement shall be taken as confirming agreement on all of the above points in relation to the Expert and the provision of Expert Services.


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For and on behalf of Frontier Economics

Signature: ...  ..

Name: .....  .....

Job title: .....Director.....

Read and acknowledged by 

Signature: ....  .....

Dated: ....17.08.22.....