**DATA SHARING AGREEMENT**[[1]](#footnote-1)

This **Agreement** is dated made on [●] day of [●]

**PARTIES**

1. **ARTS COUNCIL,** a statutory corporation established under the laws of Ireland, pursuant to an Act of the Oireachtas and having its principal office at 70 Merrion Square, Dublin 2 (**Data Receiver**).

And

1. [**FULL COMPANY NAME/ INDEPENDENT SOLE TRADER**], [a company incorporated in [Ireland] with company number [insert company number] and having its registered office at [insert address]][[2]](#footnote-2) or with its principal place of business at [insert address][[3]](#footnote-3) (**Data Discloser**)

(each a **Party;** collectively the **Parties**)

**BACKGROUND**

1. The Data Discloser agrees to disclose Shared Data (as defined below) with the Data Receiver in the European Economic Area (**EEA**) on terms set out in the Agreement.
2. The Data Receiver agrees to use the Shared Data within the EEA on the terms set out in this Agreement.

**AGREED TERMS**

# INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

## **Definitions:**

|  |  |
| --- | --- |
| **Agreed Purpose** | has the meaning given to it in Clause 2 of this Agreement. |
| **Business Day** | a day other than a Saturday, Sunday or public holiday in Ireland when banks in Dublin are open for business. |
|  |  |
| **Commencement Date:**  | has the meaning given at the beginning of the Agreement. |
| **Data:** | the personal data[[4]](#footnote-4). |
| **Deletion Procedure:** | has the meaning given to it in Clause 7.3 and Schedule 4 to this Agreement. |
| **Data Protection Law:** | all applicable laws and regulations relating to the processing of Data and privacy, including in particular the Data Protection Acts 1988 to 2018, the GDPR, Directive 2002/58/EC (as amended), European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (SI 336 of 2011) and any statutory instruments, rules, orders or regulations made thereunder as from time to time amended, extended, re-enacted, replaced, superseded or consolidated (whether before, or after the date of this Agreement). |
| **GDPR** | means the EU General Data Protection Regulation (EU) 2016/679. |
|  |  |
| **Personal Data Breach**  | a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Data or the lack of availability of Shared Data which adversely affects the data subject.  |
|  |  |
| **Shared Data:** | any Data to be shared between the Parties under Clause 3 of this Agreement.  |
| **Supervisory Authority** | For the purposes of this Agreement, the Supervisory Authority will be the Data Protection Commission of Ireland (or its successor or assignee). |
|  |  |
| **Term** | has the meaning given to it in Clause 11.1. |

## “**Controller**”, “**processor**”, “**data subject**” and “**personal data**”, “**special categories of** p**ersonal data**”, “**processing**” and “**appropriate technical and organisational measures**” shall have the meanings given to them in the Data Protection Law.

## Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

## The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

##

## References to clauses and Schedules are to the clauses and Schedules of this Agreement.

## Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## A reference to **writing** or **written** includes electronic communications.

## Any reference to any statute, statutory provision or to any order, rule or regulation shall be construed as a reference to that statute, provision, order, rule or regulation as extended, amended, replaced, superseded, consolidated or re-enacted from time to time (whether before or after the date of this Agreement) and all statutory instruments, rules, regulations and orders from time to time made thereunder or deriving validity therefrom (whether before or after the date of this Agreement).

## Unless the context otherwise requires the masculine gender shall be deemed to include the feminine and visa versa and the singular number shall be deemed to include the plural and visa versa.

# PURPOSE and responsibilities

## The Agreement sets out the framework for the sharing of Data between the Parties as (independent) "Controllers". It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other. Each Party (as "Controller") will be responsible for the lawful processing of the Shared Data, informing data subjects about the use of their personal data, the security of personal data, ensuring data subjects can exercise their rights (as well as answering any requests from a data subject exercising such rights) and for complying with their obligations as controllers under the Data Protection Law.

## The Parties consider this data sharing necessary as to fulfil the requirements of the Box Office Reporting & Insights Project. The aim of the data sharing is to provide local and national analysis of box office data via an IT platform. It will serve to benefit the Arts Council and Arts Organisations by using Box Office data to generate Arts Audience development insights.

## In consideration of the mutual covenants herein contained, the Parties agree to only process Shared Data, as described in Clause 3.1 and set out in Schedule 2, for the following purposes (**Agreed Purpose**):

1. To create a platform that can support customer development for Arts Centres and Festivals, enabling Arts Centres and Festivals to analyse their own box office data against national averages and averages of comparable organisational profiles and art forms.
2. To build a database of robust box office data that can support data-driven decision making, in the implementation of the Arts Council strategy.
3. To access data in the most technically efficient manner, either directly from Box Office Systems providers or from Arts Centres and Festivals themselves.
4. To integrate and streamline, over time, the box office data reporting with the Arts Council’s AAR and other funding/reporting mechanisms so data is comparable and data requests are not duplicated.
5. To introduce common standards and terminology for box office data across all Arts Council reporting streams that will enable comparative analysis at a national level.
6. Data will not be used by the Data Receiver for review of funding of Data Discloser without firstly taking measures with Data Discloser to verify that relevant data is agreed and interpreted correctly by both parties.

## Each Party shall appoint a single point of contact (**SPoC**) who will work together to reach an agreement with regards to any issues arising from the data sharing. The points of contact for each of the Parties are:

#### Aidan Burke, Corporate Services Director

#### Telephone: +353 (0)1 618 0276

#### e-mail: aidan.burke@artscouncil.ie

#### Address: 70 Merrion Square, Dublin 2

#### [INSERT NAME, ROLE, TEAM AND CONTACT DETAILS OF THE OTHER PARTY’S SPOC]

# SHARED DATA

## The following types of personal data will be shared between the Parties during the Term of this Agreement:

#### [N/A – No personal data will be requested or shared

## Special categories of personal data will not be shared between the Parties**.**

## Further details on the Shared Data as described in Clause 3.1 is set out in Schedule 2 together with any access and processing restrictions, as agreed and established by the Parties.

## The Shared Data must not be irrelevant or excessive with regard to the Agreed Purpose.

##

# LAWFUL, FAIR AND TRANSPARENT PROCESSING

## Each Party shall ensure that it processes the Shared Data fairly and lawfully in accordance with clause 4.2 during the Term of this Agreement.

## Each Party shall ensure that it has legitimate grounds under Data Protection Law for the processing of Shared Data.

# DATA qUALITY

The Data Discloser shall ensure that, before the Commencement Date, the Shared Data is accurate.

# data subjects' rights

## The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with requests from data subjects to exercise their rights under Data Protection Law within the time limits imposed by Data Protection Law.

## The SPoC for each Party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

# DATA RETENTION AND DELETION

## The Data Receiver shall not retain or process Shared Data for longer than is necessary to carry out the Agreed Purpose.

## Notwithstanding Clause 7.1, the Parties shall continue to retain Shared Data in accordance with any statutory retention periods.

## The Data Receiver shall ensure that any Shared Data is returned or destroyed in accordance with the agreed Deletion Procedure set out in Schedule 3 in the following circumstances:

#### on termination of the Agreement (for whatever reason);

#### on expiry of the Term of the Agreement;

#### once processing of the Shared Data is no longer necessary for the purposes it was originally shared for, as set out in Clause 2.3.

## Following the deletion of Shared Data in accordance with Clause 7.3, the Data Receiver shall notify the Data Discloser, in writing, that the Shared Data in question has been deleted in accordance with the Deletion Procedure in Schedule 3 to this Agreement.

# TRANSFERS

## For the purposes of this clause, transfers of Shared Data shall mean any sharing of Shared Data by the Data Receiver with a third party, and shall include, but is not limited to, the following:

#### subcontracting the processing of Shared Data; and/or

#### granting a third party controller access to the Shared Data.

## If the Data Receiver appoints a third party processor to process the Shared Data, it shall comply with Article 28 and Article 30 of the GDPR and shall remain liable to the Data Discloser for the acts and/or omissions of the processor.

## The Data Receiver shall not disclose or transfer Shared Data outside the EEA.

# SECURITY AND TRAINING

## The Data Discloser shall only provide the Shared Data to the Data Receiver by using secure methods as agreed and set out in Schedule 4.

## The Parties undertake to have in place throughout the Term appropriate technical and organisational security measures to:

#### prevent:

#### unauthorised or unlawful processing of the Shared Data; and

#### the accidental loss or destruction of, or damage to, the Shared Data; and

#### unavailability of the Shared Data

#### ensure a level of security appropriate to:

#### the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, damage or lack of availability of the Shared Data; and

#### the nature of the Shared Data to be protected.

## The level of technical and organisational measures agreed by the Parties as appropriate as at the Commencement Date is set out in Schedule 4. The Parties shall keep such security measures under review and shall carry out such updates as they agree are appropriate throughout the Term.

## It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and process the Shared Data in accordance with the technical and organisational security measures set out in Schedule 4 together with any other applicable national data protection laws and guidance and have entered into confidentiality agreements relating to the processing of personal data.

## The level, content and regularity of training referred to in Clause 9.4 shall be proportionate to the staff members’ role, responsibility and frequency with respect to their handling and processing of the Shared Data.

# PERSONAL DATA BREACHES AND REPORTING PROCEDURES

## The Parties shall each comply with its legal obligation to report a Personal Data Breach to the Supervisory Authority (unless such reporting is not necessary) and (where applicable) data subjects. The Parties shall each notify the other Party of any Personal Data Breach irrespective of whether there is a requirement to notify the Supervisory Authority or data subject(s).

## The Parties agree to provide all information required to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

# Duration, REVIEW and TERMINATION OF AGREEMENT

## This Agreement shall become effective on the date it has been signed by all Parties and shall continue in full force and effect until terminated in accordance with this Clause 11.

## The Parties shall review the data sharing every twelve months. The Parties shall continue, amend or terminate the Agreement depending on the outcome of the review.

## Either Party may terminate this Agreement on giving not less than six months written notice to the other Party.

## Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party in the following circumstances:

#### the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [30][[5]](#footnote-5) days after being notified in writing to do so;

#### upon signature of any further agreement between the Parties which shall be expressed to supercede this Agreement;

#### the Contractor goes into liquidation or is unable to pay its debts as and when they fall due or the Contractor has an administrator appointed or has an application made for the appointment of an administrator; or

## Each Party reserves its rights to inspect the other Party’s arrangements for the processing of Shared Data and to terminate the Agreement, with immediate effect by giving written notice to the other Party, where it considers that that Party is not processing the Shared Data in accordance with this Agreement and/or Data Protection Law.

## Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination.

# ALLOCATION OF COST

Each Party shall perform its obligations under this Agreement at its own cost.

# RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE SUPERVISORY AUTHORITY

## In the event of a dispute or claim brought by a data subject or the Supervisory Authority concerning the processing of Shared Data against either or both Parties, the Parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.

## The Parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the Supervisory Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

#

# WARRANTIES

## Each Party warrants and undertakes that it will:

#### process the Shared Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations;

#### make available on request to the data subjects who are third party beneficiaries a copy of this Agreement, unless the Agreement contains confidential information;

#### respond within [a reasonable time] and as far as reasonably possible to enquiries from the relevant Supervisory Authority in relation to the Shared Data;

#### respond to subject access requests in accordance with the Data Protection Law;

#### take all appropriate steps to ensure compliance with the security measures set out in clause 9 above.

## The Data Discloser warrants and undertakes that it is entitled to provide the Shared Data to the Data Receiver and it will ensure that the Shared Data are accurate.

## The Data Recipient warrants and undertakes that it will not disclose or transfer Shared Data outside the EEA.

## Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

# LIMITATION OF LIABILITY

## Neither Party excludes or limits liability to the other Party for:

#### fraud or fraudulent misrepresentation;

#### death or personal injury caused by negligence;

#### any matter for which it would be unlawful for the Parties to exclude liability.

## Subject to clause 15.1, neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

#### any loss (whether direct or indirect) of business, business opportunities, revenue, turnover or reputation or goodwill;

#### any loss of profits;

#### any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

#### any loss or liability (whether direct or indirect) under or in relation to any other contract.

# VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

# WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# SEVERANCE

## If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

## If any provision or part-provision of this Agreement is deemed deleted under Clause 18.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

# CHANGES TO THE APPLICABLE LAW

If during the Term the Data Protection Law changes in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that the SPoCs will negotiate in good faith to review the Agreement in the light of the new legislation.

# NO PARTNERSHIP OR AGENCY

## Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

# ENTIRE AGREEMENT

## This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

# FURTHER ASSURANCE

At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

# FORCE MAJEURE

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six months, the Party not affected may terminate this Agreement by giving 30 days’ written notice to the affected Party.

# NOTICE

## Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing, addressed to the SPoCs and shall be delivered by hand, by courier or by registered post at its principal place of business.

## Any notice or communication shall be deemed to have been received if (i) delivered by hand or courier, on signature of a delivery receipt; or (ii) sent by registered post, at 9.00am on the [third][[6]](#footnote-6) Business Day after posting.

## A notice given under this Agreement is not valid if sent by email.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# GOVERNING LAW

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Ireland.

# JURISDICTION

Each Party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.

**SCHEDULE 1**

**PURPOSE**

The **Box Office Reporting & Insights** project is an Arts Council initiative to provide local and national analysis of box office data via an IT platform. Through the delivery of this project, the Arts Council expects to develop a valuable resource for Arts Audience development in Ireland.

**Project Objectives**

The vision for the Box Office Reporting & Insights project is shaped by the following objectives:

* To create a platform that can support customer development for Arts Centres and Festivals, enabling Arts Centres and Festivals to analyse their own box office data against national averages and averages of comparable organisational profiles and art forms.
* To build a database of robust box office data that can support data-driven decision making, in the implementation of the Arts Council strategy.
* To access data in the most technically efficient manner, either directly from Box Office Systems providers or from Arts Centres and Festivals themselves.
* To integrate and streamline, over time, the box office data reporting with the Arts Council’s AAR and other funding/reporting mechanisms so data is comparable and data requests are not duplicated.
* To introduce common standards and terminology for box office data across all Arts Council reporting streams that will enable comparative analysis at a national level.

Arts Centres and Festivals will be able to compare their own data against national data, and the grouped averages of comparable organisations. Arts Centres and Festivals will not be able to data belonging to other individual organisations.

The Project Vision and Objectives are summarised in Figure 1.



Figure Box Office Reporting & Insights Project

**How will data be accessed?**

Ideally, box office data will be transferred from box office systems to the Arts Council database using secure and automated data services, without the need for additional manual effort.

To do this, the Arts Council would like to work with Arts Centres and Festivals, and their box office systems providers, to develop these data services.

We recognise that this may not be feasible for some organisations, and the Arts Council wish to work with Arts Centres and Festivals to find the optimum approach for each organisation.

The Arts Council will not be accessing any databases directly and will not engage within box office systems providers without the consent of the Arts Centre or Festival.

**Customer Data**

The Arts Council recognise both the value and the sensitivity of customer data. No customer data will be included in the scope of the 2019 project.

Instead the Arts Council wishes to work with Arts Centres and Festivals to ensure the correct policies and procedures are in place to ensure compliance with GDPR and other Data Projection regulations and seek ways to build in anonymised customer data over time.

**Prototype Solution**

The Arts Council wishes to work with volunteer organisations and their box office providers over the summer of 2019 to access data and develop a prototype solution including both a box office reporting database and reporting dashboards. Arts Centres and Festivals engaging with the prototype, will have an opportunity to inform and shape the final output of the project.

We aim to have the prototype solution by November 2019.

**Timelines**

Volunteer organisations will be requested to work with their box office providers and submit data over the summer, up to September 2019, with the prototype solution ready by November 2019.

All Arts Centres and Festivals will be requested to submit all of 2019 box office data in January 2020. The Reporting and Insights dashboards will be available to Arts Centres and Festivals in March 2020.

**Further Information**

Further information is available from:

* Website: <http://www.artscouncil.ie/boxofficecollectionproject/>
* Email: boxofficecollectionproject@artscouncil.ie

**SCHEDULE 2**

**FURTHER DETAILS ON SHARED DATA AND ACCESS AND PROCESSING RESTRICTIONS**



The data shared is as per the MS Excel Reporting Template. See attached.

**SCHEDULE 3**

**DELETION PROCEDURE**

All data belonging to the ‘Data Discloser’ will be deleted from all project data holdings. This will include:

* The live database
* Any backup, UAT or staging database
* Any copies of data held outside of the database
* All data presented within the project reports

**SCHEDULE 4**

**APPROPRIATE TECHNICAL AND ORGANISATIONAL SECURITY MEASURES**

Data Management will comply with all Arts Council IT and Security policies.

Signed for and on behalf of

**ARTS COUNCIL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Signed for and on behalf of

**[INSERT COMPANY NAME]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

1. This Agreement has been drafted on the basis that both parties are sole (not joint) controllers and the other party is based within the EEA. [↑](#footnote-ref-1)
2. Amend as appropriate. [↑](#footnote-ref-2)
3. Use this where the other party is an independent sole trader. [↑](#footnote-ref-3)
4. We assume that no special categories of personal data will be shared. [↑](#footnote-ref-4)
5. Amend as appropriate [↑](#footnote-ref-5)
6. Amend as appropriate [↑](#footnote-ref-6)