

# OPEN BANKING

## DATA SHARING AGREEMENT

### BETWEEN

- (1) The TPP or ASPSP, as applicable, that is providing the data (the “**Data Provider**”); and
  - (2) Open Banking Limited, company number 10440081, registered office address 8th Floor 100 Bishopsgate, London, England, EC2N 4AG (“**OBL**”),
- together, the “**Parties**”.

### BACKGROUND

- (A) This Data Sharing Agreement addresses the JROC’s [\*Recommendations for the next phase of open banking in the UK\*](#). In particular, this Data Sharing Agreement addresses the first open banking roadmap action for OBL to collect data on API availability and performance.
- (B) OBL, which has been certified by the British Assessment Bureau as meeting BS EN ISO/IEC 27001:2017 for the “provision of Open Banking financial services, providing a secure way for participants including small businesses to share information”, wishes to collect certain data on API availability and performance from the Data Provider.
- (C) The Data Provider agrees to provide this data on API availability and performance to OBL subject to the terms and conditions of this Data Sharing Agreement.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions: The following definitions apply in this Data Sharing Agreement:

- (a) “**API**” means Application Programming Interface;
- (b) “**ASPSP**” means a payment service provider providing and maintaining a payment account for a payer as defined by the Payment Services Regulations 2017 including the associated Regulatory Technical Standards as developed by the European Banking Authority;
- (c) “**Applicable Law**” means all applicable laws, rules, regulations, orders, regulatory policies, guidelines, regulatory permits and licences, and any mandatory instructions or requests by a Regulator, in each case which are in force from time to time and which apply to a Party or the performance of a Party’s obligation under this Data Sharing Agreement and this definition of Applicable Law will include Data Protection Laws;
- (d) “**Business Contact Information**” means the names, phone numbers or email addresses of employees of the Data Provider.
- (e) “**Business Day**” means any day other than a Saturday, a Sunday, a public holiday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales;
- (f) “**Business Contact Personal Data**” has the meaning given to it in clause 2.15;
- (g) “**Confidential Information**” means, in relation to any Party, all information (written or oral) which is used in or otherwise relates to that Party’s business, customers or financial or other affairs, including without limitation other information provided for the purposes of investigation, mitigation, defence and/or resolution of any dispute,

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and any information otherwise disclosed in relation to the conduct of any dispute, in each case whether or not marked "Confidential", and any and all other information clearly designated as "Confidential" by the disclosing Party, in each case existing in any form;

- (h) **"Data Protection Laws"** means the EU General Data Protection Regulation 2016/679, the United Kingdom General Data Protection Regulation, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, the Data Protection Act 2018, as well as any related or similar applicable privacy laws of any member state of the European Union or the European Economic Area; the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (as amended or replaced from time to time), applicable laws implementing that directive in European Union Member States, and the Privacy and Electronic Communications Regulations 2003 (SI 2003 /2426) as amended; including any guidance, guidelines or opinions published by the ICO or other relevant supervisory authority; and any other data protection legislation or law that applies to the Parties from time to time;
- (i) **"Good Industry Practice"** means, in relation to any undertaking, the standards of care, skill, diligence, prudence, judgement and foresight as can reasonably be expected from a skilled and experienced supplier engaged in the same or similar type of undertaking under the same or materially similar circumstances;
- (j) **"JROC"** means the Joint Regulatory Oversight Committee, comprising the Financial Conduct Authority ("**FCA**"), Payment Systems Regulator ("**PSR**"), Competition and Markets Authority ("**CMA**") and His Majesty's Treasury ("**HMT**"), and references to "JROC" herein include both to JROC as a single body and to its individual members, as appropriate;
- (k) **"OBL Output(s)"** has the meaning set out at clause 2.7;
- (l) **"Regulator"** means any governmental body or regulatory or supervisory authority having responsibility for the regulation or supervision of all or any part of the subject matter of this Data Sharing Agreement or the business of a Party, including the CMA, the PSR, the FCA, HMT, JROC, the Bank of England, the Prudential Regulation Authority, the Financial Ombudsman Service, the Pensions Ombudsman, His Majesty's Revenue and Customs, the Information Commissioner's Office, and the Pensions Regulator (and in each case including any successor or replacement body from time to time) and, in respect of a Data provider established in any country in the EEA other than the United Kingdom, any analogous body or authority having responsibility for regulation or supervision of the business of the Member in that country;
- (m) **"PSU"** means a natural or legal person making use of a payment service as a payee, payer or both;
- (n) **"Shared Data"** has the meaning set out in clause 2.1;
- (o) **"TPP"** means any of the following:
  - (i) an account information service provider as defined in the Payment Services Regulations 2017 including the associated Regulatory Technical Standards as developed by the European Banking Authority;

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- (ii) a payment initiation service provider as defined in the Payment Services Regulations 2017 including the associated Regulatory Technical Standards as developed by the European Banking Authority; and
  - (iii) a payment service provider that issues card-based payment instruments that can be used to initiate a payment transaction from a payment account held with another payment service provider;
- (p) “**TSP**” a technical service provider which supports the provision of TPP payment services without such a provider entering at any time into possession of the funds to be transferred.

## 1.2 Interpretation: In this Data Sharing Agreement:

- (a) a reference to a clause or paragraph is, unless stated otherwise, a reference to a clause or paragraph of this Data Sharing Agreement;
- (b) any reference to this Data Sharing Agreement or any other agreement or document will be construed as a reference to this Data Sharing Agreement or, as the case may be, that other agreement or document, as it may have been, or may from time to time be, amended, varied, supplemented, substituted, novated or assigned;
- (c) the background and headings in this Data Sharing Agreement do not affect its interpretation;
- (d) a reference to a “**person**” includes any individual, company, corporation, firm, partnership, joint venture, association, state, state agency, institution, foundation or trust (whether or not having a separate legal personality);
- (e) a reference to a statute or statutory provision includes a reference to any subordinate legislation and is a reference to:
  - (i) that statute, statutory provision or subordinate legislation as modified, consolidated, superseded, re-enacted or replaced (whether with or without modification) from time to time after the date of this Data Sharing Agreement; and
  - (ii) any statute, statutory provision or subordinate legislation which it consolidates, supersedes, re-enacts or replaces (whether with or without modification); and
- (f) a reference to “**anonymised and/or aggregated**” data or information means that no ASPSP, TPP, TSP or PSU can be identified from the data or information.
- (g) In this Data Sharing Agreement, “**personal data**”, “**data subject**”, “**controller**” and “**personal data breach**” have the meaning given to them in the applicable Data Protection Laws.

## 1.3 Applicability and precedence

- (a) The terms of this Data Sharing Agreement shall apply from the point at which the Data Provider provides OBL with the data as described in clause 2.1 below.
- (b) Where the Data Provider is a TPP, this Data Sharing Agreement shall apply to such TPP in full.

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- (c) Where the Data Provider is an ASPSP, which is a party to a Contract with OBL that is governed by the *Ecosystem Participant Terms and Conditions*, this Data Sharing Agreement shall apply as follows:
  - (i) Clause 2 (Data Sharing) shall apply to such ASPSP and shall prevail over the *Ecosystem Participant Terms and Conditions*, which are hereby deemed varied accordingly; but
  - (ii) The *Ecosystem Participant Terms and Conditions* shall prevail over the other provisions of this Data Sharing Agreement, to the extent of any conflict or inconsistency.

## 2. DATA SHARING

### **Data Provider's obligation to share data**

- 2.1 The Data Provider will provide OBL with at least the data indicated as the minimum required data in the instructions to the template accessible through this hyperlink: <https://www.openbanking.org.uk/wp-content/uploads/TPP-data-dictionary.pdf> (the “**Shared Data**”). The Data Provider will provide the Shared Data in the template's required format and in accordance with the template's instructions. If there is an inconsistency between any of the provisions of this Data Sharing Agreement and the template referred to in this clause 2.1, the template will prevail over the provisions of this Data Sharing Agreement.
- 2.2 OBL may amend any part of the template referred to in clause 2.1 on giving the Data Provider a minimum of 30 days' notice.

### **OBL's rights to use Shared Data, where the Data Provider is a TPP**

- 2.3 OBL may not publish TPP-provided Shared Data.
- 2.4 OBL may use the TPP-provided Shared Data to:
  - (a) monitor API availability and performance; and
  - (b) corroborate data on ASPSP APIs.

### **OBL's rights to use Shared Data, where the Data Provider is an ASPSP**

- 2.5 OBL may use ASPSP-provided Shared Data to:
  - (a) monitor API availability and performance; and
  - (b) corroborate data on ASPSP APIs; and
  - (c) publish API performance statistics on <https://www.openbanking.org.uk/api-performance/> (or any successor webpage).
- 2.6 OBL may provide ASPSP-provided Shared Data and/or any analysis of it that is not anonymised and/or aggregated to the JROC.

### **OBL's rights to use Shared Data, where the Data Provider is either a TPP or an ASPSP**

- 2.7 OBL may publish and share with third parties, including to the JROC, any anonymised and/or aggregated output derived from either TPP-provided or ASPSP-provided Shared Data (“**OBL Outputs**”). The OBL Outputs include but are not limited to:

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- (a) any anonymised and/or aggregated analysis of the Shared Data;
  - (b) any anonymised and/or aggregated presentation of the Shared Data including but not limited to reports, graphs, charts or dashboards; and
  - (c) any anonymised and/or aggregated presentation of the data that the ASPSP-provided Shared Data is used to corroborate under clause 2.5(b) including but not limited to reports, graphs, charts or dashboards.
- 2.8 OBL may provide the Shared Data and/or any analysis of it that is not anonymised and/or aggregated to third parties (including, for TPP-provided Shared Data, to the JROC), if:
- (a) OBL obtains the Data Provider's prior written consent; or
  - (b) OBL is required to do so under Applicable Law or by a Regulator.
- 2.9 Subject to clause 2.10, where anonymised and/or aggregated Shared Data is already in the public domain, OBL and the Data Provider can use or share the same data without restriction.
- 2.10 Neither Party may use or share the Shared Data in clause 2.9 contrary to restrictions under Applicable Law. Such restrictions include but are not limited to the restrictions in clauses 4.2, 4.3 and 4.5.

## **Parties' obligations to protect Shared Data**

- 2.11 The Data Provider will supply the Shared Data to OBL in a secure manner, as notified by OBL to the Data Provider from time to time.
- 2.12 OBL must:
- (a) have appropriate governance processes in place that ensure an understanding of their technological environment, the state of security controls and a security program to protect the Shared Data from unauthorised disclosure in accordance with Good Industry Practice;
  - (b) have an inventory of all IT assets used to process the Shared Data including where relevant any personal devices;
  - (c) apply appropriate technological controls to address current and emerging cyber threats including configuring its systems and network devices in accordance with Good Industry Practice; and
  - (d) provide real time monitoring of networks and end-points to detect security breaches.
- 2.13 Throughout the term of this Data Sharing Agreement, OBL must have a security policy or policies relating to its compliance with clause 2.12 above.

## **Parties' responsibility to comply with Data Protection Laws**

- 2.14 The Data Provider warrants and undertakes that it will not provide OBL with any personal data except for Business Contact Information.
- 2.15 In relation to any personal data in any Business Contact Information that the Data Provider provides to OBL under this Data Sharing Agreement ("**Business Contact Personal Data**");

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- (a) The Parties will comply with their respective obligations under Data Protection Laws.
- (b) The Parties acknowledge that they each act as an independent controller in respect of the Business Contact Personal Data.
- (c) Each Party will provide reasonable cooperation to the other Party, upon request, in relation to:
  - (i) any request, complaint or query from any data subject in relation to Business Contact Personal Data in connection with this Data Sharing Agreement, including to exercise their rights under Data Protection Laws; and/or
  - (ii) any inquiry, investigation or request made by any Regulator in relation to Business Contact Personal Data processed in connection with this Data Sharing Agreement.
- (d) Each Party will notify the other Party without undue delay upon becoming aware of any notifiable personal data breach affecting Business Contact Personal Data.
- (e) The Parties will provide reasonable cooperation to each other in relation to any reporting or notification obligations in the event of a personal data breach affecting Business Contact Personal Data.

## 3. CONFIDENTIALITY

### 3.1 Each Party:

- (a) shall keep confidential all Confidential Information of the other Party;
- (b) shall not disclose any Confidential Information of the other Party without the other Party's consent to any third party except professional advisors; and
- (c) shall not use any Confidential Information of the other Party for any purpose other than to perform its obligations arising out of or in connection with this Data Sharing Agreement.

### 3.2 The obligations in this clause 3 do not apply to any Confidential Information that is:

- (a) already in the recipient Party's possession at the time of disclosure by the disclosing Party other than by a breach of this Data Sharing Agreement or of any confidentiality obligation owed by the recipient Party to the other Party;
- (b) already, or has subsequently become, public knowledge other than by a breach of this Data Sharing Agreement or of any confidentiality obligation owed by the recipient Party to the other Party; or
- (c) disclosed by the recipient Party under a requirement of Applicable Law or a requirement of any Regulator.

### 3.3 The obligations in this clause 3 will survive the termination of this Data Sharing Agreement.

## 4. INTELLECTUAL PROPERTY RIGHTS

### General

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## 4.1 "Intellectual Property Rights" means:

- (a) patents, trade-marks, service marks, registered designs, trade and business names, domain names, unregistered trade-marks and service marks, copyrights (including future copyrights), semiconductor or circuit layout rights, know-how, trade secrets, database rights, rights in designs and inventions, in each case (except in relation to future copyright) from the time such rights come into existence;
- (b) applications for any of those rights (where such applications can be made); and
- (c) rights of the same or similar effect or nature as or to those in (a) or (b) or which would in any way prevent or hinder the use or exploitation of the matters to which they relate, in each case in any jurisdiction.

4.2 Except as expressly provided in this Data Sharing Agreement, the Parties will not acquire any right, title or interest in or to any Intellectual Property Rights of the other Party.

### OBL Intellectual Property Rights vs Data Provider Intellectual Property Rights

4.3 OBL acknowledges and agrees that all Intellectual Property Rights in any Shared Data will at all times remain with the Data Provider, whether it is in human or machine-readable form. OBL will not at any time attempt to obtain or claim any Intellectual Property Rights in the Shared Data.

4.4 The Data Provider hereby grants to OBL a royalty-free, non-exclusive, non-transferable, perpetual licence (including the right to sub-licence to any third party) during the term of this Data Sharing Agreement to use any Intellectual Property Rights in any Shared Data solely for the purpose of, and to the extent reasonably necessary in order to fulfil, the purposes in described in this Data Sharing Agreement.

4.5 The Data Provider acknowledges and agrees that all Intellectual Property Rights in any OBL Output will at all times remain with OBL. The Data Provider will not at any time attempt to obtain or claim any Intellectual Property Rights in the OBL Outputs and may not share them without OBL's prior consent.

## 5. LIABILITY

5.1 Nothing in this Data Sharing Agreement will exclude or limit a Party's liability under or in connection with this Data Sharing Agreement:

- (a) for death or personal injury resulting from the negligence of that Party or its officers, agents, employees or sub-contractors;
- (b) for fraud or fraudulent misrepresentation; and
- (c) for any other matter in respect of which liability cannot by Applicable Law be excluded or limited.

5.2 Subject to clause 5.1, neither Party shall have any liability whatsoever to the other under this Data Sharing Agreement, whether arising from tort (including negligence), breach of contract or otherwise.

## 6. TERMINATION

### Rights to terminate

6.1 This Data Sharing Agreement will continue until terminated under this clause 6.

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- 6.2 Either Party may terminate this Data Sharing Agreement on three (3) months' prior written notice to the other Party.
- 6.3 Subject to clause 6.4, OBL may terminate this Data Sharing Agreement with immediate effect by giving the Data Provider notice if the Data Provider has breached clauses 2.14, 2.15, 3, 4.4, or 4.5.
- 6.4 If the breach referred to in clause 6.3 is capable of remedy in OBL's sole discretion, acting reasonably, the Data Provider will have 5 Business Days or other mutually agreed period to remedy the breach or contest the proposed breach. If the Data Provider in breach has not remedied the breach within this time or satisfied OBL that there has not been a breach, OBL may terminate this Data Sharing Agreement with immediate effect by giving the Data Provider notice.

## Consequences of termination

- 6.5 Termination will not affect any rights and/or obligations of a Party which have accrued before or arise out of or in connection with the period before such termination takes effect, or any provision of this Data Sharing Agreement which expressly or by implication is intended to come into effect or to continue in effect on or after such termination has commenced.
- 6.6 Any provision of this Data Sharing Agreement that expressly or by implication is intended to come into or continue in force on or after the termination or expiry of this Data Sharing Agreement will continue in full force and effect including clauses 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.14, 2.15, 3, 4, 5, 6.5, this clause 6.6, 7.1-7.7 and 7.9-7.11.

## 7. GENERAL

- 7.1 **Relationship of the parties:** Nothing in this Data Sharing Agreement constitutes a partnership between the Parties to it or constitutes either as agent of the other for any purpose whatever and neither Party has authority or power to bind the other or to contract in the name of or create liability against the other in any way or for any purpose.
- 7.2 **Waiver:** No failure or delay by a Party to exercise any right or remedy provided under this Data Sharing 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. A waiver of a breach of this Data Sharing Agreement does not constitute a waiver of a subsequent or prior breach of this Data Sharing Agreement.
- 7.3 **Severability:** If any provision or part-provision of this Data Sharing Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed to be deleted, but that shall not affect the validity and enforceability of the rest of the provision or of this Data Sharing Agreement.
- 7.4 **Rights of third parties:** Nothing in this Data Sharing Agreement confers any benefit on, or is enforceable by, any person who is not a Party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 7.5 **Entire Agreement:**
  - (a) This Data Sharing Agreement constitutes the entire agreement between the Parties.



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- (b) Each Party acknowledges that in entering into this Data Sharing Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Data Sharing Agreement.

## 7.6 **Governing law and jurisdiction:**

This Data Sharing 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 English law. Each Party irrevocably submits to the exclusive jurisdiction of the English courts to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Data Sharing Agreement or its subject matter or formation.

## 7.7 **Assignment and sub-contracting:**

- (a) With the prior consent of OBL (such consent to be provided by OBL in its sole discretion and subject to any applicable restrictions), the Data Provider may sub-licence and/or sub-contract the performance of any of its obligations and/or the exercise of any of its rights under the Data Sharing Agreement to any third party.
- (b) The Data Provider will be responsible for all acts and omissions of its sub-contractors (including any sub-sub-contractors) as if they were its own.
- (c) OBL may sub-contract or novate the performance of any of its obligations and/or the exercise of any of its rights under the Data Sharing Agreement to any legal person that is a successor of OBL.

7.8 **Further Assurance:** Each Party will, at the request of the other Party and at its own cost, do (or procure others to do) everything necessary to give the other Party the full benefit of this Data Sharing Agreement.

7.9 **Force Majeure:** Neither Party will be in breach of this Data Sharing Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Data Sharing Agreement if such delay or failure results 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.

## 7.10 **Notices:**

- (a) All notices to be given under this Data Sharing Agreement will be given by email to the nominated contact provided to OBL by the Data Provider, in the case of the Data Provider, and to [openbankingengagement@openbanking.org.uk](mailto:openbankingengagement@openbanking.org.uk), in the case of OBL.
- (b) Any notice will be deemed to have been received at 9.00am UK-time on the next Business Day after transmission to the correct address in accordance with clause 7.10(a) above.
- (c) Any consent must be provided in accordance with this clause 7.10 and the same rules on deemed receipt apply.

7.11 **Variation:** OBL may vary the terms of this Data Sharing Agreement from time to time by giving the Data Provider a minimum of three (3) months' notice (variations to the template is subject, separately, to clause 2.2). If the Data Provider objects to any such variation, it may terminate the Data Sharing Agreement on not less than two (2) weeks' notice, termination to take effect at the end of the three (3) months' notice period.