

Data sharing agreement – Introduction

The recent Creative Scotland research into [Touring Theatre and Dance in Scotland](#) identified a need to improve understanding of audience data. The General Data Protection Regulations that came into force in 2018 are intended to prevent the sharing of personal data - for instance the fact that you bought a ticket – without the active consent of the person who owns the data. This means that venues and companies need to work together to ensure that they can demonstrate that they have received consent for any sharing or processing of data.

This agreement has been prepared to help venues and companies, by providing a template data-sharing agreement which has been checked for legal compliance. The following contract has been approved by Dentons and will be reviewed annually, in January. In order to remain compliant with the GDPR requirements, this contract has to be used **in its entirety**.

You will need to have this agreement in place if:

1. You are a touring company and you would like to communicate with the venue's audiences directly
2. You are a touring company and you would like to have access to the ticketing/CRM system of a venue, anecdotal data or desk research before/and after a show.
3. You are a venue and you want to share audience data, ticketing, CRM information, anecdotal data or desk research with a touring company.

To be able to share data venues must provide an option for audience to tick 'I agree to receive information from Visiting Companies' or, if your box office system allows for it 'I agree to receive information from Company X'. For purchases directly from the box office, the audience members should be asked this question over the phone/counter and you should have systems to allow for this answer being recorded when the tickets are bought. The question will have to specify which types of communication the person is consenting to, i.e. post/email/phone.

Please note that the presenting venue must not use the 'soft' or 'assumed' opt-in exception permitted under the Privacy and Electronic Communications Regulations 2003 because this would prevent the sharing of any data with the touring company.

You will notice that point 2.6 of the agreement below refers to the ICO registration number both of the VENUE and the TOURING COMPANY. To check whether you're required to have an ICO you can fill in the self-assessment which can be found on [ICO's website](#).

Our thanks go to the National Theatre of Scotland and to Dentons for their permission to reproduce and share this free resource.

Data sharing – useful links:

The **Information Commissioner's Office** has a lot of information available on their website, including:

- [Guide to the General Data Protection Regulation](#).
- PECR (Privacy and Electronic Communications Regulations) information, [including electronic mail marketing](#), [using cookies and similar technology](#) and [using marketing lists](#).

Culture Republic have created a GDPR resource hub specifically for the cultural sector. It includes downloadable audit packs and a range of articles looking at the impact of GDPR, for example anonymisation of data and the way it affects analysis of rural postcodes. Visit the [Culture Republic website](#) to find out more.

The Audience Agency has produced a free sample data management policy structure document that sets out a staged approach to working through the key areas that you need to consider and documenting them. It is available to download as a word document from the [Audience Agency website](#).

The Data Protection Network website has published a series of news articles and updates, [visit their website here](#).

DATA SHARING AGREEMENT

This is an agreement that sets out the terms and conditions under which personal data or other information held by one Party to this Agreement, may be shared by that Party with another Party to the Agreement whether for processing or other legitimate reasons. This agreement is entered into with the purpose of ensuring compliance with the EU General Data Protection Regulation ('GDPR') (Regulation (EU) 2016/679), the Data Protection Act 2018 and all other applicable Data Protection Laws.

The Parties

This Agreement is between

[insert name and address of venue] (the "Venue")

and

[insert name and address of the Touring Company]

Together being the '**Parties**' or an individual '**Party**'.

Unless defined in the clauses below, the definitions of key terms used in this Agreement are contained in Appendix A.

1 Purpose

- 1.1 The purpose of the Agreement is to facilitate data sharing between the Parties for: (1) internal research and analysis; and (2) (where permitted under Data Protection Laws) direct marketing (the '**Purpose**'). To avoid any doubt direct marketing shall only be permitted by the receiving Party where appropriate consents have been obtained which permit such direct marketing.
- 1.2 The Parties agree that any sharing and use of data under or in connection with this Agreement must at all times comply with Data Protection Laws. Without prejudice to the foregoing each Party shall ensure that it has lawful grounds under Data Protection Laws to share and process the Data.

2 General principles of data sharing

- 2.1 The parties will share the data they collect through their sales channels ('**Data**'), in projects where they have a co-producing or a venue/visiting company relationship.
- 2.2 The Parties each agree that the Data is being shared on a controller to controller basis and each Party will be an independent data controller of personal data they receive from each other. To avoid any doubt nothing in this Agreement is intended to establish the Parties as joint controllers and each Party shall, at all times, comply with their obligations as a controller

under Data Protection Laws, whether in respect of personal data shared or received. Such obligations shall include appropriately storing the Data such that the origins of the Data, the lawful basis for processing the Data and any consents or conditions relating to the processing of the Data are clearly recorded by the controller. Furthermore each Party shall be separately responsible for its processing and for informing data subjects of the processing purposes in respect of all personal data which they hold (including by providing an appropriate privacy notice in compliance with Articles 13 and 14 of the GDPR).

- 2.3 Each Party will ask each customer whether that customer agrees to receive direct marketing communications from the other Party at the point of sale (online, in person and on the telephone). The exact question will be agreed jointly on a case by case basis. The other Party shall only be entitled to direct market the customer where consent has been given and always in accordance with the scope of the consent.
- 2.4 The Data, including personal data, to be provided is that which is set out in **Appendix B**.
- 2.5 Each Party agrees to provide the other Party with any relevant Data required for the Purpose.
- 2.6 Notification with the Information Commissioner's Office: each Party shall ensure that it is registered as a data controller with the ICO (and has paid the required fee).
VENUE ICO Registration Number:
Touring Company ICO Registration Number:

3 Use, Disclosure and Publication

- 3.1 Each Party agrees that the Data will be used and shared solely for the Purpose.
- 3.2 Each Party agrees that: (1) the Data shall not at any time be copied, broadcast or disseminated to any third parties, except in accordance with this Agreement; and (2) the Data will not be disclosed to any third Party without the written consent of the relevant controller. Without prejudice to the generality of the foregoing the recipient may disclose the Data to a third party marketing service provider, subject always to such transfer being in compliance with Data Protection Laws.
- 3.3 The only exceptions to clauses 3.1 and 3.2 above will be where any Party is required to give evidence in legal proceedings but the disclosing Party shall notify the other Party promptly upon receiving a request under such legal proceedings unless notification is not permitted under applicable law.
- 3.4 Access to the Data will be restricted to only those employees of each Party that have a need to access the Data in connection with the Purpose and in the course of their employment.
- 3.5 No Data supplied by either Party will be transferred to a country outside the European Economic Area (EEA) by the receiving Party without gaining the agreement of the disclosing Party and any such transfer shall be subject to ensuring compliance with Data Protection Laws.

- 3.6 On reasonable notice and at reasonable times, periodic audits may be conducted by either Party's Data Protection Officer (or equivalent) to confirm compliance with Data Protection Laws. The Party being audited will provide all reasonably requested information to demonstrate compliance.
- 3.7 The recipient of Data shared by the other Party shall only retain and process the Data for so long as it necessary for the Purpose and shall thereafter (at the discretion of the disclosing Party) return or destroy the Data in a manner compliant with Data Protection Laws.
- 3.8 If the Data recipient intends to process the Data for the purposes of direct marketing, that Party shall ensure that:
 - 3.8.1 the appropriate level consent has been obtained from the relevant data subjects to allow the Data to be used for the purposes of direct marketing in compliance with the Data Protection Laws; and
 - 3.8.2 effective procedures are in place to allow the data subject to "opt-out" from having their personal data used for such direct marketing purposes.

4 Confidentiality

- 4.1 Neither Party shall disclose or communicate to any third party (other than those who need to know the same for the Purpose) any Data which has been shared with them under this Agreement, which they shall treat as private and confidential and safeguard accordingly. Furthermore personal data shared under this Agreement shall not be disclosed to any third party without the prior written consent of the Party who shared the personal data.
- 4.2 For the avoidance of doubt, the obligations of confidentiality imposed on the Parties by this Agreement shall continue in full force and effect to all Parties after the expiry or termination of this Agreement.
- 4.3 The Parties agree that respect for the privacy of data subjects should be guaranteed in any project requiring the use of personal data.

5 Security

- 5.1 Each Party shall implement appropriate technical and organisational measures (compliant with the requirements of Articles 5 and 32 of the GDPR) to ensure that personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures. The foregoing may include, where reasonably appropriate, the pseudonymisation and encryption of personal data. In particular, the Parties shall ensure that measures are in place to do everything reasonable to:
 - 5.1.1 make accidental compromise or damage unlikely during storage handling, use, sharing, transmission or transport;

5.1.2 deter deliberate compromise or opportunist attack, and

5.1.3 promote discretion in order to avoid unauthorised access.

5.2 Data will be shared between the Parties using the following procedures:

5.2.1 DISCUSS WITH VENUE

5.3 Each Party will store the Data in whatever format received securely whilst it is being used and when it is not in use. This refers to the Data in both electronic and paper formats and to any USB sticks or drives containing the Data.

5.4 Any security incidents, breaches and newly identified vulnerabilities must be communicated between the Parties at the earliest opportunity. Where one Party shares Data with another Party, the recipient shall provide the disclosing Party with all reasonable assistance required to enable the disclosing Party to comply with their obligations under Data Protection Laws, including without limitation with respect to the data subject rights and dealings with the Information Commissioner's Office.

6 Indemnity and liability

6.1 In consideration of sharing of the Data for the Purpose, each Party (as recipient of Data) undertakes to indemnify the other Party (as discloser of Data) against any loss (of whatever nature), damages, charges, expenses and liability, which may be suffered or incurred by the disclosing Party as a result of the recipient Party's breach of this Agreement.

6.2 Provided that this indemnity shall not apply:

6.2.1 where the liability arises from Data supplied by the Party seeking to rely upon the indemnity which is shown to have been incomplete or incorrect;

6.2.2 where the liability arises in connection with the Data supplied by the Party seeking to rely upon the indemnity having been supplied in contravention of Data Protection Laws;

6.2.3 unless the Party claiming the benefit of the indemnity: (1) notifies the other Party as soon as possible of any action, claim or demand to which this indemnity applies; (2) permits the other Party to defend or otherwise deal with the action, claim or demand by settlement or otherwise; and (3) provides reasonable assistance to the other Party to enable the defence or settlement of the action, claim or demand;

6.2.4 to the extent that the Party claiming the benefit of this indemnity makes any admission which may be prejudicial to the defence or settlement of the action, claim or demand.

6.3 Neither Party shall be liable for loss of revenue, loss of profits, loss of business or opportunity, damage to reputation or goodwill or for any indirect or consequential losses of whatever nature, whether arising in contract, delict (including negligence) or otherwise.

- 6.4 Nothing in this Agreement shall limit or exclude liability for fraud or fraudulent misrepresentation, death or personal injury arising from negligence or for any matter for which it would be unlawful for the Parties to limit or exclude liability.

7 Disputes and Governing Law

- 7.1 If any dispute arises out of or in connection with this Agreement the Parties will attempt in good faith to settle it by negotiation. If the Parties are unable to settle any dispute by negotiation within twenty-eight (28) days, the Parties will attempt to settle it by mediation in accordance with the Acas Model Mediation Procedure. If the Parties fail to agree within 60 days of the initiation of the alternative dispute resolution procedure, then the Parties shall be at liberty to commence litigation.
- 7.2 This agreement shall be governed by and construed in accordance with Scottish Law and the Parties hereby submit to the exclusive jurisdiction of the Scottish Courts.

8 Termination and Variation

- 8.1 This agreement shall commence upon the last date of signing and shall continue, unless and until terminated in accordance with the terms of this Agreement.
- 8.2 A Party may terminate this Agreement by the giving of 3 months written notice to the other Party.
- 8.3 Should one Party be in material breach of this Agreement then the other Party terminate this Agreement, with thirty (30) days prior written notice subject to: (1) prior consideration being given under clause 7.1; and (2) the defaulting Party being given the opportunity to remedy the breach (where capable of being remedied) during the foregoing notice period.
- 8.4 Upon termination of this Agreement or of a Party to this Agreement the Parties shall continue to ensure compliance with Data Protection Laws.
- 8.5 In the event that any Party wishes to vary any term of this Agreement, that Party will give notice, in writing to the offices of the other Party, explaining the effect of and reason for the proposed variation. The Parties shall within 30 days of receipt of such a notice meet to discuss the variation.
- 8.6 All Parties must agree in writing to any proposed variation to this Agreement.

9 Relationship between the Parties

- 9.1 Each Party shall give reasonable assistance as is necessary to the other in order to enable that Party to:
- 9.1.1 Comply with request for subject access from the data subjects or to a freedom of information request;

9.1.2 Respond to information notices served upon it by the Information Commissioner's Office;

9.1.3 Respond to complaints from data subjects;

9.1.4 Investigate any data security breach or alleged breach

in accordance with the statutory obligations under Data Protection Laws.

9.2 Under the GDPR data subjects have a right of access to information held about them. The receipt by one Party of any subject access request to access personal data covered by this Agreement must be reported at the earliest opportunity to the relevant Data Protection Officer or other such nominated officer representing the other Party.

9.3 The Parties shall agree between themselves which Party shall take responsibility and arrange the relevant response to that request.

10 General

10.1 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.

10.2 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, 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.

10.3 Changes to the applicable law: If during the term the Data Protection Laws change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties will negotiate in good faith to review the Agreement in the light of the new law.

10.4 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.

10.5 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

10.6 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 time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

10.7 Notice: Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service. 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.

This Agreement consisting of this and the preceding 6 pages and the Appendices is executed as follows:

Subscribed for and on behalf of the Venue

By (name/title):

Location:

Date:

And by (name/title):

Subscribed for and on behalf of

the Touring Company

By (name/title):

Location:

Date:

And by (name/title):

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Appendix A – Definitions

The principal terms used in this Agreement are based upon the definitions laid out in Article 4 of the EU General Data Protection Regulation (GDPR), including:

‘personal data’ means any information relating to an identified or identifiable natural person (**‘data subject’**); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, 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.

‘data controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

‘data subject’ means an identified or identifiable person.

‘third party’ means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data.

‘consent’ of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

For the purposes of this Agreement "**Data Protection Laws**" means: (i) the General Data Protection Regulation (EU) 2016/679 and any law which implements, supplements, relates to or replaces it; (ii) the European Privacy and Electronic Communications Directive (Directive 2002/58/EC), including, in each case, any laws applicable to the processing of personal data that relates to or promulgate the same into national law together with any other applicable data privacy or data protection laws or regulations and associated binding judgments of any competent tribunal, regulatory body, or court of law in the United Kingdom, including without limitation the Data Protection Act 2018.

Appendix B – Types of data to be shared

1. Personal data for bookers including:

Unique customer ID

prefix

fname

mname

lname

suffix

street1

street2

street3

city

county

postal_code

phone1

eaddress

Age

[Data protection Post]

[Data protection e-mail]

Show name

Performance Date

Price Type (standard, student...)

Zone

Seats

Amount

Mode of Sale (phone, online...)

Order Date

Order Number

special category personal data (as defined in the GDPR) shall not be shared between the Parties.

2. Any other data as agreed in advance by Venue and the Touring Company.