SAMPLE BILATERAL AGREEMENT TYPE A – GDPR Clauses

Variation to Agreement between (insert name **Society A)** and (insert name **Society B**) made on (date of original agreement).

RECITALS

The provisions of the Regulation 2016/679, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR) entered into force in the European Union on 25th May 2018.

As that Regulation is fully applicable to all RROs located within the European Union (EU) or within the European Economic Area (EEA), the parties have agreed to amend their agreement to clarify their obligations and responsibilities regarding the handling and processing of personal data.

AGREEMENT

1. The following clause is inserted after clause 6, Covenants.

    6a. DATA PROTECTION

    1. (a)Each RRO shall at its own costs take all necessary measures to be compliant with the provisions of the GDPR and of any applicable laws or regulations governing the processing of personal data, in its performance of this Agreement.

    Optional clause 1(b) ALTERNATIVELY to be replaced by a different provision on the Parties respective liability for breach of the GDPR

    1.(b) As a consequence, each RRO is liable to the other for any consequence of a failure to comply with the GDPR and/or the applicable data protection laws.

    2. Each RRO is to be regarded as an independent data controller within the meaning of the GDPR when they process personal data for their own purposes in the field of their activities. This applies to the exchange of personal data from one RRO to the other in the performance of this Agreement.

    3. Each RRO acknowledges the importance of complying with the GDPR and each RRO warrants that they have:

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(i)	carefully assessed whether and to what extent the provisions of the GDPR apply to its operations and;	
(ii)	taken all necessary steps to comply with the provisions of the GDPR where required. In any event, national laws which are still applicable under the GDPR continue to apply to this Agreement and each party will also comply with these national laws.	

Optional Clause 4: For the situation in which one of the RROs is located outside the EU/EEA, but in a country benefiting from an adequacy decision

4. In the event either RRO is located outside the EU/EEA and processes personal data from a data subject resident in the European Union for the offering of goods or services or for the monitoring of their behavior, or otherwise falls under the scope of Article 3 of the GDPR, the RRO agrees that the provisions of the GDPR shall be fully applicable to that RRO's operations and that Clauses 1 to 3 above equally apply.

Optional Clauses 5 – 8: for the situation in which one of the RROs is located outside the EU/EEA and outside a country benefitting from an adequacy decision

5. In the event either RRO transfers personal data within the meaning of article 44 of the GDPR to the other RRO, the parties agree and undertake to enter into Standard Contractual Clauses from the EU Commission, Decision 2004/915/EC, which is Annex 1 to this Agreement.

6. Annex 1 shall apply to all data transfers between the RROs and replaces and supersedes any previous contractual provisions regarding transfers of personal data between the RROs.

7. Each RRO transferring personal data shall, at its own cost, file the executed version of the Standard Contractual Clauses with the competent data protection authority.

8. The RRO located outside EU/EEA and outside a country benefiting from an adequacy decision acknowledges and agrees that it will indemnify the other RRO located within the EU/EEA of the consequences of any major infringement of any provisions of Chapter 2 or Chapter 3 of the GDPR that arises as a consequence of a wrongdoing or gross negligence of that RRO.

2. The parties agree to delete subparagraph 7 of clause 6, Covenants.