

Privacy Innovation and Knowledge-Sharing (“Pink”) Sandbox

Participant Terms and Conditions

1. Scope

1.1 In consideration of the mutual obligations of the parties set out under these Terms and Conditions, the parties agree to be bound by these Terms and Conditions, including stipulations stated in the engagement letter.

1.2 The support offered by the the Office of the Privacy Commissioner for Bermuda (“us”, “we”, “our”), to you, the organisation which is participating in the Pink Sandbox (“you”, “your”, or “participant”) through the sandbox is solely in relation to the proposition for an innovative product or services, outlined in your application (the “Product or Service”).

1.3 We will use our reasonable skill and care in providing our feedback, guidance, any document, or other advice (“Comment”). Unless we expressly state otherwise, our Comment will be based on the specific information that you share with us and our understanding of the Personal Information Protection Act 2016 (“PIPA”) law and guidance in force at the time. Only specific privacy issues related to PIPA are open to Comment through the Pink Sandbox.

1.4 Our Comment will not be a full examination or audit and will not identify all of the risks associated with the Product or Service, your activities, or all possible areas of non-compliance. This remains the case even if we raise issues that you have not expressly brought to our attention.

1.5 You and we agree to co-operate to help you and us get the most out of your participation in the Pink Sandbox. You agree to remain open and transparent with us at all times in relation to the Product or Service including before, during, and after your time in the sandbox. If you are aware of any information that you believe would affect our position, you must inform us immediately.

1.6 You agree that you remain responsible for your compliance, and your Product or Service’s compliance, with all legal and regulatory obligations, whether in respect of PIPA or otherwise.

1.7 You are not required to comply with the Comment, and you are always free to take your own independent legal advice. Of course, if you choose not to follow our Comment, we may discontinue the engagement, and you might be acting in breach of PIPA. Therefore, you may not be protected by any statement of regulatory comfort.

1.8 The Comment is to you only and is specific to your circumstances. It must not be shared with any other party (either in part or in full) without our express written permission. This does not prevent you from disclosing the Comment to your employees, agents, consultants, advisors, representatives or sub-contractors, provided that they are subject to obligations to maintain the confidentiality of the advice and not to disclose it to third parties, and that the Comment is only used for the purposes of advising or assisting you.

1.9 Any Comment is given without prejudice to any decision or action that we may take in the future, including any enforcement or other regulatory action. The positions reflected in the Comment may change over time, for example on receipt of further information by us, or following a change in law, court judgments, regulatory guidance or policy.

1.10 Engagement via the Pink Sandbox does not prevent regulatory action by us or by any other regulatory body or authority. The Comment does not affect rights conferred on third parties (such as your customers), nor does it bind any courts.

1.11 If you are engaging in the Pink Sandbox on behalf of a group, you and we acknowledge that you are acting as a lead organisation, and the development of the Product or Service is shared among the persons and organisations listed according to clause 1.12. You acknowledge and agree that our relationship in relation to the Pink Sandbox is only with you. You agree to indemnify us from and against any claim or complaint brought by a third party, including those listed below, under or in relation to these Terms and Conditions or your engagement in the Pink Sandbox.

1.12 A list of persons and organisations you are working with on the Product or Service shall be included as an appendix, with name, address, and company number (if applicable).

2. Pink Sandbox safeguards

2.1 We may require safeguards to be built into the Pink Sandbox to protect the rights of individuals. For example, you may need to provide disclosures and protections to individuals, and may be required to have arrangements to compensate individuals for any losses suffered in connection with particular tests. We will determine the appropriate safeguards on a case-by-case basis, considering your Pink Sandbox activities. If you choose not to implement such safeguards or protections, we may discontinue the engagement, and you might be acting in breach of PIPA. Therefore, you may not be protected by any statement of regulatory comfort.

3. The scope of our role in the Pink Sandbox

3.1 We will use reasonable care in our dealings with you in relation to the Pink Sandbox and your Product or Service. However, given the nature of the Pink Sandbox and of our Comment (and subject to clause 3.2), we do not accept any liability or responsibility for: (i) any opinions expressed or information included in any of our Comment, (ii) the time it may take for us to provide any Comment, and/or (iii) any other liability under or in relation to the Pink Sandbox, your Product or Service, and/or these Terms and Conditions, whether in contract, tort (including negligence), or otherwise.

3.2 Nothing in these Terms and Conditions seeks to limit our liability in any way which is not permitted by law, including our liability to you for fraud or fraudulent misrepresentation.

4. Overview of the engagement process

4.1 The Pink Sandbox engagement process is flexible and is not designed to be a ‘one size fits all’ solution. We understand that each participant’s journey through the Pink Sandbox will be unique, depending on the specific options used, the solution being tested and the extent of individuals’ involvement. As an early step, you and we will agree on the scope of the engagement, including details such as frequency of communications and meetings.

4.2 We will collaborate and agree an approach for your journey through the Pink Sandbox (the “Pink Sandbox Plan”), which may specify testing parameters, measures for outcomes, reporting requirements, safeguards, timescales, milestones and term of the Pink Sandbox. You must fully comply with your obligations set out in the Pink Sandbox Plan. We will monitor your performance against the Pink Sandbox Plan through regular review meetings, during which you will need to demonstrate, to our reasonable satisfaction, that you are on course to fulfil all of the requirements

set out in the Pink Sandbox Plan, by the applicable dates. As you progress through the Pink Sandbox, we may from time to time, ask you to comply with further obligations which we reasonably consider to be necessary, which you must fulfil, in addition to the requirements set out in your Pink Sandbox Plan.

4.3 As part of the Pink Sandbox Plan, you will be required to develop and obtain our approval for an exit plan to ensure the Pink Sandbox can be closed down at any point whilst minimising the potential detriment to individuals (the “Exit Plan”).

5. Term of the Pink Sandbox

5.1 Unless extended by us, or terminated in accordance with these Terms and Conditions, your involvement in the Pink Sandbox terminates on the expiry of the agreed term under the Pink Sandbox Plan. If we cease to operate the Pink Sandbox, your participation in the Pink Sandbox will automatically cease with immediate effect.

5.2 If you have not completed all of your required obligations in the Pink Sandbox Plan by the end of the relevant term of your Pink Sandbox Plan, we may, acting entirely in our discretion, either grant you an extension to your term in the Pink Sandbox or terminate your involvement in the Pink Sandbox.

Furthermore, if at any time during your participation in the Pink Sandbox, we consider that you are not engaging with us in a sufficiently cooperative or collaborative manner, then we may, acting entirely in our discretion, and without prejudice to our other rights and remedies, temporarily suspend your involvement in the Pink Sandbox (for a period which we deem to be necessary) until we are satisfied that you have sufficiently addressed such concerns. However, when considering what action to take under this clause, we will always act reasonably and will take into account any extenuating circumstances which may have delayed or otherwise affected your progress within the Pink Sandbox.

5.3 Either you or we may at any time, without cause, on two (2) week’s written notice, terminate your involvement in the Pink Sandbox.

5.4 We may at any time terminate, with immediate effect, your involvement in the Pink Sandbox and cease providing Comment and any other regulatory support if: (i) there is a conflict of interest as defined in clause 10; (ii) you commit a material or repeated breach of the Pink Sandbox Plan or these Terms and Conditions, which is not capable of remedy; or (iii) we (acting reasonably) determine that your conduct, either in the course of or outside of the Pink Sandbox, is contrary to the public interest or is likely to bring us into disrepute, or is otherwise deemed by us to be contrary to the nature of the Pink Sandbox (including where in our opinion you consciously withhold information from us where you should reasonably have disclosed it, or where you take material action concerning the Product or Service without informing or involving us, or where you otherwise act in a manner which we deem to be inappropriate).

5.5 As we may request, you must carry out and adhere to your Exit Plan upon the termination of the Pink Sandbox, either at the expiry of the agreed term or upon earlier termination however arising.

5.5 You acknowledge that due to the highly innovative nature of the Pink Sandbox, we are entitled to suspend or terminate the Pink Sandbox project at any time should the Pink Sandbox trigger detrimental unexpected consequences for us, you, or individuals.

6. Intellectual property

6.1 You will retain your intellectual property rights in, and responsibility for, all content and materials that you contribute to the Pink Sandbox, which either (i) already exist at the start of your involvement with the Pink Sandbox project; or (ii) are otherwise developed by you outside of the Pink Sandbox (“Existing Intellectual Property”). You will only submit Existing Intellectual Property that you have the right to share, use, and develop, and you will fully comply with any third party licenses relating to the Existing Intellectual Property.

6.2 All intellectual property rights obtained, created or developed by you during your participation in the Pink Sandbox relating to your Product or Service (“New Intellectual Property”) will vest in you, subject to any contrary agreement you may have with a third party.

6.3 We may use Existing Intellectual Property and New Intellectual Property as is reasonable to enable us to exercise our rights and perform our functions or obligations in connection with the Pink Sandbox (the “Use”), and you grant or must procure the grant of royalty-free and non-exclusive licences to us, for the Use of the Existing Intellectual Property and the New Intellectual Property.

6.4 You warrant and undertake to ensure that the Use by us of any Existing Intellectual Property and/or New Intellectual Property will not infringe the rights of any third party.

6.5 You agree to defend, indemnify, and hold us harmless from and against any liability or loss (including, without limitation, any legal costs) incurred by us as a result of, or in connection with, our Use of Existing Intellectual Property and New Intellectual Property, save where such liability or loss is incurred because of our fault or wilful misconduct arising as a result of our Use of Existing Intellectual Property and New Intellectual Property.

7. Confidentiality

7.1 You must clearly identify to us, in writing, which information you provide to us you consider to be your confidential information and provide clear reasons why you regard such information to be confidential (“your confidential information”). We will protect your confidential information as we do our own commercially sensitive information.

7.2 During the term of the Pink Sandbox and for so long as your confidential information remains confidential in nature and not available to the public, we will not use or disclose your confidential information without your prior written consent: (i) other than to provide Comment or other support in connection with the Pink Sandbox or to fulfil any of our functions or obligations, including as set out in this clause 7; and/or (ii) unless permitted or required to do so by law, statutory directions, court orders or government regulations; and/or (iii) unless otherwise permitted under these Terms and Conditions.

7.3 We may use information obtained from you (including your confidential information) to help develop and provide guidance, policies and resources (on an anonymised basis) to the public.

7.4 We may disclose your confidential information to such of our employees, agents, consultants, advisors or representatives to the extent that such disclosure is reasonable in relation to the Pink Sandbox, including for us to provide Comment, and for the purposes set out in this clause 7, provided always that such employees, agents, consultants, advisors or representatives are made aware of and comply with the obligations of confidentiality under these Terms and Conditions.

7.5 We may disclose any information received from or relating to you, including your confidential information, to any regulator or public body in Bermuda or elsewhere, where such disclosure by us is made for the purposes of: (a) verifying any claim made by you when applying for the Pink Sandbox; (b) facilitating the performance of our functions; (c) complying with any specific legal or regulatory obligation; (d) or at our discretion as described in PIPA Section 34.

7.6 We are bound by the Public Access To Information (PATI) Act 2010 and as such can be asked to disclose certain information that we hold, which could include information which you give to us concerning you and/or your involvement in the Pink Sandbox. We will endeavour to let you know if we are asked to share any information that relates to you and will seek to apply relevant exemptions from disclosure where appropriate.

7.7 Should you receive any confidential information belonging to us, you will keep that information confidential and only use it for the purpose for which it was provided to you. You will protect that confidential information as you do your own confidential information. At any time, at our request you shall securely return or securely destroy our confidential information in your possession or control. Secure destruction consists of a good faith effort, and copies of confidential information that may be retained which have been created pursuant to your automatic archiving and back-up procedures may not necessary be considered a breach of this clause 7.7. You may retain information as may be required by your document retention policies or by applicable law, provided that such confidential information shall remain subject to the continuing obligation of confidentiality under these Terms and Conditions. The obligations in this clause 7.7 shall continue during the term of the Pink Sandbox and for so long afterwards as that confidential information remains confidential in nature and not available to the public.

8. Communications relating to the Pink Sandbox

8.1 A condition of your participation in the Pink Sandbox is that each party provides consent to make public that you are participating in the Pink Sandbox along with a short description of your proposition. We will consult with you on the short description we use ahead of publication.

8.2 We may also at our discretion make public anonymised, aggregated information on the Pink Sandbox and its participants.

8.3 Your involvement in the Pink Sandbox does not represent an approval or endorsement by us of you or your Product or Service. Neither you nor anyone acting on your behalf may make any statement or announcement, either expressly or by implication, that suggests that we have approved, endorsed, or otherwise accepted that you or your Product or Service complies with regulatory requirements as a result of your involvement.

8.4 Your organisation is not permitted to publicise or communicate to any third party the contents of a Comment or opinion that you received from us, without our express written and specific consent. This includes, but is not limited to, communications to any organisation, media outlet, existing or future customers, and individuals. You may share Comments or opinions in accordance with section 1.8, such as for the purpose of taking your own independent legal advice.

8.5 Following your exit from the Pink Sandbox, whenever or howsoever arising, we reserve the right to publish a statement or report, including on our website, summarising your involvement in the Pink Sandbox, including the outcomes of your time in the Pink Sandbox. Where reasonably possible, we will seek your input on the drafting of this statement and/or report and will seek to take such

input into account, but for the avoidance of doubt, we retain the right, acting entirely in our own discretion, to publish the statement and/or report and to determine its contents, as well as a right to determine timescales for its publication.

9. Privacy and protection of personal information

9.1 Except for business contact information, and unless otherwise agreed, any personal information provided to us as part of your participation in the Pink Sandbox will be processed by us in line with our privacy notice.

9.2 You are responsible for providing a copy of our privacy notice to any employees or other Individuals whose personal information you share with us during your participation in the Pink Sandbox.

9.3 Given that we will only be processing minimal amounts of business-related personal information in relation to your time in the Pink Sandbox, we do not at this stage deem it necessary to enter into a separate data sharing agreement with you. However, you must ensure that any transfer of personal information is completed in compliance with applicable law (including PIPA or other applicable data protection laws).

9.4 We will implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including from unauthorised or unlawful processing of personal information, or accidental loss or destruction of, or damage to, that personal information, and will process all personal information received from you in compliance with the provisions and principles set out in relevant laws.

9.5 You acknowledge and agree that your participation in the Pink Sandbox does not affect your responsibility or liability if personal information or data is corrupted, damaged or improperly used or disclosed by you in the course of the Pink Sandbox.

10. Conflict of Interest

10.1 You acknowledge and undertake to discuss at the application stage, and as and when one may arise, any actual or potential conflict of interest (“conflict of interest”). Such a conflict of interest may arise, for example, from any connections or associations that you or any of your employees may have with individuals working with or for us, which may include:

- a) spouses, partners, children, parents or other relatives;
- b) business partners, employees, managers or directors; and/or
- c) any of our former staff members who is employed by you, appointed to your board, or who has a substantial interest in you.

10.2 As a parallel internal process, we will declare any potential conflicts of interest with you as soon as reasonably practicable after they become apparent to us.

11. General

11.1 Your involvement in the Pink Sandbox does not create a joint venture, co-ownership, partnership or agency relationship between you and us. Neither you nor we will have the authority to incur, assume, or create, orally or in writing, any liability, obligation, or undertaking of any kind in the name of, or on behalf of, or in any way binding upon, the other.

11.2 We retain the right to amend these Terms and Conditions at any time by giving you reasonable notice in writing.

11.3 General words within these Terms and Conditions must not be given a restrictive meaning simply because they are followed by particular examples intended to be embraced by the general words.

11.4 Only you and we have rights under these Terms and Conditions. A person who is not a party to these Terms and Conditions has no rights to enforce it or enjoy any benefits under it.

11.5 These Terms and Conditions, including the engagement letter, constitute the whole and only agreement between us and you relating to your participation in the Pink Sandbox. You acknowledge that you have not relied on any representation made by or on behalf of us which is not set out in these Terms and Conditions. If there is any conflict between the terms of the Pink Sandbox engagement letter and the terms set out in this document, the terms set out in this document will prevail.

11.6 Remedies under these Terms and Conditions are cumulative and may be exercised concurrently or separately.

11.7 If any provision of the Terms and Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Terms and Conditions without modifying the remaining provisions.

11.8 Any waiver or relaxation, either partly or wholly, of any of the Terms and Conditions shall be valid only if it is communicated to the other in writing and expressly stated to be a waiver, and shall not constitute a waiver of any right or remedy arising from any other breach of the Terms and Conditions.

11.9 Any formal notice to be given under the Terms and Conditions shall be in writing and may be served by personal delivery, first class recorded post, or e-mail to the address of you or us (as applicable) set out in the Pink Sandbox engagement letter, or such other address as you or we have notified to other for formal notices. Notices shall be deemed served on the next working day after delivery. An email shall be deemed delivered when sent unless an error message is received or, where an out of office message is received, on the date the out of office message states the recipient is to return.

11.10 Any matter, claim or dispute arising out of or in connection with these Terms and Conditions, whether contractual or non-contractual, is to be governed by and determined in accordance with Bermuda law. You and we irrevocably submit to the jurisdiction of Bermuda courts.

Representative of _____

Privacy Commissioner for Bermuda

Date: _____

Date: _____