

**MEMORANDUM OF UNDERSTANDING DATED 7 DAY OF SEPTEMBER 2018
BETWEEN**

THE PARTIES

The Minister for the Cabinet Office, 10 Great George Street, Westminster, London, SW1P 3AE
("the Cabinet Office")

AND

Audit Scotland, 102 West Port, Edinburgh, EH3 9DN

BACKGROUND

(A) The Cabinet Office may conduct Data Matching exercises or arrange for them to be conducted on its behalf under part 6 of the Local Audit and Accountability Act 2014 ("LAAA").

(B) Audit Scotland may conduct Data Matching exercises in or with respect to Scotland, or arrange for them to be conducted on its behalf, under Part 2A of the Public Finance and Accountability (Scotland) Act 2000 ("PFA(S)A").

(C) The purpose of this Memorandum is to facilitate Data Matching exercises: by the Cabinet Office through the National Fraud Initiative (referred to hereinafter as the "NFI"); and by Audit Scotland. The NFI has been instrumental in identifying fraud and error and contributes to the prevention and detection of fraud. The Cabinet Office and Audit Scotland are Joint Controllers for the processing of personal data to facilitate Data Matching through the NFI.

(D) Audit Scotland wishes the Cabinet Office to conduct Data Matching exercises on its behalf using the NFI, pursuant to PFA(S)A. In addition, Audit Scotland is a voluntary body Participant in the NFI, pursuant to LAAA. In practice, Data Matching exercises conducted pursuant to this Memorandum by the sub-contractor which the Cabinet Office has engaged for the NFI will be Data Matching exercises under both LAAA and PFA(S)A.

(E) The Cabinet Office and Audit Scotland may disclose information obtained for the purpose of Data Matching and the results of any Data Matching exercise to each other for or in connection with the purpose of assisting in the prevention or detection of fraud, in accordance with paragraph 4 of Schedule 9 to the LAAA and section 26D of the PFA(S)A. The data shared may not be used for the sole purpose of identifying patterns and trends in a person's characteristics or behaviour which suggest the person is likely to commit fraud in the future.

(F) The parties envisage that Data Matching of information from the Participants with that of other Participants and with data obtained as part of the NFI will increase the scope and effectiveness of Data Matching.

(G) The parties are required to have regard to the most recent Code of Data Matching Practice published under the LAAA and the PFA(S)A when conducting Data Matching Exercises.

1. Definitions and Interpretation

Definitions

'Data Matching' means the comparison of sets of data to determine how far they match, including the identification of any patterns and trends.

'GDPR' means General Data Protection Regulation (Regulation (EU) 2016/679).

'Personal Data' has the meaning given in the GDPR.

'Joint Data Controller' has the meaning given in the GDPR.

'DPA' means the Data Protection Act 2018.

'Data Controller' has the meaning given in the DPA.

'Data Processor' has the meaning given in the DPA.

'Data Protection legislation' has the meaning given to it in section 3 of the DPA.

'Fees' means the aggregate fees payable by Audit Scotland to the Cabinet Office for participation in the main NFI exercises. Where Scottish bodies choose to use the flexible matching service then these fees will be recovered direct from the Participants by the Cabinet Office.

'Participants' means those bodies ('mandatory bodies') required to submit data for Data Matching by Audit Scotland or the Cabinet Office as well as those bodies whom Audit Scotland or the Cabinet Office think appropriate to submit data for Data Matching on a voluntary basis ('voluntary bodies').

'Purpose' means the purpose of the Data Matching. In the case of the Cabinet Office, this purpose is for assisting in the prevention and detection of fraud; in the case of Audit Scotland, this purpose is for assisting in the prevention and detection of fraud, assisting in the prevention and detection of offences other than fraud and/or assisting in the apprehension and prosecution of offenders.

'Voluntary bodies' and 'mandatory bodies' have the meanings given in the definition of 'Participants' above.

'Sub-contractor' means the organisation procured by the Cabinet Office as a data processor to process the information on behalf of the Cabinet Office and Audit Scotland for the purpose of Data Matching in the NFI.

Interpretation

The interpretation of this Memorandum shall be subject to the following provisions:

1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

1.3 Headings are included in this Memorandum for ease of reference only and shall not affect the interpretation or construction of this Memorandum.

2. Term

2.1 This Memorandum shall take effect on the date given at the start of the Memorandum and shall continue in force and effect until terminated in accordance with this Memorandum, or otherwise lawfully terminated.

2.2 The terms of this Memorandum, including the Fees, shall be kept under review by the Cabinet Office and Audit Scotland. Any variations shall be agreed between the parties in writing.

3. Obligations of Audit Scotland

3.1 Audit Scotland shall arrange for all data it requires to be matched, or thinks appropriate to be matched voluntarily, to be submitted by the Participants directly to the Cabinet Office's subcontractor, as directed by the Cabinet Office from time to time. For the purposes of LAAA, this data is, nonetheless considered to be provided to the Cabinet Office by Audit Scotland. Data shall be submitted electronically via a secure encrypted website.

3.2 Audit Scotland shall, and shall take reasonable steps to ensure that the Participants shall, undertake such preparatory work as is requested by the Cabinet Office prior to submitting data for Data Matching to the NFI.

3.3 Audit Scotland shall take reasonable steps to ensure that data submitted for Data Matching complies with the data specifications issued by the Cabinet Office for the data matching exercise, and acknowledges that the Cabinet Office and its subcontractor may liaise directly with Participants, if necessary, regarding the data submitted.

3.4 Audit Scotland shall provide the Cabinet Office with any instructions as to the Data Matching and processing of data pursuant to PFA(S)A within a reasonable time prior to the submission of data for a Data Matching exercise.

3.5 Audit Scotland acknowledges and accepts that the Cabinet Office will have access to the data held by its subcontractor.

4. Obligations of the Cabinet Office

4.1 The Cabinet Office shall, and shall procure that its subcontractor shall, in the conduct of Data Matching exercises:

4.1.1 make available its guidance and data specifications for NFI, and its secure encrypted website, for use by the Participants;

4.1.2 process and match the data provided by Audit Scotland and their Participants;

4.1.3 make any resulting data matches directly available to the Participants via the NFI secure encrypted website through the use of a user name and password;

- 4.1.4 provide the Participants with reasonable assistance in relation to Data Matching;
- 4.1.5 keep Audit Scotland informed of the summary NFI and Data Matching results at suitable intervals and without undue delay;
- 4.1.6 keep Audit Scotland reasonably informed if any matter that comes to its attention which may have implications for the audit of a body subject to audit by Audit Scotland.

4.2 The Cabinet Office shall:

- 4.2.1 carry out the processing of any Personal Data provided pursuant to this Memorandum in accordance with all reasonable instructions, requests or directions from Audit Scotland. Such instructions may be specific instructions or instructions of a general nature;
- 4.2.2 carry out the processing of Personal Data only for the purposes of Data Matching exercises under PFA(S)A and/or LAAA and only as is permitted by law;
- 4.2.3 implement appropriate technical and organisational measures to protect the security of the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. Such measures are to be of a technical and organisational security standard at least equivalent to ISO 27001. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 4.2.4 provide Audit Scotland with any information reasonably requested by Audit Scotland in relation to a complaint received by Audit Scotland;
- 4.2.5 permit Audit Scotland or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and review any security reviews or audit reports of the Cabinet Office's sub-contractor as to the data processing activities, facilities, procedures and documentation (and/or those of its sub-contractor);
- 4.2.6 ensure that its sub-contractor acts in compliance with the principles set out in this paragraph 4.2.

5. GDPR and all relevant data protection legislation

- 5.1 Both parties will duly observe and perform all their obligations under the GDPR and DPA which arise in connection with the Memorandum.
- 5.2 Both parties will comply with the data protection principles, and with all relevant data protection legislation in force.
- 5.3 Both parties will properly involve their Data Protection Officer in a timely manner in issues that relate to data protection.
- 5.4 Both parties will ensure an appropriate level of technical and organisational security for the personal data they process.
- 5.5 Both parties shall keep each other apprised of any significant comments and advice obtained from the Information Commissioner as a result of any liaison regarding the NFI or the Data Matching exercises.

5.6 Cabinet Office shall be responsible for reporting data breaches within the NFI under relevant data protection legislation to the Information Commissioner within 72 hours, in consultation with the Data Protection Officer.

5.7 Audit Scotland shall be responsible for publishing a Code of Data Matching Practice in which Participants are informed of the way in which data matching happens and compliance with data protection legislation.

5.8 Audit Scotland, with assistance from the Cabinet Office, shall be responsible for responding to data subject requests, such as for access (SARs), rectification or erasure in relation to information held by the NFI and on NFI systems.

5.9 Cabinet Office shall be responsible for carrying out any Data Protection Impact Assessment required under the law, including any required consultations with data subjects or the Information Commissioner, unless it is a Scotland only Proof of Concept trial.

5.10 Audit Scotland shall be responsible for carrying out any Data Protection Impact Assessment required under the law, including any required consultations with data subjects or the Information Commissioner, for Scotland only Proof of Concept trials.

5.11 Cabinet Office shall be responsible for maintaining records of processing within the NFI under relevant data protection legislation, including identifying appropriate legal bases and retention periods.

5.12 Cabinet Office shall be responsible for managing contracts with data processors for the NFI.

5.13 Audit Scotland shall be responsible for publishing this MoU, or a summary of this MoU.

6. Data Retention

6.1 All original data transmitted to the Cabinet Office will be destroyed and rendered irrecoverable by the Cabinet Office within six months of submission by the Participant. Subject to what is said below, all data that are derived or produced from that original data, including data held by any firm undertaking data matching as the Cabinet Office's agent, will be destroyed and rendered irrecoverable within three months of the conclusion of the [data matching] exercise.

6.2 A single set of reference codes for previous matches, together with any comments made by Participants' investigators, will be retained securely off-line by the Cabinet Office for as long as they are relevant. This is solely for the purpose of preventing unnecessary reinvestigation of previous matches in any subsequent data matching exercise.

7. Fees and Charges

7.1 The Cabinet Office may charge a fee to any body or person providing data for, or receiving the results of a Data Matching exercise pursuant to LAAA. It is agreed (for the purposes of paragraph 6 of Schedule 9 to the LAAA) that Audit Scotland shall pay the Fees to the Cabinet Office in accordance with the following provisions:

7.1.1 The Cabinet Office shall endeavour to invoice Audit Scotland for the Fees within two (2) months of the commencement of a Data Matching exercise. The Cabinet

Office may issue a final invoice for any Fees, not having been previously invoiced, within a reasonable period of the Data Matching exercise being completed.

7.1.2 Audit Scotland shall pay the Fees in cleared funds within 30 days of receipt of an invoice.

7.1.3 Each invoice shall contain all appropriate references and a detailed breakdown of the Fees for each Participant will be made available.

7.2 The Cabinet Office shall carry out a consultation on fee proposals prior to the commencement of the NFI biennial data matching exercise. Any variations to fees shall be agreed between the Cabinet Office and Audit Scotland in writing.

8. Sub-contractors

8.1 The Cabinet Office shall consult Audit Scotland at least six months in advance of re-tendering or issuing a new tender for any sub-contractor.

8.2 Any issues or concerns about a sub-contractor will be raised by Audit Scotland immediately with the Cabinet Office. The Cabinet Office will then investigate and ensure the sub-contractor complies with the terms in the contract.

8.3 The performance of sub-contractors will be discussed, and appropriate improvement actions agreed where necessary, at the six monthly meetings between the Cabinet Office and the other national audit agencies (Audit Scotland, the Wales Audit Office, And the Northern Ireland Audit Office).

9. Notices

9.1 Except as otherwise expressly provided within the Memorandum, no notice or other communication from one party to the other shall have any validity under the Memorandum unless made in writing by or on behalf of the party concerned.

9.2 Any notice or other communication which is to be given by either party to the other shall be given in writing by electronic mail or in a letter sent by hand, post, registered post or by recorded delivery. Such communications shall be addressed to the other party in the manner referred to in paragraph 9.4. Provided the relevant communication is not returned as undelivered, the notice shall be deemed to have been given 2 working days after the day on which the letter was posted or four hours after transmission, in the case of electronic mail.

9.3 Either party may change its address for service by serving a notice in accordance with this paragraph.

9.4 For the purposes of this paragraph the addresses for notice are:

Audit Scotland:
102 West Port,
Edinburgh,
EH3 9DN

dmcgiffen@audit-scotland.gov.uk

Cabinet Office:
Head of NFI Team
10 Great George Street
Westminster
London
SW1P 3AE

10. Termination

10.1 Either party may terminate this Memorandum at any time, for any reason whatsoever, by giving three (3) months notice in writing to the other party.

10.2 Either party may terminate this Memorandum by notice in writing with effect from the date specified by that party in such notice if the other party:

10.2.1 commits a material breach of this Memorandum, which breach the other party has failed to remedy within 30 days of receipt of a request to remedy it; or

10.2.2 is persistently in breach of its obligations under this Memorandum. More than three defaults or failures to perform satisfactorily within any twelve month period shall mean the other party is persistently in breach of its obligations for the purposes of this paragraph.

SIGNED for and on behalf of

The Cabinet Office



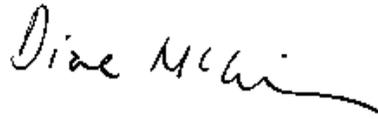
Signature

Name: Darren Shillington
Position: Senior Data Matching Manager

Date: 7/9/18

SIGNED for and on behalf of

Audit Scotland



Signature

Name: Diane McGiffen
Position: Chief Operating Officer

Date: 12/09/2018