**DATA PROCESSING AGREEMENT – Controller to Controller**

**[where the University (data controller) provides personal data to the other party who is also a controller; where there is an existing agreement between the parties; enabling transfer personal data outside the European Economic Area]**

**Between**

**UNIVERSITY OF DUNDEE**

**And**

**PARTNER**

****

**PROCESSING DETAILS**

**Background**

The parties entered into the Contract described in these Processing Details. As a consequence of the entering into the Contract, UoD has agreed to provide Personal Data to the Partner to facilitate the effective operation of the arrangements envisaged by the Contract.

This Controller-to-Controller Processing Agreement sets out the additional terms, requirements and conditions on which UoD may provide, and the Partner will use, Personal Data in connection with the Contract. This Agreement consist of the below Processing Details and the Processing Conditions and the Schedule in 2 Parts.

|  |
| --- |
| **Parties and the Contract** |
| UoD | **University of Dundee**, established by Royal Charter dated 20 July 1967 and a registered Scottish Charity (charity number SC015096), having its principal office at 149 Nethergate, Dundee, DD1 4HN |
| Partner | *[Note 1]* |
| Contract | Subject matter of the contract: *[Note 2]*Date(s) of signing if the contract: *[Note 3]* |

|  |
| --- |
| **Other Processing Details** |
| Purposes | Proper performance of the Partner’s obligations under the Contract. As required by applicable law or regulatory body.*[Note 4]* |
| Personal Data provided by (or on behalf of) UoD | *[Note 5]* |
| Special categories of Personal Data provided by (or on behalf of) UoD | *[Note 6]* |
| Categories of Data Subjects | *[Note 7]* |
| Partner’s legal grounds to Process Personal Data  | *[Note 8]* |
| Partner’s legal grounds to Process special categories of Personal Data | *[Note 9]* |
| Access and Processing restrictions | *[Note 10]* |
| Security Requirements | *[Note 11]*Personnel security requirements: Technical security requirements: Physical security requirements: Any other agreed security requirements:  |
| Review of this Agreement | Every *[Note 12]* monthsFirst review being *[Note 13]* months from commencement of this Agreement |
| UoD Contacts | *[Note 14]*Name: Position:University address:E-mail:Cc: Telephone: Mobile: | *[Note 15]*Name: Position:University address:E-mail:Cc: Telephone: Mobile: |
| Partner Contact | *[Note 16]*Name: Position:Address:E-mail:Cc: Telephone: Mobile: |

**Signed for and on behalf of**

**THE UNIVERSITY OF DUNDEE** …………………………………….

 Authorised Signatory

by (Insert name)

on (Date of signing)

at (Place of signing)

In the presence of this witness:

……………………………………………………….……………………Witness Sign

…………………………………………….………………………………Witness Name

…………………………………………….………………………………Witness Address

……………………………………………………………………………

**Signed for and on behalf of**

***[Note 17]*** …………………………………….

 Authorised Signatory

by (Insert name)

on (Date of signing)

at (Place of signing)

In the presence of this witness:

…………………………………………..…………………………………Witness Sign

…………………………………………………..…………………………Witness Name

…………………………………………………………..…………………Witness Address

………………………………………………………………….…………

**PROCESSING CONDITIONS**

1. **Data Protection compliance**
	1. This Agreement sets out the framework for the provision of Personal Data between the parties as Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.
	2. The parties agree that they are Controllers in common in connection with Personal Data provided under this Agreement, and are not joint Controllers.
	3. Each party shall comply with all the obligations imposed on a Controller under the Data Protection Laws. The Partner acknowledges that certain Data Protection Laws (such as the GDPR) may apply to the Partner regardless of the location of the Partner.
2. **Purposes and the types of Personal Data provided by (or on behalf of) UoD**
	1. The Partner agrees to Process the Personal Data provided by (or on behalf of) UoD only for the Purposes.
	2. The Personal Data provided by (or on behalf of) UoD must not be irrelevant or excessive with regard to the Purposes.
	3. The types of Personal Data and special categories of Personal Data which may be provided by (or on behalf of) UoD and the relevant categories of Data Subjects to whom such Personal Data relates are outlined in the Processing Details. UoD is not obliged to provide Personal Data to the Partner.
	4. UoD shall exercise reasonable endeavours to ensure that the Personal Data provided by it is accurate and up-to-date at the time of providing such Personal Data. Where the Partner becomes aware that the Personal Data provided by (or on behalf of) UoD is no longer accurate or up-to-date, it shall promptly inform UoD of such inaccuracy and provide the relevant accurate or updated Personal Data to UoD.
3. **General obligations**
	1. Without prejudice to clause 1.3 (*Data Protection Compliance*), the Partner shall:
		1. comply with the access and Processing restrictions outlined in the Processing Details;
		2. subject to clause 3.1(a), not disclose or transfer the Personal Data provided by (or on behalf of) UoD, unless such disclosure is:
4. to the Partner’s employees whose reliability the Partner has taken reasonable steps to ensure, on a need-to-know basis;
5. to any third party Processing Personal Data on behalf of the Partner; or
6. to any other third party (other than the parties mentioned in clauses 3.1(b)(i) or 3.1(b)(ii) above) with UoD’s prior written consent

always provided that such disclosure or transfer is made for the Purposes, subject to an obligation of confidentiality and in compliance with Data Protection Laws, and in connection with clause 3.1(b)(ii) and 3.1(b)(iii), is made under a written legally binding agreement between the Partner and the relevant recipient of Personal Data which is no less onerous than this Agreement (including in connection with confidentiality);

* + 1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the Personal Data in accordance with clause 3.1(b);
		2. assist UoD in complying with all applicable requirements of Data Protection Laws;
		3. notify UoD immediately if it becomes aware of any disclosure or Processing of any Personal Data that has been made or is likely to be made in breach of the terms of this Agreement or the Data Protection Laws; and
		4. maintain complete and accurate records and information to demonstrate its compliance with this Agreement and allow for audits by UoD or UoD's designated auditor.
1. **Privacy notices and legal grounds for Processing**
	1. UoD shall ensure that it has all necessary notices and consents in place to enable lawful provision of the Personal Data to the Partner for the Purposes.
	2. The Partner undertakes to give full information to any Data Subject whose Personal Data may be Processed under this Agreement of the nature such Processing (including any sharing) as required by Data Protection Laws. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by the Partner.
	3. The Partner shall ensure that it Processes Personal Data (including special categories of Personal Data) provided by (or on behalf of) UoD on the basis of one or more of the legal grounds outlined in the Processing Details.
2. **Security and training**
	1. The Partner shall ensure that:
		1. it has in place appropriate technical and organisational measures (as defined in the Data Protection Laws), to protect against unauthorised or unlawful Processing of Personal Data provided by (or on behalf of) UoD under this Agreement and against accidental loss or destruction of, or damage to, such Personal Data and shall, without prejudice to the generality of the foregoing, comply with the specific Security Requirements outlined in the Processing Details;
		2. its staff members are appropriately trained to handle and Process the Personal Data provided by (or on behalf of) UoD in accordance with the required technical and organisational security measures together with applicable Data Protection Laws;
		3. it uses compatible technology in connection with Personal Data provided by (or on behalf of) UoD, to ensure there is no lack of accuracy resulting from transfers of Personal Data; and
		4. it keeps the Personal Data provided by (or on behalf of) UoD separate from all other data/information held, stored or otherwise Processed by or under the control of the Partner.
3. **Rights of Data Subjects**
	1. The parties agree to comply with their obligations to respond to Data Subject Access Requests and to give effect to other rights of Data Subjects in accordance with Data Protection Laws.
	2. The Partner shall:
		1. promptly inform UoD about the receipt of any Data Subject Access Request or other query, request, dispute or complaint from a Data Subject which relates to Personal Data provided by (or on behalf of) UoD or otherwise Processed under this Agreement or the Contract and shall provide UoD with a copy of the same;
		2. provide UoD with assistance in complying with any Data Subject Access Request, query, request dispute or complaint; and
		3. in relation to Data Subject Access Requests, not disclose or release any Personal Data provided by (or on behalf of) UoD in response to a Data Subject Access Request without first consulting UoD, wherever possible, and shall retain a record of information provided to a Data Subject.
4. **Personal Data Breaches**
	1. The Partner shall provide UoD assistance in complying with all applicable requirements of the Data Protection Laws applicable to Personal Data Breaches. In particular, the Partner shall:
		1. promptly (and in any case within 72 hours) notify UoD as soon as it becomes aware of a Personal Data Breach or a suspected Personal Data Breach which relates to Personal Data provided by (or on behalf of) UoD;
		2. carry out an investigation into the Personal Data Breach or a suspected Personal Data Breach, its extent and any parties responsible for the Personal Data Breach. Such investigation should consider if the processes outlined in this Agreement have been compromised or whether this Agreement has been breached. The Partner shall provide details of the Personal Data Breach to UoD on request; and
		3. where in receipt of notification from UoD in respect of an actual or suspected Personal Data Breach, provide reasonable assistance to UoD to ensure UoD is able to deal with such actual / suspected Personal Data Breach in an expeditious and compliant manner.
5. **Dealing with Supervisory Authorities (including the UK Information Commissioner’s Office)**
	1. The Partner shall promptly notify UoD of any dispute, claim or query brought by any Supervisory Authority concerning the Processing of Personal Data provided by (or on behalf of) UoD and shall take into account any comments and representations made by UoD when responding to such dispute, claim or query.
	2. The Partner agrees to co-operate and provide all reasonable assistance and information to UoD in dealing with any dispute, claim or query brought by any Supervisory Authority in connection with this Agreement or the Contract, with a view to settling them amicably and in a timely fashion.
6. **Data Protection Impact Assessment**
	1. Each Party shall be responsible for adopting and maintaining a data protection impact assessment relevant to its Processing activities in accordance with Data Protection Laws.
	2. The Partner agrees to provide UoD reasonable assistance on request from UoD in connection with preparation and updating of UoD’s data protection impact assessment.
7. **Retention and deletion of Personal Data**
	1. The Partner shall not retain or otherwise Process the Personal Data provided by (or on behalf of) UoD for longer than is necessary to carry out the Purposes.
	2. The Partner shall ensure that Personal Data provided by (or on behalf of) UoD are either returned to UoD or securely deleted or destroyed in accordance with Data Protection Laws as UoD may instruct, in the following circumstances:
		1. on request by UoD;
		2. on termination or expiry of this Agreement (unless there is an obligation to Process such Personal Data under applicable laws); and
		3. once Processing of the Personal Data is no longer necessary for the Purposes.
8. **Term and termination of this Agreement**
	1. This Agreement will be deemed to come into effect on the date of signing by UoD hereof and will remain in full force and effect, unless terminated earlier in accordance with this Agreement, until the termination or expiry of the Contract.
	2. UoD may terminate this Agreement by giving the Partner no less than 10 days’ written notice to that effect.
	3. UoD may terminate this Agreement immediately by giving the Partner written notice to that effect in the following circumstances:
		1. the Partner notifies UoD pursuant to clause 3.1(e) (*General Obligations*);
		2. the Partner has breached Data Protection Laws in connection with either this Agreement or the Personal Data provided by (or on behalf of) UoD and such breach is either not capable of remedy or is not remedied within 10 days of written notice from UoD;
		3. UoD considers that the Partner is not Processing the Personal Data provided by (or on behalf of) it in accordance with this Agreement; or
		4. the Partner acts in any manner which brings or is likely to bring UoD into disrepute or is materially adverse to the interests of UoD.
	4. Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Agreement will remain in full force and effect. This includes clause 14 (*Warranty and indemnity*).
	5. The termination of this Agreement will be without prejudice to any other rights or remedies of any party under this Agreement or at law and shall not affect any claims or rights which a party may have against the other which have accrued prior to such termination.
	6. The Partner's failure to comply with the terms of this Agreement is a material breach of the Contract. In such event, UoD may terminate the Contract or, if appropriate, any part of the Contract, effective immediately, on written notice to the Partner, without further liability or obligation.
9. **Review of Agreement**
	1. The parties shall review the effectiveness of this Agreement at such times as indicated in the Processing Details, having consideration to the Purposes. The Parties shall continue, amend or terminate this Agreement depending on the outcome of such review. Such review will include:
		1. assessing whether the purposes for which the Personal Data is being Processed are still the Purposes listed in the Processing Details;
		2. assessing whether the Personal Data (including special categories of Personal Data) provided by UoD is still as outlined in the Processing Details;
		3. assessing whether the legal framework governing data quality, retention, and Data Subjects' rights are being complied with; and
		4. assessing whether Personal Data Breaches involving the Personal Data provided by (or on behalf of) UoD have been handled in accordance with this Agreement and the applicable legal framework.
	2. In addition to the review carried out under clause 12.1, in case the Agreement is no longer adequate for the purpose of governing lawful data provision by UoD, the parties agree to negotiate in good faith to review the Agreement in light of UoD’s reasonable requirements.
10. **Cross-border Transfers of Personal Data**
	1. The Partner must not transfer any Personal Data provided by (or on behalf of) UoD outside the EEA unless the Partner:

* + 1. complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint Controller); and
		2. ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.
	1. If any Personal Data transfer between UoD and the Partner requires execution of SCC in order to comply with Data Protection Laws (where UoD is the entity exporting Personal Data to the Partner outside the EEA), the parties will complete all relevant details (including Appendices) in, and execute, appropriate SCC provided by (or on behalf of) UoD for such purpose, and take all other actions required to legitimise the transfer.
1. **Warranty and indemnity**
	1. The Partner warrants that:
		1. it and anyone operating on its behalf will comply with this Agreement, Data Protection Laws and other laws, enactments, regulations, orders, standards and other similar instruments;
		2. it shall comply with clauses 3 (*General Obligations*) to 10 (*Retention and deletion of Personal Data*) and 13 (*Cross-border transfers of Personal Data*);
		3. it shall give effect to the rights of Data Subjects in accordance with Data Protection Laws; and
		4. it has full power and authority to receive, store and Process the Personal Data, to use it for the Purposes and to give the warranties, indemnities and enter into and perform its obligations under and in terms of this Agreement.
	2. The Partner shall indemnify UoD on demand against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by UoD arising out of or in connection with the breach of either this Agreement or the Data Protection Laws by the Partner, its employees, contractors, Processors, agents or other representatives.
	3. Any limitation of liability set forth in the Contract will not apply to the indemnity or reimbursement obligations of this Agreement.
	4. The Partner shall hold and ensure that it continues to hold throughout the term of this Agreement a satisfactory level of and appropriate insurance cover with a reputable insurer to cover the Partner’s obligations under this Agreement. The Partner will disclose to UoD satisfactory evidence of such insurance (including the amount and type of cover effected) and payment of current premiums upon request by UoD.
	5. Nothing in this Agreement will:
		1. limit or exclude any liability for death or personal injury resulting from negligence; or
		2. limit or exclude any liability for fraud or fraudulent misrepresentation; or
		3. limit any liabilities in any way that is not permitted under applicable law; or
		4. exclude any liabilities that may not be excluded under applicable law.
2. **Notices**
	1. Any notice or other communication required to be given under this Agreement will be served personally, by first class post or (international) courier to the address of the relevant party’s contacts outlined in the Processing Details (including both UoD Contacts). Any notice so given will be deemed to have been duly served if:
		1. personally delivered, on the day of delivery; or
		2. if sent by post or courier within the United Kingdom, forty-eight (48) hours after posting; or
		3. if sent by international courier, 7 days after posting.
	2. Any notice given under or in connection with this Agreement shall be in the English language.
3. **Language**
	1. This Agreement is drafted in the English language. If it is translated into any other language, the English language version shall prevail.
	2. All other documents provided under or in connection with this Agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail.
4. **General**
	1. This Agreement is incorporated into the Contract.
	2. The definitions in Schedule Part 1 to these Processing Conditions shall apply to this Agreement.
	3. The following rules of interpretation shall apply to this Agreement:
		1. any reference to a recital, clause or Schedule Part is to the relevant recital, clause or Schedule Part of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the clause or Schedule Part in which it appears;
		2. the clause headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;
		3. use of the singular includes the plural and vice versa and use of any gender includes the other genders;
		4. any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
		5. any reference to a statute, statutory provision or subordinate legislation ("legislation") shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
		6. any reference to a Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Scotland, be deemed to include a reference to what most nearly approximates in that jurisdiction to the Scottish legal term;
		7. any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
		8. references to any act or omission or breach or non-compliance by or on the part of either party shall be deemed to include a reference to any act, omission, breach or non-compliance by any contractor, Processor, personnel or other representative of the relevant party.
	4. In the case of conflict or ambiguity between:
		1. any provision contained in these Processing Conditions and any provision contained in the Processing Details, the provisions in the Processing Details will prevail;
		2. any of the provisions of this Agreement and the provisions of the Contract, the provisions of this Agreement will prevail; and
		3. any of the provisions of this Agreement and any executed SCC, the provisions of the executed SCC will prevail.
	5. Each party shall perform its obligations under this Agreement at its own cost.
	6. This Agreement and the Contract constitute the entire understanding between the parties in relation to their subject matter and supersede any prior arrangements, understandings, promises or agreements made or existing between the parties regarding their subject matter.
	7. No party shall be entitled to assign, novate, transfer, sub-license or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the other party.
	8. No amendment of any term of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party.
	9. 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. Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Agreement shall be deemed to constitute one party as an agent of another party or authorise a party to bind another party.
	11. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties and this Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Agreement (but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contract (Third Party Rights) (Scotland) Act 2017).
	12. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
	13. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
	14. This Agreement shall be interpreted and applied in accordance with the laws of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

**This is the Schedule in two (2) Parts to the foregoing Processing Conditions between University of Dundee and the Partner named in the Processing Details.**

**SCHEDULE**

**PART 1**

**DEFINITIONS**

|  |  |
| --- | --- |
| “**Agreement**” | this Controller-to-Controller data processing agreement between UoD and the Partner consisting of the Processing Details, the Processing Conditions and this Schedule in two (2) Parts; |
| “**Contract**” | means the contract between the parties as specified in the Processing Details;  |
| “**Controller**”  | has the meaning given in the Data Protection Laws; |
| “**Data Processing Details**” | means the data processing details annexed to and forming part of this Agreement;  |
| “**Data Protection Laws**” | means the Data Protection Act 2018, the GDPR and any other applicable laws relating to the processing of personal data and privacy; |
| “**Data Subject**” | has the meaning given in the Data Protection Laws; |
| **“EEA”** | means the European Economic Area; |
| “**GDPR**”  | means Regulation (EU) 2016/679 of the European Parliament and of the Council 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); |
| “**parties**” | UoD and the Partner, and the word “party” shall be construed accordingly; |
| “**Personal Data**” | has the meaning given in the Data Protection Laws; |
| “**Personal Data Breach**” | has the meaning given in the Data Protection Laws; |
| “**Processing**” | has the meaning given in the Data Protection Laws; and |
| “**Processor**” | has the meaning given in the Data Protection Laws; and |
| **“Purposes”** | means the purposes specified in the Processing Details; |
| “**Schedule**”  | means this Schedule in two (2) Parts annexed to the Processing Conditions and forming part of the Agreement; |
| **“Security Requirements”** | means the security requirements outlined in the Processing Details; |
| “**Standard Contractual Clauses**” or “**SCC**” | the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to controllers established in third countries (controller-to-controller transfers), as set out in the Annex to Commission Decision 2004/915/EC and Schedule Part 2 (as may be updated from time to time); |
| “**Supervisory Authority**” | has the meaning given in the Data Protection Laws; and |
| **“Working Day”** | means Monday to Friday, excluding public holidays or bank holidays on which clearing banks are open for normal business in Edinburgh (ignoring 24 hour internet banking services). |

**SCHEDULE**

**PART 2**

**Commission Decision C(2004)5721**

**SET II**

**Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)**

Data transfer agreement

between

University of Dundee (name)

149 Nethergate, Dundee, DD1 4HN, United Kingdom (address and country of establishment)

hereinafter “data exporter”

and

*[Note 18]* (name)

 (address and country of establishment)

hereinafter “data importer”

each a “party”; together “the parties”.

**Definitions**

For the purposes of the clauses:

1. “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
2. “the data exporter” shall mean the controller who transfers the personal data;
3. “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;
4. “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

1. **Obligations of the data exporter**

The data exporter warrants and undertakes that:

1. The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
2. It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
3. It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
4. It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
5. It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.
6. **Obligations of the data importer**

The data importer warrants and undertakes that:

1. It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
2. It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
3. It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
4. It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
5. It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
6. At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
7. Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
8. It will process the personal data, at its option, in accordance with:
9. the data protection laws of the country in which the data exporter is established, or
10. the relevant provisions[[1]](#footnote-1) of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data[[2]](#footnote-2), or
11. the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: *[Note 19]*

Initials of data importer: ;

1. It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
2. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
3. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
4. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
5. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer
6. **Liability and third party rights**
7. Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
8. The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter’s country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).
9. **Law applicable to the clauses**

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

1. **Resolution of disputes with data subjects or the authority**
2. In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
3. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
4. Each party shall abide by a decision of a competent court of the data exporter’s country of establishment or of the authority which is final and against which no further appeal is possible.
5. **Termination**
6. In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
7. In the event that:
8. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
9. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
10. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
11. a final decision against which no further appeal is possible of a competent court of the data exporter’s country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
12. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

1. Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
2. The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.
3. **Variation of these clauses**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

1. **Description of the Transfer**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

*[Note 20]*

Dated:

FOR DATA IMPORTER FOR DATA EXPORTER

ANNEX A

**DATA PROCESSING PRINCIPLES**

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.
8. Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:

 a) i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and
 ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

 or

 b) where otherwise provided by the law of the data exporter.

ANNEX B

**DESCRIPTION OF THE TRANSFER**

(To be completed by the parties)

**Data subjects**The personal data transferred concern the following categories of data subjects:
*[Note21]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Purposes of the transfer(s)**
The transfer is made for the following purposes:
*[Note22]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Categories of data**
The personal data transferred concern the following categories of data:
*[Note23]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Recipients**
The personal data transferred may be disclosed only to the following recipients or categories of recipients:
*[Note24]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Sensitive data** (if appropriate)
The personal data transferred concern the following categories of sensitive data:
*[Note25]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Data protection registration information of data exporter** (where applicable)
*[Note26]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Additional useful information** (storage limits and other relevant information)
*[Note27]*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

**Contact points for data protection enquiries**

**Data importer *[Note 28]* Data exporter *[Note 29]***………………………………………… …… …………………………………………………
………………………………………… …… …………………………………………………
………………………………………… …… …………………………………………………

1. “Relevant provisions” means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses). [↑](#footnote-ref-1)
2. However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected. [↑](#footnote-ref-2)