**DATA PROCESSING AGREEMENT**

**[where the University is the data controller and the other party the data processor; where processor provides services to the University on the basis of an existing agreement; enabling transfer personal data outside the European Economic Area]**

**Between**

**UNIVERSITY OF DUNDEE**

**And**

**PARTNER**

**PROCESSING DETAILS**

**Background**

The parties entered into a Contract on or around *[Note 1]* and as a consequence thereof the Partner has agreed to Process Personal Data on behalf of UoD to provide the Services and to otherwise perform its obligations under the Contract.

This Data Processing Agreement sets out the additional terms, requirements and conditions on which the Partner will Process Personal Data when performing the Contract. This Data Processing Agreement contains the mandatory clauses required by Article 28(3)(*Processor*) of the GDPRfor contracts between Controllers and Processors. This Data Processing Agreement consist of the below Processing Details and the Processing Conditions and the Schedule in 2 Parts.

|  |
| --- |
| **Parties** |
| 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 2]* |

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| **Processing Details required by Article 28(3) GDPR** |
| Subject matter and duration of the Processing of Personal Data | The subject matter and duration of the Processing are set out in this Data Processing Agreement and the Contract. *[Note 3]* |
| The nature and purpose of the Processing of Personal Data  | *[Note 4]* |
| Types of Personal Data to be Processed | *[Note 5]* |
| Categories of Data Subject to whom Personal Data relates | *[Note 6]* |
| The obligations and rights of UoD | The obligations and rights of UoD as the Controller are set out in this Data Processing Agreement. |

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| **Other Processing Details** |
| UoD Contacts | *[Note 7]*Name: Position:University address:E-mail:Cc: Telephone: Mobile: | *[Note 8]*Name: Position:University address:E-mail:Cc: Telephone: Mobile: |
| Partner Contact | *[Note 9]*Name: Position:University address:E-mail:Cc: Telephone: Mobile: |
| Security measures | *[Note 10]* |
| Permission to transfer Personal Data outside the European Economic Area (“EEA”)? (Y/N) | *[Note 11]* |
| Type of Processing carried outside the EEA | *[Note 12]* |
| Legal basis for Processing Personal Data outside the EEA  | *[Note 13]*Select one basis which applies form the below options 1-5: 1. Processing takes place in a country with a current determination of adequacy (state country): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Binding Corporate Rules.
3. Standard Contractual Clauses between UoD as "data exporter" and Partner as "data importer".
4. Standard Contractual Clauses between Partner as "data exporter" on behalf of UoD and Partner’s Sub-processor as "data importer".
5. EU-US Privacy Shield Certified.
 |

**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 the**

***[Note 14]*** …………………………………….

 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 Compliance**
	1. Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 1 is in addition to, and does not relieve, remove or replace, a party of its obligations and liabilities under the Data Protection Laws.
	2. The parties acknowledge that for the purposes of the Data Protection Laws, UoD is the Controller and the Partner is the Processor.
	3. The Processing Details set out the subject matter, nature and purpose of Processing by the Partner, the duration of the Processing and the types of Personal Data and categories of Data Subject.
	4. The Partner shall:
		1. Process the Personal Data only on and in accordance with written instructions from UoD, including with regard to transfers of Personal Data to a third country, (unless the Partner is required to Process Personal Data by applicable law in which case the Partner shall inform UoD in writing of that legal requirement before undertaking the Processing required by applicable law, unless applicable law prohibits the Partner from notifying UoD) and the Partner will not Process the Personal Data for any other purpose or in a way that does not comply with this Data Processing Agreement or Data Protection Laws;
		2. promptly comply with any request or instruction from UoD requiring the Partner to amend, transfer, delete or otherwise Process (or cease the Processing of) Personal Data, or to stop, mitigate or remedy any unauthorised Processing;
		3. maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless UoD, the Contract or this Data Processing Agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator or Supervisory Authority requires the Partner to Process or disclose Personal Data, the Partner must first inform UoD of the legal or regulatory requirement and give UoD an opportunity to object or challenge the requirement, unless the law prohibits such notice;
		4. ensure that persons who have access to and/or Process the Personal Data are obliged to both keep the Personal Data confidential and to comply with other use restrictions in respect of the Personal Data;
		5. take all measures required pursuant to Article 32 (*Security of processing*) of the GDPR;
		6. not appoint another Processor without the prior written consent of UoD;
		7. taking into account the nature of the Processing, assist UoD by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the UoD’s obligation to respond to requests for exercising Data Subjects’ rights laid down in Chapter III (*Rights of the Data Subject*) of the GDPR;
		8. assist UoD in ensuring UoD’s compliance with its obligations under Data Protection Laws, including the obligations under the GDPR pursuant to Articles 32 (*Security of processing*), 33 (*Notification of a personal breach to the supervisory authority),* 34 (*Communication of a Personal Data breach to the Data Subject*), 35 (*Data protection impact assessment*) and 36 (*Prior consultation*) taking into account the nature of Processing and the information available to the Partner;
		9. at the choice of UoD, delete or return all the Personal Data to UoD upon the earlier of either the end of the provision of Services relating to Processing under the Contract or the termination of this Data Processing Agreement, and delete existing copies unless applicable law requires storage of the Personal Data (in which case the Partner shall notify UoD in writing of that storage requirement, giving details of the materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends);
		10. make available to UoD all information necessary to demonstrate the Partner’s compliance with the obligations laid down in this Data Processing Agreement and allow for and contribute to audits, including inspections, conducted by UoD or another auditor mandated by UoD;
		11. immediately inform UoD if, in its opinion, an instruction from UoD infringes the GDPR or another applicable law; and
		12. promptly notify UoD of anything that may adversely affect the Partner's performance of the Contract or this Data Processing Agreement.
	5. The Processing Details describe the subject matter, duration, nature and purpose of Processing and the Personal Data categories and Data Subject types in respect of which the Partner may Process in order to carry out its obligations under the Contract.
2. **Technical and Organisational Measures**
	1. Without prejudice to clause 1.4(e) (*Data Compliance*), taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Partner shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, *inter alia*, as appropriate:
		1. any security measures outlined in the Processing Details;
		2. the pseudonymisation and encryption of Personal Data;
		3. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
		4. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
		5. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.
	2. In assessing the appropriate level of security the Partner shall take account in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, Processing, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.
	3. The Partner must document its technical and organisational measures in writing and periodically review them to ensure they remain current and complete, at least annually.
3. **General Obligations**
	1. The Partner shall:
		1. not acquire any rights in the Personal Data and shall keep the Personal Data separate from any data the it Processes on behalf of any other third party;
		2. ensure that only those personnel who need to have access to the Personal Data are granted access to such Personal Data (and only for the purposes of the performance of the Contract) and that all of the personnel required to access the Personal Data:
		3. are reliable and have been trained in how to handle and Process Personal Data; and
		4. have been informed of the confidential nature of the Personal Data;
		5. are aware of both the Partner's duties and their personal duties and obligations under the Data Protection Laws and this Data Processing Agreement; and
		6. notify UoD within five (5) days if it receives:
		7. a request from a Data Subject to access that Data Subject’s Personal Data;
		8. a request from a Data Subject to exercise any of their rights under Data Protection Laws (for example the exercise of the right to rectification or the right to erasure);
		9. any communication from a Supervisory Authority in relation to the Processing of the Personal Data; or
		10. a complaint from a Data Subject

and the Partner will give UoD its full co-operation and assistance in responding to any complaint, notice, communication or request.

1. **Appointment of Sub-processors**
	1. Where the Partner engages another Processor (“**Sub-processor**”) for carrying out specific Processing activities on behalf of UoD in accordance with clause 1.4(f) (*Data Compliance*), the Partner shall:
		1. maintain control over all Personal Data it entrusts to the Sub-processor;
		2. ensure that the same data protection obligations as set out in this Data Processing Agreement (in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of data Protection Laws) shall be imposed on the Sub-processor by way of a written legally binding contract and that the Sub-processor’s contract terminates automatically on termination of this Data Processing Agreement.
	2. Where the Sub-processor fails to fulfil its obligations under such written agreement, the Partner remains fully liable to UoD for the Sub-processor’s performance of its agreement obligations.
2. **Data Breach Notification**
	1. The Partner shall notify UoD in writing without undue delay (and, in any event, no later than within 24 hours) on becoming aware of an actual or suspected Personal Data Breach and provide UoD with such details as UoD reasonably requests in respect of the same.
	2. Without prejudice to the foregoing generality, the Partner shall provide UoD in writing with:
	3. a description of the nature of the actual or suspected Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
	4. the name and contact details of the data protection officer or other contact point of the Partner where more information can be obtained;
	5. a description of the likely consequences of the actual or suspected Personal Data Breach; and
	6. a description of the measures taken or proposed to be taken by the Partner to address the actual or suspected Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.
	7. Immediately following a Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. The Partner will reasonably co-operate with UoD in UoD’s handling of the matter, including:
		1. assisting with any investigation;
		2. making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Laws or as otherwise reasonably required by UoD; and
		3. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach.
	8. The Partner will not inform any third party of any actual or suspected Personal Data Breach without first obtaining UoD's prior written consent, except when required to do so by law.
	9. The Partner agrees that UoD has the sole right to determine:
		1. whether to provide notice of the Personal Data Breach to any Data Subjects, Supervisory Authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the discretion of UoD, including the contents and delivery method of the notice; and
		2. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
	10. The Partner will cover all reasonable expenses associated with the performance of the obligations under clauses 6.1 to 6.3 (inclusive). The Partner shall restore any Personal Data at its own expense.
	11. The Partner will reimburse UoD for reasonable expenses incurred by UoD when responding to a Personal Data Breach to the extent that the Partner caused such a Personal Data Breach, including all costs of notice and any remedy as set out in clause 6.5.
3. **Cross-border Transfers of Personal Data**
	1. The Partner (or any permitted Sub-processor) must not transfer or otherwise Process Personal Data outside the European Economic Area (“**EEA**”) without obtaining UoD’s prior written consent (such consent may be provided within the Processing Details).

* 1. Where such consent is granted, the Partner may only Process, or permit the Processing, of Personal Data outside the EEA under the following conditions:
		1. the Partner is Processing Personal Data in a territory which is subject to a current finding by the European Commission under Data Protection Laws that the territory provides adequate protection for the privacy rights of individuals. The Partner must identify in the Processing Details the relevant territory that is subject to such an adequacy finding; or
		2. the Partner participates in a valid cross-border transfer mechanism under Data Protection Laws, so that the Partner (and, where appropriate, UoD) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 (*Transfers subject to appropriate safeguards*) of the GDPR. The Partner must identify in the Processing Details the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and the Partner must immediately inform UoD of any change to that status.
	2. 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 UoD for such purpose, and take all other actions required to legitimise the transfer.
1. **Records**
	1. The Partner shall maintain written records, including in electronic form, of all Processing activities carried out on behalf of UoD containing:
		1. the name and contact details of the Partner and UoD and, where applicable, UoD’s and/or the Partner’s representatives, and their data protection officers;
		2. the categories of Processing carried out on behalf of UoD;
		3. the access, control and security of the Personal Data, approved Sub-processors and the purposes of Processing;
		4. where applicable, transfers of Personal Data to a third country, including the identification of that third country and, the documentation of suitable safeguards; and
		5. a general description of the technical and organisational security measures to ensure a level of security appropriate to the risk for the rights and freedoms of Data Subjects.
	2. The Partner will ensure that the records are sufficient to enable UoD to verify the Partner’s compliance with its obligations under this Data Processing Agreement. The records referred to in clause 8.1 shall be made available to UoD in a timely manner and, in any event, within ten (10) days from UoD’s request.

1. **Warranty and indemnity**
	1. The Partner warrants that:
		1. it and anyone operating on its behalf will Process the Personal Data in compliance with Data Protection Laws and other laws, enactments, regulations, orders, standards and other similar instruments;
		2. it has full power and authority to receive, store and Process the Personal Data, to use it for the purposes set out in this Data Processing Agreement, including without limitation the Services and to give the warranties, indemnities and enter into and perform its obligations under and in terms of this Data Processing Agreement;
		3. it shall comply with clause 3 (*Technical and Organisational Measures*).
	2. The Partner shall indemnify and keep UoD indemnified in full and on demand in respect of any losses, claims, costs, expenses, proceedings and damages incurred by UoD arising out of or in connection with a breach by the Partner of this Data Processing Agreement or Data Protection Laws.
	3. Any limitation of liability set forth in the Contract will not apply to the indemnity or reimbursement obligations of this Data Processing Agreement.
	4. The Partner shall obtain and maintain appropriate insurance cover with a reputable insurer to cover the Partner’s obligations to UoD under this Data Processing Agreement. The Partner will provide satisfactory evidence of such insurance cover to UoD on request.
	5. Nothing in this Data processing 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. **Term of this Data Processing Agreement**
	1. This Data Processing Agreement will be deemed to come into effect on the date of signing by UoD hereof.
	2. This Data Processing Agreement will remain in full force and effect so long as:
		1. the Contract remains in effect; or
		2. the Partner retains any Personal Data related to the Contract in its possession or control.
	3. Any provision of this Data Processing Agreement that expressly or by implication should come into or continue in force on or after termination of the Contract in order to protect Personal Data will remain in full force and effect.
	4. The termination of this Data Processing Agreement will be without prejudice to any other rights or remedies of any party under this Data Processing 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.
	5. The Partner's failure to comply with the terms of this Data Processing Agreement is a material breach of the Contract. In such event, UoD may terminate the Contract or, if appropriate, any part of the Contract authorising the Processing of Personal Data, effective immediately, on written notice to the Partner, without further liability or obligation.
3. **Notices**
	1. Any notice or other communication required to be given under this Data Processing 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 Data Processing Agreement shall be in the English language.
4. **Language**
	1. This Data Processing 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 Data Processing 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.
5. **General**
	1. This Data Processing Agreement is incorporated into the Contract.
	2. The definitions in Schedule Part 1 shall apply to this Data Processing Agreement.
	3. The following rules of interpretation shall apply to this Data Processing Agreement:
		1. any reference to a recital, clause or Schedule Part is to the relevant recital, clause or Schedule Part of or to this Data Processing 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 Data Processing 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; and
		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.
	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 provision in the Processing Details will prevail;
		2. any of the provisions of this Data Processing Agreement and the provisions of the Contract, the provisions of this Data Processing Agreement will prevail; and
		3. any of the provisions of this Data Processing Agreement and any executed SCC, the provisions of the executed SCC will prevail.
	5. This Data Processing 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.
	6. No party shall be entitled to assign, novate, transfer, sub-license or sub-contract any of its rights or obligations under this Data processing Agreement without the prior written consent of the other party.
	7. No amendment of any term of this Data Processing Agreement shall be effective unless it is in writing and signed by or on behalf of each party.
	8. No failure or delay by a party to exercise any right or remedy provided under this Data Processing 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.
	9. Nothing in this Data Processing Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Data Processing Agreement shall be deemed to constitute one party as an agent of another party or authorise a party to bind another party.
	10. A person who is not a party to the Data Processing 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 Data Processing Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Data Processing Agreement (but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act).
	11. If any provision or part-provision of this Data Processing 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 Data Processing Agreement.
	12. This Data Processing 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.
	13. This Data Processing 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**

|  |  |
| --- | --- |
| “**Contract**” | means the agreement between the parties in connection with the Services as outlined in the Processing Details;  |
| “**Controller**”  | has the meaning given in the Data Protection Laws; |
| “**Data Processing Agreement**” | this data processing agreement between UoD and the Partner consisting of the Processing Details, the Processing Conditions and this Schedule in two (2) Parts; |
| “**Data Processing Details**” | means the data processing details annexed to and forming part of this Data Processing 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, including, where applicable, the guidance and codes of practice issued by the Article 29 Working Party, the European Data Protection Board and the UK Information Commissioner in relation to such laws; |
| “**Data Subject**” | has the meaning given in the Data Protection Laws; |
| “**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 |
| “**Schedule**”  | means this Schedule in two (2) Parts annexed to and forming part of the Data Processing Agreement; |
| “**Services**” | means the services to be provided by the Partner under the Contract;  |
| “**Standard Contractual Clauses**” or “**SCC**” | the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU and Schedule Part 2; |
| “**Sub-processor**” | has the meaning outlined in clause 5.1 (*Appointment of Sub-processors*); and |
| “**Supervisory Authority**” | has the meaning given in the Data Protection Laws. |

**SCHEDULE**

**PART 2**

**Commission Decision C(2010)593
Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC

Name of the data exporting organisation: The University of Dundee

Address: Nethergate, Dundee, DD1 4HN

Tel.:[insert telephone no.] ; fax: [insert fax no.] ; e-mail:[insert email address]

Other information needed to identify the organisation:

……Charity number SC015096………………………………………………………
(the data **exporter**)

And

Name of the data importing organisation: [insert name of partner institution]

Address: [insert address of partner institution]

Tel.:[insert telephone no.] ; fax: [insert fax no.] ; e-mail:[insert email address]

Other information needed to identify the organisation:

 [insert any other relevant information e.g. charity no. or company no.]

(the data **importer**)

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

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

*Clause 1*

***Definitions***

For the purposes of the Clauses:

(a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[[1]](#footnote-1);

(b) '*the data exporter'* means the controller who transfers the personal data;

(c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) '*the applicable data protection law****'*** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

*Clause 2*

***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

*Clause 3*

***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

*Clause 4*

***Obligations of the data exporter***

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

*Clause 5*

***Obligations of the data importer[[2]](#footnote-2)***

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

(ii) any accidental or unauthorised access, and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

*Clause 6*

***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely……Scotland…………………………………………………………………….

*Clause 10*

***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*

***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses[[3]](#footnote-3). Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely Scotland………………………………… …………………………………………………………………………………………………………………………………………………………………………

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*

***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

Name (written out in full): [insert name of signatory]

Position: [insert position of signatory]

Address: [insert address of signatory]

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

 (stamp of organisation)

**On behalf of the data importer:**

Name (written out in full): [insert name of signatory]

Position: [insert position of signatory]

Address: [insert address of signatory]

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

 (stamp of organisation)

**Appendix 1 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

**Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

[insert the activities the University is undertaking which are relevant to the transfer.

**EXAMPLE**: The data exporter is delivering various degree programmes in collaboration with the partner institution. (amend as appropriate)] ………………………………………………………………………………………………………………

**Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

[insert the activities the partner institution is undertaking which are relevant to the transfer.

**EXAMPLE**: The data importer is based out with the EEA in [specify country] and is delivering various degree programmes in collaboration with the University. (amend as appropriate)]

………………………………………………………………………………………………………………

**Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

[insert the categories of persons whose personal data may be transferred by the University to the partner institution.

**EXAMPLE:**

* Students admitted and jointly registered by the parties;
* Staff, visiting staff, advisors, consultants and other professional experts employed or engaged by either party who may be collaborating on the degree programmes; and/or
* Relatives, guardians and associates of the students of either party. (amend as appropriate)]

………………………………………………………………………………………………………………

**Categories of data**

The personal data transferred concern the following categories of data (please specify):

[insert the categories of personal data which are likely to be transferred by the University to the partner institution.

**EXAMPLE:**

* Personal Details;
* Education and Training Details;
* Student Records;
* Facilities Access Information;
* Employment Details;
* Financial Details; and/or
* Family, Lifestyle and Social Circumstances. (amend as appropriate)] .………………………………………………………………………………………………………………

**Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

[insert any special categories of personal data which are likely to be transferred by the University to the partner institution.

**EXAMPLE:**

* Physical or Mental Health or Conditions;
* Racial or Ethnic Origin;
* Political Opinions;
* Offences (including Alleged Offences)
* Religious or other Beliefs; and/or
* Sexual Life (amend as appropriate)]

………………………………………………………………………………………………………………

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

[insert the way in which the personal data is likely to be processed by the data importer.

**EXAMPLE:**

* **Processing activities**: administration of education and training (e.g. registration and monitoring, calculation and publication of exam results, provision of references); provision of education (e.g. planning curricula and exams, producing educational materials); administration of student awards and fees; administration of library services/facilities (e.g. membership records, loan/access records); and alumni relations (e.g. promotion of alumni events/services, fundraising, alumni related mailings);
* **The scope and purpose**: the scope and purpose of the data processing is as described in the Data Processing Agreement between the University and the partner institution; and
* **Duration**: The duration of the data processing shall be for the term of the Data Processing Agreement between the University and the partner institution. (amend as appropriate)]

………………………………………………………………………………………………………………=

DATA EXPORTER

Name:[insert name of signatory]………………………………

Authorised Signature ……………………

DATA IMPORTER

Name:[insert name of signatory]………………………………

Authorised Signature ……………………

**Appendix 2 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

[insert any security measures which the partner institution is required to comply with. This may include any procedures which are required to fulfil the data importer’s obligations under Clause 2 of the Data Processing Agreement. Relevant security measures could be physical and technological measures, as well as organisational and managerial.

**EXAMPLE:**

* Carrying out an information risk assessment and identifying an individual within the organisation who is responsible for security measures;
* Vetting staff through processes which comply with the data exporter’s requirements;
* Establishing management controls such as ensuring password access to computerised copies of personal data, limiting access to certain individuals etc.;
* Ensuring physical security and preventing unauthorised physical access to any part of such computer systems, networks and rooms in which the personal data is stored;
* Not transmitting personal data unless that personal data is encrypted and the key or password to decrypt that personal data is communicated separately;
* Restricting the number of paper copies of the data made and/or kept by the data importer to the minimum number reasonably required in order to discharge or exercise the data importer’s rights and obligations;
* Preventing unauthorised physical access to any such paper copies (unless they have been shredded);
* Generally restricting access to the personal data that is in the data importer’s possession in accordance with good practice for an academic institute (or such institute as applies); and
* Compliance with any applicable confidentiality guidelines. (amend as appropriate)] …………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………
1. Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone. [↑](#footnote-ref-1)
2. Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter* *alia,* internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements. [↑](#footnote-ref-2)
3. This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision. [↑](#footnote-ref-3)