**TEMPLATE B**

**DATA PROCESSING AGREEMENT – Controller to Controller**

**[*Note: this template can be used where the University is a data controller and shares personal data with another party who is also a controller of that data.*]**

**Between**

**UNIVERSITY OF DUNDEE**

**And**

**PARTNER**

***[Please ensure that all Notes are deleted before signing]***

**PROCESSING DETAILS**

**Background**

UoD has agreed to provide Personal Data to the Partner and the Partner has agreed to use the Personal Data only for the Purposes set out in these Processing Details and the parties shall each be a Controller of that Personal Data.

This Controller-to-Controller Processing Agreement sets out the terms on which UoD may provide, and the Partner will use, the Personal Data. This Agreement consists of the below Processing Details and the Processing Conditions, including the Schedule.

|  |  |
| --- | --- |
| **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: Insert the name and registered address of the Partner to whom the University will provide personal data under this agreement]* |

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| **Processing Details** | | |
| Purposes | *[Note:* *Insert description of the purposes for which UoD transfers personal data and for which the Partner will use such personal data.*   * *If the purpose relates to a separate contract, insert details of the contract including the relevant date(s) of signing.* * *Also describe why the data sharing is necessary to achieve the purpose; and* * *the benefits of data sharing.]* | |
| Sharing Start Date | *[Note: insert the data sharing start date. The agreement will apply from that date.]* | |
| Personal Data provided by (or on behalf of) UoD | *[Note: Insert the types of personal data to be provided by the University under this agreement]* | |
| Special category Personal Data / Personal Data relating to criminal offences or convictions provided by (or on behalf of) UoD | *[Note:* *Insert the types of special category personal data to be provided by the University. Special category data is personal data relating to race, ethnic origin, politics, religion, trade union membership, genetics, biometrics (where used for ID purposes), health, sex life and sexual orientation.)*  *Also insert details of any personal data relating to criminal offences or convictions (if relevant) to be shared.]* | |
| Categories of Data Subjects | *[Note:* *Insert the categories of individuals (data subjects) whose personal data the University will provide to the Partner under this agreement]* | |
| UoD’s legal grounds to share Personal Data | *[Note: Insert the legal grounds on which the University will share personal data.]* | |
| UoD’s legal grounds to share special category Personal Data / Personal Data relating to criminal offences or convictions | *[Note: Insert the legal grounds on which the University shares special categories of personal data and (if relevant) personal data relating to criminal offences or convictions (if relevant).]* | |
| Partner’s legal grounds to Process Personal Data | *[Note: Partner to confirm the legal grounds on which it will process personal data provided by the University.]* | |
| Partner’s legal grounds to Process special categories of Personal Data / Personal Data relating to criminal offences or convictions | *[Note: Partner to confirm legal grounds on which the Partner will process any special categories of personal data / personal data relating to criminal offences or convictions (if relevant).]* | |
| Access and Processing restrictions | *[Note:* *Insert details of any access and processing restrictions the Partner has to comply with in connection with the personal data. If none, insert “N/A”.]* | |
| Security Requirements | *[Note: Insert below details of any security requirements which the Partner must follow in connection with the personal data (e.g. specific access restrictions, ISO27001 or Cyber Essentials certification, encryption, security in connection with access to premises where data is stored.) If none, insert “N/A”.]*  Personnel security requirements:  Technical security requirements:  Physical security requirements:  Any other agreed security requirements: | |
| Review of this Agreement | *[Note: Indicate how regularly the parties will review this agreement – e.g. once per year on or around the anniversary of the Sharing Start Date.]* | |
| UoD Contacts | Name: *[Note: insert UoD primary contact name]*  Position: *[Note: insert UoD primary contact role]*  University address: *[Note: insert work address of UoD primary contact]*  E-mail: *[Note: insert UoD primary contact e-mail]*  Cc: *[Note: insert Cc e-mail address for primary contact]*  Telephone: *[Note: insert UoD primary contact phone number]* | Name: *[Note: insert UoD secondary contact name]*  Position: *[Note: insert UoD secondary contact role]*  University address: *[Note: insert work address of UoD secondary contact]*  E-mail: *[Note: insert UoD secondary contact e-mail]*  Cc: *[Note: insert Cc e-mail address for secondary contact]*  Telephone: *[Note: insert UoD secondary contact phone number]* |

|  |  |
| --- | --- |
| Partner Contact | Name: *[Note: insert Partner contact name]*  Position: *[Note: insert Partner contact role]*  Address: *[Note: insert work address of contact]*  E-mail: *[Note: insert Partner contact e-mail]*  Cc: *[Note: insert Cc e-mail address for contact]*  Telephone: *[Note: insert contact phone number]* |

**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:*** ***Insert the full name of the Partner. This should be the same as above.]*** …………………………………….

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

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**PROCESSING CONDITIONS**

1. **General compliance obligations**
   1. This Agreement sets out the framework for the provision of Personal Data by UoD to the Partner. It sets out the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other in connection with sharing of Personal Data.
   2. The parties 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 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, special categories of Personal Data and (if applicable) Personal Data relating to criminal convictions and offences 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 (*General compliance obligations*), 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, loss or destruction, 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 shall ensure that it Processes 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.
   3. The Partner undertakes to give clear and sufficient information to Data Subjects whose Personal Data may be Processed by or on behalf of the Partner in connection with this Agreement including the nature and extent of the Processing (including any data transfers) and the legal basis and duration of such Processing, as required by Data Protection Laws.
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 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 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 relating to Personal Data Breaches. In particular, the Partner shall:
      1. promptly (and in any case within 24 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. take reasonable and prompt steps to mitigate the impact of the Personal Data Breach;
      3. co-ordinate with UoD to investigate the actual or 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 and whether this Agreement has been breached. The Partner shall provide details of the Personal Data Breach to UoD on request; and
      4. where in receipt of notification from UoD in respect of a Personal Data Breach, provide reasonable assistance to UoD to ensure UoD is able to deal with such Personal Data Breach in an expeditious and compliant manner.
5. **Dealing with Supervisory Authorities** 
   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, 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 for 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 the Sharing Start Date mentioned in the Processing Details (regardless of the date(s) of signing of this Data Processing Agreement) and will remain in full force and effect for so long as the Partner retains any of the shared Personal Data in its possession or control unless otherwise terminated in accordance with its terms.
   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. the Partner is not Processing the Personal Data provided by (or on behalf of) UoD 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 is intended to come into or continue in force on or after termination of the Agreement will remain in full force and effect. This includes clause 14 (*Liability 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.
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 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 amendments to the Agreement in light of UoD’s reasonable requirements.
10. **Cross-border Transfers of Personal Data**
    1. The Partner (or any third party Processing Personal Data on behalf of the Partner) must not transfer any Personal Data provided by (or on behalf of) UoD outside the UK unless the Partner:

* + 1. complies with the provisions of Article 26 of the UK GDPR (in the event the third party is a joint Controller); and
    2. ensures that (i) the transfer is to a territory which is subject to adequacy regulations under the Data Protection Laws that the territory provides adequate protection for the privacy rights of individuals ; or (ii) the Partner participates in a valid cross-border transfer mechanism under the Data Protection Laws, so that the Partner 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 UK GDPR; or (iii) one of the derogations for specific situations in Article 49 of the UK 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 UK), the parties will complete all relevant details 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. **Liability and indemnity**
   1. The Partner shall indemnify and keep UoD indemnified in full and on demand in respect of any direct losses, claims, costs, expenses, proceedings and damages incurred by UoD arising out of or in connection with the negligence, bad faith, and/or wilful misconduct of the Partner in relation to this Data Processing Agreement or Data Protection Laws.
   2. 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 given under this Agreement will be in writing and will be served personally, by first class post or (domestic/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. sent by post or courier within the United Kingdom, forty-eight (48) hours after posting; or
      3. 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. This clause 15 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.
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. The definitions in Schedule Part 1 to these Processing Conditions shall apply to this Agreement.
   2. The following rules of interpretation shall apply to this Agreement:
      1. any reference to a clause or Schedule Part is to the relevant 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 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. a reference to "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
      5. a reference to legislation or a legislative provision:

(i)is a reference to it as amended, extended or re-enacted from time to time; and

(ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

* + 1. 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;
    2. 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
    3. 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.
  1. 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; and
     2. any of the provisions of this Agreement and any executed and applicable SCC, the provisions of the SCC will prevail.
  2. Each party shall perform its obligations under this Agreement at its own cost.
  3. This Agreement constitutes the entire understanding between the parties in relation to its subject matter and supersedes any prior arrangements, understandings, promises or agreements made or existing between the parties regarding its subject matter.
  4. 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.
  5. 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.
  6. 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.
  7. 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.
  8. 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 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).
  9. 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.
  10. 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.
  11. 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 referred to in 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; |
| “**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 any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of personal data, electronic communications and privacy to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR; |
| “**Data Subject**” | has the meaning given in the Data Protection Laws; |
| **“Data Subject Access Request”** | a request (or purported request) under Article 15 of the UK GDPR; |
| “**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 cognate expressions shall be interpreted accordingly); |
| “**Processor**” | has the meaning given in the Data Protection Laws; |
| **“Purposes”** | means the purposes specified in the Processing Details; |
| “**Schedule**” | means this Schedule annexed to the Processing Conditions and forming part of the Agreement; |
| **“Security Requirements”** | means the security requirements outlined in the Processing Details; |
| **“Sharing Start Date”** | means the sharing start date set out in the Processing Details; |
| “**Standard Contractual Clauses**” or “**SCC**” | The UK Information Commissioner’s Standard Contractual Clauses for the transfer of Personal Data from the UK to controllers established in third countries (controller-to-controller transfers) as set out in Schedule Part 2 (if required) (as may be amended from time to time); |
| “**Supervisory Authority**” | means the UK Information Commissioner’s Office and any other supervisory authority under the Data Protection Laws; |
| “**UK 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 (as transposed into UK legislation); 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**

**[Insert Standard Contract Clauses if required]**