[INSERT OFFICE REF NUMBER/SUPPLIER REF ETC.]

**Dated**



**DATA PROCESSING AGREEMENT**

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**THIS AGREEMENT dated** May 23rd, 2018 is made between:

(1) UNIVERSITY OF BRISTOL a UNIVERSITY OF BRISTOL a body incorporated by Royal Charter under number RC000648 having its administrative office at Beacon House, Queens Road, Bristol BS8 1QU (**University**); and

(2) a organization incorporated and registered in [under [company/LLP] number [Number]] and having its registered office at (**Supplier**).

(each a **party** and together the **parties**)

**Background**

1. The Supplier is a provider of [description of Supplier’s service(s) (**Services**).
2. entered into between the parties on or about the date of this Agreement (**Services Agreement**).
3. The parties have agreed to enter into this Agreement in relation to the processing of personal data by the Supplier in the course of providing the Services and, subject to clause 1.10, the terms of this Agreement are intended to apply in addition to and not in substitution of the terms of the Services Agreement.

**Agreed terms**

1. **Definitions and interpretation**
	1. In this Agreement the terms **controller**, **processor**, **personal data**, **special categories of personal data**, **processing**, **pseudonymisation**, **personal data breach** and **supervisory authority** shall have the meanings given to them in the Data Protection Legislation (as defined in clause 1.2 below).
	2. In addition to those terms referred to in clause 1.1, the following definitions shall apply in this Agreement:

|  |  |
| --- | --- |
| **Affiliates** | in relation to the University, each and any business entity or undertaking under the University’s direction and in relation to either party, any entity that directly or indirectly controls, is controlled by or is under common control with that party (where **control** is defined as the direct or indirect ownership or control of more than 50% of the shares or other equity securities, as defined in section 560(1) of the UK Companies Act 2006, of an entity or of the power to direct or significantly influence the direction of the management, policies and voting interests of an entity whether by contract or otherwise). |
| **Authorised Person** | the person(s) named by the University in Schedule 1 or such other person(s) as shall be nominated by the University from time to time in writing. |
| **Business Day** | a day other than a Saturday, Sunday or public holiday in England when banks in the City of London are generally open for business. |
| **Data Protection Legislation** | 1. unless and until the GDPR is no longer directly applicable in the UK by virtue of the UK’s exit from the European Union, the GDPR and any national implementing laws, regulations and secondary legislation in the UK and then any successor legislation to the GDPR;
2. the Privacy and Electronics Communications (EC Directive) Regulations 2003 (as amended);
3. all applicable laws and regulations relating to the processing of personal data and privacy; and
4. where applicable, the guidance and codes of practice issued by the UK Information Commissioner’s Office (ICO) or any other supervisory authority (and the equivalent of any of the foregoing in any relevant jurisdiction).
 |
| **EEA** | the European Economic Area including, for the purposes of this Agreement, the UK. |
| **GDPR** | Regulation (EU) 2016/679 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). |
| **Personnel** | in relation to party, those of its employees, workers, agents, consultants, contractors, sub-contractors, representatives or other persons employed or engaged by that party on whatever terms. |
| **Sub-processor** | any entity (whether or not an Affiliate of the Supplier, but excluding the Supplier’s Personnel) appointed by or on behalf of the Supplier to process personal data on behalf of the University under this Agreement. |

* 1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
	2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
	3. Unless the context otherwise requires, any reference to a **party** shall be deemed to include that party’s Affiliates and where an obligation is imposed on a party under this Agreement, it will be required to procure compliance with such obligation by that party’s Affiliates where appropriate.
	4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
	5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
	6. Unless the context otherwise requires, a reference to writing or written includes email but not fax.
	7. Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
	8. In the event of any ambiguity or inconsistency between the terms of this Agreement (including its Schedules) and the terms of the Services Agreement, the terms of this Agreement shall take precedence.
1. **Roles and responsibilities**
	1. The parties hereby record their intention that, for the purposes of the Data Protection Legislation, the University shall be the controller and the Supplier shall be the processor.
	2. Schedule 2 sets out the scope and purpose of the processing of personal data by the Supplier, the duration of the processing and the types of personal data and categories of data subject concerned.
2. **Compliance with Data Protection Legislation**
	1. Each party shall comply with all applicable requirements of the Data Protection Legislation. This clause 3.1 is in addition to, and does not relieve any party from complying with, a party’s obligations under the Data Protection Legislation.
	2. Without prejudice to the generality of clause 3.1, the University will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer to and processing of the personal data by the Supplier in connection with the performance by the Supplier of its obligations under the Services Agreement and this Agreement.
	3. To the extent within the University’s control having regard to the Supplier’s obligations under the Services Agreement and this Agreement, the University shall be responsible for the accuracy and quality of the personal data processed by the Supplier under this Agreement.
	4. The Supplier shall have an ongoing obligation throughout the duration of the Services Agreement to identify and report to the University:
		1. best practice techniques relating to the processing of personal data under this Agreement; and
		2. the emergence of new and evolving technologies which could improve the availability, confidentiality and/or integrity of the processing of personal data under this Agreement.
3. **Processing of personal data by the Supplier**
	1. The Supplier shall only process personal data:
		1. for the purposes expressly specified in the Services Agreement;
		2. for any purposes specified in Schedule 2; and
		3. otherwise in accordance with the University’s documented instructions [as given by an Authorised Person],

unless the Supplier is required by any applicable law to which the Supplier is subject, to process personal data for any other purposes (in which case the Supplier shall, to the extent permitted by such applicable law, inform the University of such legal requirement before undertaking such processing).

* 1. The University shall ensure that any Authorised Person is fully aware of the terms of the Services Agreement and this Agreement such that the Supplier shall be entitled to assume that any instruction given by any Authorised Person to the Supplier under clause 4.1 shall be given with the University’s full authority. The University further acknowledges and agrees that the Supplier shall not be under any duty to investigate the completeness, accuracy or sufficiency of any instructions given to it by any Authorised Person.
1. **Supplier’s Personnel**
	1. The Supplier shall take reasonable steps to ensure the reliability of those of its Personnel who may have access to any personal data.
	2. The Supplier shall ensure that those of its Personnel authorised to process personal data under this Agreement:
		1. are aware of the confidential nature of the personal data;
		2. are bound by obligations of confidentiality by virtue of a written agreement between the Supplier and such persons; and
		3. have received appropriate training on the handling of personal data and on their responsibilities in relation to the processing of personal data.
	3. The Supplier shall implement appropriate technical and organisational measures to ensure that those of its Personnel only have access to such part or parts of the personal data as is strictly necessary for the performance of their duties and obligations.
2. **Security of the processing**
	1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of the data subjects the Supplier shall, in relation to the processing of personal data under this Agreement, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate:
		1. the pseudonymisation and encryption of personal data;
		2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
		3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
		4. 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 Supplier shall take into account any risks that are presented by the processing, in particular, from a personal data breach.
	3. Without prejudice to the generality of clauses 6.2 and 6.3, the Supplier shall implement the specific security measures set out in Schedule 4. The Supplier may add to, amend, or replace the specific security measures for security reasons and shall notify the University in writing where it has done so.
3. **Sub-processors**
	1. The University hereby authorises the Supplier to appoint the Sub-processors listed in Schedule 5 (**Approved Sub-processors**).
	2. With respect to each Sub-processor appointed by the Supplier, the Supplier shall:
		1. undertake appropriate due diligence prior to the processing of personal data by such Sub-processor to ensure that it is capable of providing the level of protection for personal data required by the terms of the Services Agreement and this Agreement;
		2. enter into a written agreement with the Sub-processor incorporating terms which are substantially similar (and no less onerous) than those set out in this Agreement and which meets the requirements stipulated in article 28(3) of the GDPR; and
		3. as between the University and the Suppler, remain fully liable to the University for all acts or omissions of such Sub-processor as though they were its own.
	3. To the extent that the Supplier has already appointed any Sub-processors prior to the processing of any personal data under this Agreement, the Supplier shall ensure that its obligations under clause 7.2 are met as soon as practicable.
	4. Where the Supplier proposes any changes concerning the addition or replacement of any Approved Sub-processor, it shall notify the University in writing as soon as reasonably practicable prior to implementing such change specifying:
		1. the name of any Sub-processor which it proposes to add or replace;
		2. the processing activity or activities affected by the proposed change;
		3. the reasons for the proposed change; and
		4. the proposed date for implementation of the change.
	5. If within thirty (30) days of receipt of a notice under clause 7.4 the University [(acting reasonably and in good faith)] notifies the Supplier in writing of any objections to the proposed change, the parties shall use their respective reasonable endeavours to resolve the University’s objections. Where such resolution cannot be agreed within thirty (30) days of the Supplier’s receipt of the University’s objections (or such longer period as the parties may agree in writing) the University may, notwithstanding the terms of the Services Agreement, serve written notice on the Supplier to terminate the Services Agreement (to the extent that the provision of the Services is or would be affected by the proposed change).
	6. The Supplier shall, upon the University’s request, provide the University with copies of any agreements between the Supplier and its Sub-processors (which may be redacted to remove information which is confidential to the Supplier and/or its Sub-processors and which is not relevant to the terms of this Agreement).
4. **Rights of data subjects**
	1. Taking into account the nature of the processing, the Supplier shall assist the University by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the University’s obligation to respond to requests for exercising the data subject’s rights under the Data Protection Legislation.
	2. Without prejudice to the generality of clause 8.1, the Supplier shall implement measures intended to uphold the rights of data subjects.
	3. The Supplier shall:
		1. promptly and in any case within twenty-four (24) hours/one (1) Business Day] notify the University if it (or any of its Sub-processors) receives a request from a data subject under the Data Protection Legislation in respect of any personal data processed by the Supplier under the terms of the Services Agreement or this Agreement; and
		2. give to the University its full co-operation and assistance in relation to any request made by a data subject to have access to their personal data.
5. **Notification of personal data breaches**
	1. The Supplier shall notify the University without undue delay after becoming aware of any personal data breach affecting the personal data processed by the Supplier under this Agreement, providing sufficient information to enable the University to evaluate the impact of such personal data breach and to meet any obligations on the University to report the personal data breach to a supervisory authority and/or notify the affected data subjects in accordance with the Data Protection Legislation.
	2. The Supplier shall provide the University with such assistance as the University may reasonably request and take such reasonable commercial steps as the University may request in order to evaluate, investigate, mitigate and remediate any personal data breach (including, where applicable, communicating any personal data breach to affected data subjects).
6. **Data Protection Impact Assessments and Prior Consultation**

The Supplier shall provide the University with such assistance as the University may reasonably request with any data protection (or privacy) impact assessments and prior consultation with any supervisory authority or other competent authorities which the University considers necessary pursuant to Articles 35 and 36 of the GDPR respectively. The Supplier’s assistance shall, in each case, be limited to the processing of personal data under this Agreement.

1. **Obligations upon expiry or termination of the Services Agreement**
	1. Notwithstanding the Supplier’s obligations under the Services Agreement following its expiry or termination, the Supplier shall promptly and in any event within thirty (30) days of the expiry or termination of the Services Agreement, at the University’s option (given by any Authorised Person) either delete or return (in such format and on such media or by such means as the parties shall agree in writing) all copies of the personal data processed by the Supplier and/or its Sub-processors on behalf of the University under this Agreement.
	2. Where the University has instructed the Supplier to delete the personal data under clause 11.1, the Supplier shall do so in accordance with best industry practice for the reliable and secure deletion of data for the secure destruction of confidential material.
	3. The Supplier (and those of it’s Sub-processors, as appropriate) may retain a copy of the personal data processed by it under this Agreement to the extent required by any applicable law to which the Supplier (or any Sub-processor) is subject and only for such period as shall be required by such applicable law. Where applicable, the Supplier shall notify the University of such requirement and shall ensure that such personal data are kept confidential and not processed for any other purpose.
	4. The University may require the Supplier to provide a written certificate confirming that it has complied with its obligations under this clause 11.
2. **Record-keeping requirements and audit rights**
	1. The Supplier shall maintain a record of all categories of processing activities carried out by it on behalf of the University under this Agreement in accordance with Data Protection Legislation (**Processing Records**).
	2. The Supplier shall permit the University, any Authorised Person or any other auditor mandated by the University, on reasonable notice and during the Supplier’s normal business hours (but without notice, in the case of any reasonably suspected breach of this clause 12) to:
		1. gain access to, and take copies of, the Processing Records and any other information held at the Supplier's premises; and
		2. inspect all Processing Records, documents and electronic data and the Supplier’s systems, facilities and equipment,

for the purpose of auditing and certifying the Supplier's compliance with its obligations under this Agreement. Such audit rights may be exercised only once in any calendar year during the term of the Services Agreement and for a period of three (3) years following the expiry or termination of the Services Agreement.

* 1. The Supplier shall give all necessary assistance to the conduct of any audits under clause 12.2.
	2. The Supplier further agrees that it shall provide the University with such assistance as it may reasonably request in connection with any compulsory or voluntary audit or inspection by a supervisory authority or other competent authority.
	3. The Supplier shall immediately inform the University if, in its opinion, any instruction infringes the Data Protection Legislation.
1. **Transfers of personal data outside of the EEA**
	1. For the purposes of this clause 13, the **transfer of any personal data** shall include:
		1. storing personal data on servers located or co-located outside the EEA;
		2. appointing any Sub-processor which is located outside the EEA (in accordance with clause 7; or
		3. granting access rights to any of the Supplier’s Personnel who are located outside the EEA.
	2. The Supplier shall not transfer any personal data processed under this Agreement outside of the EEA except with the University’s prior written consent and provided that the University is satisfied that the following conditions have been met:
		1. the University, the Supplier and/or any Sub-processor (as appropriate) has provided appropriate safeguards in relation to the transfer;
		2. the data subject has enforceable rights and effective legal remedies in relation to the processing of personal data relating to them; and
		3. the Supplier and/or Sub-processor (as appropriate) complies with its obligations under the Data Protection Legislation by providing an adequate level of protection for any personal data that are transferred.
2. **Standard clauses and certification schemes**

If at any time the European Commission or any supervisory authority shall adopt any controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme (whether or not relating to the transfer of personal data outside the EEA), either party may request that this Agreement shall be reviewed with a view to adopting the same (in whole or in part).

1. **Indemnity**
	1. Notwithstanding any other indemnity provided by the Supplier under the Services Agreement, the Supplier shall, except to the extent directly caused by the University’s negligence or wilful default, fully indemnify the University against all liabilities, losses, costs, expenses, and damages of whatever nature (including any direct, indirect or consequential losses, legal costs (on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the University arising out of or in connection with:
		1. any breach by the Supplier of the terms of this Agreement (or the terms of any agreement between the Supplier and its Sub-processors) or the Data Protection Legislation; and
		2. any personal data breach caused by the Supplier or its Sub-processors.
	2. The University shall give the Supplier written notice of any claim under the indemnity in clause 15.1 as soon as reasonably practicable specifying the nature of the claim in reasonable detail, however the giving of such notice shall not affect the University’s right to recovery under the indemnity.
	3. Notwithstanding any limitations on the Supplier’s liability under the Services Agreement, the Supplier’s liability under the indemnity in clause 15.1 shall be limited to £5,000,000 in relation to any one claim or series of related claims (and the University shall not be debarred from bringing any additional claim for damages to the extent that its liability exceeds the indemnified sum).
2. **General provisions**
	1. Term and termination: Except in respect of any provision of this Agreement that expressly or by implication is intended come into or continue in force on or after the expiry or termination of the Services Agreement, this Agreement shall be coterminous with the Services Agreement.
	2. Third party rights: A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.
	3. Severance
		1. 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.
		2. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
	4. Variation: Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
	5. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A counterpart signature page of this Agreement executed by a party and the execution version of the Agreement transmitted electronically in Portable Document Format (PDF) shall be treated as an original, fully binding and with legal force and effect. The parties waive any rights they may have to object to such treatment.
	6. Governing law: This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
	7. Jurisdiction: Each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**This Agreement has been entered into on the date stated at the beginning of it.**

1. **– The Authorised Person(s)**

The University hereby authorises the following person(s) to act on its behalf for the purposes of this Agreement:

**Name:**

**Role:**

**Email:**

**Telephone:**

**Name:**

**Role:**

**Email:**

**Telephone:**

The Supplier hereby authorises the following person(s) to act on its behalf for the purposes of this Agreement:

**Name:**

**Role:**

**Email:**

**Telephone:**

**Name:**

**Role:**

**Email:**

**Telephone:**

1. **– Summary of the processing activities**
2. Processing by the Supplier
	1. Scope of the processing

[Description of the scope of the processing activities, which may be summarised in list format]

* 1. Purpose of the processing

[Description of the purpose of the processing activities, which may be summarised in list format]

* 1. Duration of the processing

[Description of the duration of the processing, which may be defined by reference to the duration of the Services Agreement but should also take into account any post-termination retention of personal data in accordance with the terms of the Services Agreement or as may be required by applicable law]

1. Types of personal data

The types of personal data to be processed by the Supplier in the course of providing the Services are as follows:

1. Categories of data subject

The categories of data subject in respect of which the Supplier shall process personal data are as follows:

[Description of the categories of data subject, which may be summarised in list format]

1. **– Specific security measures**

The University of Bristol will conduct the activities covered by this agreement in compliance with its [Information Security Policy](http://www.bristol.ac.uk/infosec/policies/docs/), and relevant [data protection policies and guidance](http://www.bristol.ac.uk/secretary/data-protection/).

1. **– Approved Sub-processors**

The University agrees that the Supplier may sub-contract certain of its obligations under this Agreement to the following Sub-processors:

|  |  |  |
| --- | --- | --- |
| **Name of Sub-processor** | **Registered office address** | **Sub-contracted activities** |
|  |  |  |
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