

**[Standard data protection [agreement/clauses] for the transfer of Personal Data  
from the University of Edinburgh (as Data Controller) to a Data Processor  
within the European Economic Area ]**

**DATA PROCESSING AGREEMENT**

between

**THE UNIVERSITY COURT OF THE UNIVERSITY OF EDINBURGH**, which has its principal administrative offices at Old College, South Bridge, Edinburgh, EH8 9YL (the “**University**”)

and

[  
], a company registered in [  
] with registered number [  
] and having its registered office at [  
] (the “**Data Processor**”)

The University and the Data Processor have agreed on the following contractual clauses in order to ensure adequate safeguards are in place in respect of and to protect the processing of Personal Data by the Data Processor in terms of this Agreement.

NOW THEREFORE the parties agree as follows:-

*Clause 1*

**Definitions and Interpretation**

In this Agreement:-

- 1.1 ‘**Data Processor**’ shall mean the organisation detailed above and which has agreed to receive Personal Data from the University for further processing in accordance with the terms of this Agreement.
- 1.2 ‘**Personal Data**’ is data processed, under this Agreement that identifies a living individual and as defined by the Act.
- 1.3 ‘**Data Subject**’ is the individual which the Personal Data identifies.
- 1.4 ‘**Act**’ means the Data Protection Act 1998 and any and all subordinate legislation made thereunder and any and all primary and secondary legislation for the time being re-enacting, consolidating or modifying the same.
- 1.5 ‘**Data Processing**’ is any processing, operation or action taken with Personal Data and which constitutes “processing” in terms of the Act and shall include, without limitation, the collection, use, disclosure, destruction and holding of the data and “process” or “processing” shall be construed accordingly
- 1.6 ‘**Ordered Services**’ are the services set out in the Schedule annexed to and forming part of this Agreement and that the Data Processor has agreed to undertake on behalf of the University in accordance with the terms of this Agreement.

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- 1.7 “**Working Days**” means any day (excluding Saturdays, Sundays, and bank or public holidays) on which clearing banks are open for normal banking business in Edinburgh (ignoring 24 hour internet banking services).
- 1.8 “**Data Processor Personnel**” means the Data Processor and/or each of its sub-contractors and the officers, employees, agents, consultants, representatives and other personnel of each of the Data Processor and each sub-contractor.
- 1.9 Words and expressions defined in the Act shall bear the same meanings in this Agreement, save where the context otherwise requires.
- 1.10 Unless the context requires otherwise:
- 1.10.1 the words “include” or “including” or “in particular” are to be construed as meaning without limitation;
- 1.10.2 words in the singular include the plural and vice versa and words for any gender shall include all genders; and
- 1.10.3 reference to persons shall be deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations, to trusts (in each case whether or not having separate legal personality) but references to individuals shall be deemed to be references to natural persons only.
- 1.11 Reference to any statute or statutory provision includes a reference to statutory instruments and orders made further to it and includes consolidations or amendments or modifications or re-enactments.
- 1.12 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.13 Unless otherwise stated, a reference to a clause or a schedule or a party or parties is reference to a clause in or a schedule or a party or parties to this Agreement.
- 1.14 Any reference in this Agreement to writing or cognate expressions includes a reference to facsimile transmission, electronic mail or other comparable means of communication.
- 1.15 References to any act or omission or breach or non-compliance by or on the part of the Data Processor shall be deemed to include a reference to any act, omission, breach or non-compliance by of any sub-contractor or any Data Processor Personnel.

## *Clause 2*

### **Assistance with compliance**

- 2.1 The Data Processor shall comply at all times with the requirements of the Act (as if it were a data controller) and shall perform its obligations under this Agreement in such a way as to ensure that the University does not or is not likely to breach any of its obligations under the Act.

- 2.2 The Data Processor will comply with all reasonable requests by the University (and/or its auditors, internal or external, and/or representatives subject to reasonable and appropriate confidentiality undertakings being given by the University's auditors or representatives and reasonable notice) to inspect and audit the Data Processor's Data Processing activities, facilities, processes and procedures, documents, resources and equipment (and/or those of its agents, subsidiaries and sub-contractors) to enable the University to verify that the Data Processor is complying fully with its obligations under this Agreement and, for these purposes, the Data Processor shall allow the University and/or its auditors or representatives access (and it shall ensure that its sub-contractors shall allow the University and/or its auditors, internal or external, and/or representatives access to their premises) to all of the premises that it occupies (or other locations at which any Personal Data is being held and/or processed at that time) to enable such inspection and/or audit shall be carried out.
- 2.3 The Data Processor will provide the University with full cooperation and assistance to ensure that each party complies with its requirements and obligations under the Act including without limitation by:
- 2.3.1 notifying the University (within five (5) Working Days) if it receives a subject access request from a Data Subject to have access to his or her Personal Data and (at the same time) providing full details and a copy of such request;
  - 2.3.2 notifying the University (within five (5) Working Days) of any complaint received by it from a Data Subject about the processing of his or her Personal Data and providing (at the same time) the University with full details and a copy of the complaint and ensuring that it does not make any admissions or do or omit to do anything without the prior written consent of the University that may prejudice the University's ability to respond to or make a defence in respect of any such complaint;
  - 2.3.3 providing reasonable assistance to the University in dealing with or responding to any subject access request or any complaint referred to in Clauses 2.3.1 and 2.3.2;
  - 2.3.4 providing the University, within five (5) Working Days of the date of such request from the University, with any Personal Data that it holds to enable the University to respond to requests received by the University from Data Subjects; and/or
  - 2.3.5 providing the University, within five (5) Working Days of the date of such request from the University, with such information that it holds and that the University may reasonably require regarding the provision of the Ordered Services and the performance by the Data Processor of its obligations under and pursuant to the terms of this Agreement including without limitation in relation to any subject access request or complaint received by the University or the Data Processor.
- 2.4 As the University is subject to the Freedom of Information Act (Scotland) 2002 and the Environmental Information Regulations (Scotland) 2004 (in each case and also together being referred to as "FOISA"), the Data Processor:

- 2.4.1 shall, following notification from the University that it has received a request from a third party seeking information under FOISA, send to the University within [2] Working Days of such notification, such information as may be requested by the University and, in addition, such additional information that it holds on behalf of the University under this Agreement and that the Data Processor believes (acting reasonably) is relevant for the purposes of such FOISA request;
- 2.4.2 shall not respond to any request for information (including Personal Data) received by it under FOISA (or any similar or equivalent legislation relating to freedom of information and in force in the jurisdiction to which it is subject) that it holds on behalf of the University (including Personal Data) under this Agreement without consultation with the University; and
- 2.4.3 shall provide, in response to a written request from the University, a copy of any information it holds on behalf of the University, whether or not this information is Personal Data and irrespective of the format in or the media on which such information is held or stored, within ten (10) Working Days of the date of such request (or such longer period as may be agreed in writing by the University).
- 2.5 The Data Processor will promptly and properly deal with and respond to any and all reasonable requests and enquiries made by the University relating to its Data Processing of the Personal Data.
- 2.6 The Data Processor shall notify the University forthwith upon it becoming aware that it is or is likely to become unable to comply with either its obligations under this Agreement and/or the University's requirements or instructions (whether specific or general) regarding the processing of the Personal Data whereupon the University shall be entitled, at its sole discretion, to either:-
- 2.6.1 suspend the right of the Data Processor to process Personal Data under or pursuant to the terms of this Agreement (to such extent and for howsoever long as the University may determine) until the Data Processor is able to demonstrate to the reasonable satisfaction of the University that the Data Processor is able and will continue to be able to so comply PROVIDING ALWAYS THAT if the Data Processor is unable to demonstrate to the reasonable satisfaction of the University that the Data Processor is able and will continue to be able to comply with the terms of the Agreement, the University shall be entitled to terminate this Agreement on ten (10) Working Days' written notice; or
- 2.6.2 terminate this Agreement on ten (10) Working Days' written notice.

### *Clause 3*

#### **Insurance cover**

- 3.1 The Data Processor shall hold and ensure that it continues to hold throughout the term of this Agreement a satisfactory level of and appropriate insurance cover with a reputable insurer to cover the Data Processor's obligations to the University under this Agreement, including without limitation, public liability

cover of at least five million pounds sterling. The Data Processor will disclose to the University satisfactory evidence of such insurance (including the amount and type of cover effected) and payment of current premiums as soon as reasonably practicable upon request by the University.

#### *Clause 4*

### **Liability and Warranties**

- 4.1 The Data Processor is liable for and shall indemnify and keep the University fully indemnified on demand from and against each and every action, proceeding, liability, loss, damage, cost, claim, fine, expense and/or demand suffered or incurred by the University which arise from or in connection with or pursuant to any act or omission of or the performance of the Data Processor's obligations under this Agreement, including without limitation those arising out of third party demand, claim or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or non compliance with this Agreement or any part of the Act by the Data Processor or any of the Data Processor Personnel or any claim that is referred to in Clause 4.2.
- 4.2 The Data Processor acknowledges to and agrees with the University that:-
- 4.2.1 Data Subjects who suffer damage (the "Damages") as a result or a consequence of the acts and/or omissions of or a breach of the provisions of this Agreement by or on behalf of the Data Processor shall be entitled to receive compensation from the Data Processor for such Damages; and
- 4.2.2 it shall be liable (to the exclusion of the University, as between the University and the Data Processor) for any such Damages that may be due to or awarded to any such Data Subject by any court, authority or person of competent jurisdiction and that the indemnity set out in Clause 4.1 shall apply in respect of any such Damages.
- 4.3 The Data Processor warrants, represents and undertakes to the University that:-
- 4.3.1 it has full power and authority to receive, store and process the Personal Data, to use it for the purposes set out in this Agreement, including without limitation the Ordered Services and to give the warranties, indemnities and enter into and perform its obligations under and in terms of this Agreement;
- 4.3.2 it has in place, appropriate technical and organisational measures to prevent unlawful or unauthorised processing, accidental or unlawful destruction, accidental loss, alteration, unauthorised disclosure or access and adequate security procedures to ensure that unauthorised persons will not have access to the Personal Data, or to equipment used to process the Personal Data and that any persons it authorises to have access to the Personal Information will respect and maintain the confidentiality and security of the Personal Data;
- 4.3.3 it will comply with the Act (as it was a data controller) and, in particular the data protection principles set out in Schedule 1 of the Act in

relation to the processing of the Personal Data in terms of this Agreement; and

- 4.3.4 it has no reason to believe that any legislation applicable to it in any way prevents, restricts or limits its ability or right to comply with and fulfill its obligations under this Agreement.

#### *Clause 5*

#### **Restriction on transfer outside the European Economic Area (EEA)**

- 5.1 In processing Personal Data on behalf of the University pursuant to its obligations under this Agreement, the Data Processor shall:
  - 5.1.1 not process Personal Data outside the EEA without the express prior written consent of the University and, where the University gives such consents to a transfer, will:
    - 5.1.1.1 take such steps as may be necessary to ensure that the obligations of the University under the eighth data protection principle set out in Schedule 1 of the Act by providing an adequate level of protection to any Personal Data that is transferred have been complied with and will not effect any such transfer unless and until it has satisfied itself that an adequate level of protection is in place in respect of the Personal Data to be transferred and all necessary filings and registrations relating to any arrangements put in place with the third party located in such jurisdiction have been made; and
    - 5.1.1.2 comply with all reasonable instructions notified to it by the University in connection with such transfer; and
    - 5.1.1.3 as soon as reasonably practicable (and in any event within five (5) Working Days) of a request from the University, provide a written explanation and full details of the steps that have been taken or implemented by or on behalf of the Data Processor to comply with Clauses 5.1.1.1 and 5.1.1.2.
- 5.2 The Data Processor acknowledges and agrees that where Personal Data incorporates personal sensitive data and is to be transferred outwith the EEA that it may be necessary to ensure that additional safeguards and security measures are adopted by the Data Processor, such as strong encryption or keeping a written record of access to such sensitive personal data. Such measures will require to be agreed in writing with the University prior to transfer.

#### *Clause 6*

#### **Restrictions on use of Personal Data**

- 6.1 In processing Personal Data on behalf of the University pursuant to its obligations under this Agreement, the Data Processor shall:

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- 6.1.1 process the Personal Data only in accordance with instructions from the University (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified in writing by the University to the Data Processor during the term of this Agreement but for no other purposes whatsoever;
- 6.1.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Services or the proper performance of its obligations under this Agreement or as is required by law or any regulatory body;
- 6.1.3 take reasonable steps to ensure the reliability of any Data Processor Personnel who have access to the Personal Data;
- 6.1.4 ensure that Personal Data is only disclosed to and/or accessed or processed by Data Processor Personnel who reasonably require the same in order to allow the Data Processor to comply with its obligations under this Agreement and that such Data Processor Personnel are informed of the confidential nature of the Personal Data and undertake to comply with the obligations of the Data Processor set out in this Agreement;
- 6.1.5 ensure that none of the Data Processor Personnel, use, publish, disclose or divulge any of the Personal Data to any third party unless expressly directed in writing to do so by the University;
- 6.1.6 obtain the prior written consent from the University in order to transfer the Personal Data to any sub-contractors for the provision of the Ordered Services or the performance of any of the obligations of the Data Processor under this Agreement;
- 6.1.7 where the Data Processor wishes to appoint a sub-contractor to assist it in providing the Ordered Services and performing its obligations under this Agreement and such assistance includes the processing of Personal Data on behalf of the University, then any such appointment shall not be made unless and until the proposed sub-contractor has entered into a written contract (on terms satisfactory to the University) with the Data Processor in terms of which such sub-contractor agrees to be governed by the same terms with respect to data protection requirements as are set out in this contract and placed upon the Data Processor;
- 6.1.8 not disclose, trade, give, barter, sell, give away, lend or transfer any Personal Data to any person or make any copy or copies of the Personal Data in any form or on any media whatsoever save to the extent that is absolutely necessary for the carrying on of the Ordered Services or the proper performance of the obligations of the Data Processor in terms of this Agreement or for back-up or security purposes deemed necessary by the Data Processor; and
- 6.1.9 without prejudice to the other provisions of this Agreement and the Act, exercise in respect of Personal Data and other information passed to it by the University pursuant to the terms and/or for the purposes of this Agreement, no lesser security measures and degree

of care than those which the Data Processor applies to its own personal data and confidential information.

- 6.2 The Data Processor shall not acquire any right, title or interest in and to any of the Personal Data or other information provided or disclosed by the University pursuant to or form the purposes of this Agreement.

*Clause 7*

**Security provisions**

- 7.1 Without prejudice to the other provisions of this Agreement, in processing Personal Data on behalf of the University pursuant to its obligations under this Agreement, the Data Processor shall implement and shall ensure that it has in place at all times during the term of this Agreement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Data Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 7.2 As soon as reasonably practicable (and in any event within five (5) Working Days) of a request from the University, the Data Processor shall provide to the University a written explanation and full details of the appropriate technical and organisational measures taken by or on behalf of the Data Processor to demonstrate and ensure compliance with Clause 7.1.

*Clause 8*

**Provisions for the return or destruction of Personal Data**

- 8.1 Forthwith upon termination of this Agreement (howsoever arising):-
- 8.1.1 the Data Processor shall cease to access, use or process any of the Personal Data (and shall ensure that its permitted sub-contractors do likewise); and
- 8.1.2 the Data Processor will return all Personal Data and all other information belonging to the University and which is provided or disclosed to the Data Processor for the purposes of this Agreement and all copies of such Personal Data and information to the University forthwith or, at the University's written instruction, will destroy all such Personal Data and information, together with any and all copies of all such Personal Data and information and certify in writing to the University that it has done so, save to the extent that the Data Processor is prevented by law from destroying all or part of all such Personal Data and information, in which event the Data Processor undertakes that all such Personal Data and information will be kept confidential and will not be disclosed to any third party or used or processed for any purpose.



- 8.2 The Data Processor agrees that if requested by the University, its auditors (internal or external) or any regulatory body, it will allow the University or a representative of it access on demand subject to reasonable notice to all of its premises (and it shall ensure that its permitted sub-contractors shall allow the University access to their premises) to verify that the Data Processor has complied with its obligations in terms of Clause 8.1.

#### *Clause 9*

### **Termination**

- 9.1 This Agreement may be terminated by either party immediately if:-
- 9.1.1 without prejudice to Clause 9.3, the other party commits or permits any material or persistent breach of this Agreement and, in the case of such breaches capable of being remedied, fails to remedy that breach within 21 days of receiving notice of such breach; or
  - 9.1.2 the other party commits an act of bankruptcy or goes into liquidation other than for the purposes of reconstruction or amalgamation or suffers the appointment of a receiver or administrator of any of its property or income or makes any deed or arrangement with or composition for the benefit of any of its creditors.
- 9.2 This Agreement may be terminated by the University in the circumstances set out in Clause 2.6 or 10.4.3.
- 9.3 The University may terminate this Agreement immediately if the Data Processor fails to comply within a reasonable time with any reasonable security recommendation made by the University.
- 9.4 This Agreement may be terminated by either party giving no less than [ ] months notice to the other party.

#### *Clause 10*

### **Miscellaneous Provisions**

- 10.1 Any termination of this Agreement will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination. The provisions of Clauses 4 and 10 shall survive the expiry or termination of this Agreement.
- 10.2 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as the agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 10.3 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity

or unenforceability shall remain in full force and effect. The parties hereby agree to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

10.4.1 Neither party hereto shall be liable for any breach of its obligations under this Agreement resulting from causes beyond its reasonable control including, but not limited to, fire, strikes, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "**Event of Force Majeure**").

10.4.2 Each of the parties agrees to give notice forthwith to the other upon becoming aware of any Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

10.4.3 If a default due to any Event of Force Majeure shall continue for more than [six] weeks, then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

10.5 Any communication or notice required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by fax or sent by first class registered or recorded delivery if posting to the following addresses:

10.5.1 to the University: [ ]

Fax: [ ]

10.5.2 to the Data Processor: [ ]

Fax: [ ]

or to such other address or fax number as may be notified in writing to the other party in accordance with these provisions.

Any communication or notice pursuant to Clause 10.5 shall be deemed to have been received and served:

10.5.3 if hand delivered, at the time of delivery;

10.5.4 if sent by fax, at completion of transmission during the hours of 9am to 5pm on a working day at its destination or if not within such hours at 9am at its destination on the next working day;

10.5.5 if sent by post, within 48 hours of posting (exclusive of Sunday).

10.6 This Agreement supersedes any previous agreement between the parties hereto in relation to the matters dealt with herein and represents (together with the documents referred to herein) the entire agreement between the parties hereto in relation to such matters. All warranties, representation or undertakings that may be implied by law are excluded to the fullest extent permitted by law and each party hereby expressly excludes any and all rights and/or remedies that it may have thereunder.



.....

Witness Signature

.....

Witness Full Name

.....

.....

Address

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT  
BETWEEN THE UNIVERSITY COURT OF THE UNIVERSITY OF EDINBURGH  
AND [ ]**

**Ordered Services**

**[insert specific details of services to be provided]**