### LONDON’S GLOBAL UNIVERSITY



# Data Processing Agreement

between

**University College London**

and

**[INSERT NAME OF DATA PROCESSOR]**

|  |  |
| --- | --- |
| Date this Agreement comes into force: | [DATE] |
| Date by which this Agreement should be reviewed: | Six months after coming into force, then annually |
| Agreement owner: |  |
| Location of signed Agreement: |  |
| Protective marking: | PROTECTIVELY MARKED |

## Parties to this Agreement

1. **UNIVERSITY COLLEGE LONDON** a body corporate established by Royal Charter with company number RC000631 of Gower Street, London, WC1E 6BT (**UCL**); and
2. [**NAME OF** **SERVICE PROVIDER] [DESCRIPTION, COMPANY NUMBER AND REGISTERED ADDRESS]** (**Service Provider**).

## Purpose

1. [UCL has appointed the Service Provider to provide services as set out in [INSERT DETAILS OF MAIN AGREEMENT] (**Main Agreement**).] ***[Note: include this Clause only if applicable.]***
2. This Agreement establishes the terms and conditions under which: (a) UCL will provide Personal Data to the Service Provider; and (b) the Service Provider shall Process that Personal Data on behalf of UCL, [in connection with the Main Agreement].

## Terms of the Agreement

1. This Agreement comprises these terms and conditions and the Schedules attached hereto.
2. For clarity, the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
3. UCL shall share the Personal Data with the Service Provider, and the Service Provider shall process that Personal Data, only in accordance with the terms of this Agreement.

## Term and termination

1. This Agreement shall commence on the date set out at the beginning of it and shall continue[: (a) until terminated in accordance with its terms; or (b) until the date upon which the Main Agreement terminates or expires, whichever is the later.] ***[Note: applicable termination date to be considered.]***
2. Without prejudice to any other right or remedy available to it, UCL may terminate this Agreement at any time for any reason with immediate effect by giving 28 days’ written notice.
3. Clause 4 (Term and termination), Clause 5 (Data protection arrangements) and Clause 6 (indemnity) shall survive the termination or expiry of this Agreement, as shall any other Clause which, by its nature, is intended to survive termination or expiry.
4. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## Data protection

1. The parties agree and acknowledge that UCL shall be the Data Controller of all Personal Data Processed by the Service Provider in connection with this Agreement, and the Service Provider shall be the Data Processor in respect of such Personal Data.

***Obligations applicable to the Service Provider***

1. The Service Provider shall, when Processing Personal Data in connection with this Agreement:
2. comply with all applicable provisions of the Data Protection Legislation, including the obligations imposed upon a Data Processor;
3. subject to Clause 5(b)(iii), act only in accordance with UCL’s written instructions from time to time regarding the Processing of Personal Data pursuant to this Agreement;
4. notify UCL immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable EU Law to act other than in accordance with the instructions of UCL, including where it believes that any of UCL's instructions under this Clause infringes any of the Data Protection Legislation;
5. Process the Personal Data for and on behalf of UCL only for the Permitted Purpose in accordance with this Agreement, including the terms of Schedule 2;
6. keep a record of any Processing of Personal Data that it carries out on behalf of UCL;
7. implement and maintain appropriate technical and organisational security measures, including the encryption of personal data in transit and at rest and in accordance with the particulars set out in Schedule 2, which are sufficient to comply with at least the obligations imposed on UCL by the Security Requirements and, where requested, provide to UCL evidence of its compliance with such requirements;
8. take all reasonable steps, including the provision of appropriate training in data protection and information security, to ensure the reliability, competence and integrity of any of the Personnel who shall have access to the Personal Data, ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings, and all times procure compliance by those persons with such obligations of confidentiality;
9. within thirty (30) calendar days of a request from UCL, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the Data Controller (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Agreement and with the Data Protection Legislation, including the requirements of Article 28 GDPR and provide reasonable information, assistance and co-operation to UCL, including access to relevant Personnel and/ or, on the request of UCL, provide UCL with written evidence of its compliance with the requirements of this Agreement and with Data Protection Legislation;
10. not make (nor instruct or permit a third party to make) a Data Transfer unless it: (A) has first obtained UCL's prior written consent; (B) provides, in advance of any such Data Transfer, a Data Transfer Risk Assessment to UCL; and (C) has put in place measures to ensure UCL's compliance with the Data Protection Legislation, including entering into, or procuring that such applicable sub-contractors enter into, the relevant Standard Contractual Clauses with UCL;
11. not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without UCL's prior written consent, save in relation to Third Party Requests where the Service Provider is prohibited by Applicable EU Law from notifying UCL, in which case it shall use reasonable endeavours to advise UCL where permitted in advance of such disclosure and in any event as soon as practicable thereafter;
12. not sub-contract the performance of any of its obligations under this Agreement without the prior written consent of UCL;
13. where in connection with this Agreement, it sub-contracts the processing of any Personal Data to a third party, (A) ensure that the arrangement with the sub-contractor is: (1) governed by a written contract imposing the same terms in relation to the processing of the Personal Data as those set out in this Agreement; and (2) where applicable, meets the requirements of Article 28(3) of the General Data Protection Regulation; and (B) be fully liable to UCL for any breach by that party in respect of its obligations to process Personal Data in accordance with this Agreement and the compliance of that subcontractor with the Data Protection Legislation;
14. notify UCL promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or Regulator Correspondence and shall: (A) not disclose any Personal Data in response to any Data Subject Request or Regulator Correspondence without UCL's prior written consent; and (B) provide UCL with all reasonable co-operation and assistance required by UCL in relation to any such Data Subject Request or Regulator Correspondence;
15. notify UCL promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected, threatened or ‘near miss’ Personal Data Breach, with sufficient information to allow UCL to meet any obligations under Data Protection Legislation to report or inform Data Subjects of the data breach, and: (A) implement any measures necessary to restore the security of compromised Personal Data; and (B) assist the Data Controller to make any notifications to the Regulator and affected Data Subjects;
16. except to the extent permitted by Applicable EU Law, upon UCL’s request and/or on the earlier of: (A) termination or expiry of this Agreement (as applicable); and/ or (B) the date on which the Personal Data Processed in connection with this Agreement is no longer relevant to, or necessary for, the Permitted Purpose, the Service Provider shall cease Processing all such Personal Data and return and/ or permanently and securely destroy, so that it is no longer retrievable (as directed in writing by UCL), all such Personal Data and all copies in its possession or control (including back up copies); and
17. use all reasonable endeavours, in accordance with Good Industry Practice, to assist UCL to comply with the obligations imposed on UCL by the Data Protection Legislation, including: (A) compliance with the Security Requirements; (B) obligations relating to notifications required by the Data Protection Legislation to the Regulator and/ or any relevant Data Subjects; and (C) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Legislation, consulting with the Regulator in respect of any such Data Protection Impact Assessments).

***Obligations applicable to both UCL and the Service Provider***

1. During the term of this Agreement each party acknowledges that it has obligations under applicable Data Protection Legislation including the following (for clarity, these obligations shall be without prejudice to the obligations applicable to the Service Provider set out at Clause 5(b) above):
2. to make due notification (where required by applicable Data Protection Legislation) to the Regulator, including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Legislation;
3. to ensure that all Personal Data disclosed or transferred to, or accessed by, the other party is accurate and up-to-date, as well as adequate, relevant and not excessive to enable each party to Process the Personal Data, as envisaged under this Agreement;
4. to ensure that appropriate operational and technical measures, including encryption implemented to the appropriate Current Standard, are in place to safeguard against any unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the other party evidence of its compliance with such requirement;
5. take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
6. not transfer any Personal Data outside the European Economic Area except in accordance with the requirements of the Data Protection Legislation;
7. hold the information contained in the Personal Data confidentially; and
8. not do anything which shall damage the reputation of the other party or that party's relationship with the Data Subjects.
9. Notwithstanding anything in this Agreement to the contrary, this Clause 5 (Data Protection Arrangements) shall continue in full force and effect for so long as the Service Provider Processes any Personal Data in connection with this Agreement.

## Freedom of Information

1. The Service Provider acknowledges that UCL is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
2. provide all necessary assistance and cooperation as reasonably requested by UCL to enable UCL to comply with its obligations under the FOIA and EIRs;
3. transfer to UCL all Requests for Information relating to this Agreement [or to the Main Agreement] that it receives as soon as practicable and in any event within 2 working days of receipt;
4. provide UCL with a copy of all Information belonging to UCL requested in the Request For Information which is in its possession or control in the form that UCL requires within 5 working days (or such other period as UCL may reasonably specify) of UCL's request for such Information; and
5. not respond directly to a Request For Information unless authorised in writing to do so by UCL.
6. The Service Provider acknowledges that UCL may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. UCL shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) UCL shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## Indemnity

1. The Service Provider hereby indemnifies UCL against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by UCL in connection with or as a result of any breach of this Agreement by the Service Provider, its staff or agents.
2. [For clarity, the parties agree that any limitations on liability set out in the Main Agreement shall not apply to the indemnity set out in this Clause.] ***[Note: include only if applicable.]***

## Miscellaneous

1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
3. 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.
4. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
5. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
6. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
7. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
8. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
9. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law.
10. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed for and on behalf of **University College London**

Name (print):

Job title:

Date:Signed for and on behalf of **[INSERT NAME OF SERVICE PROVIDER]**

Name (print):

Job title:

Date:

**Schedule 1: Definitions and interpretation**

1. **Definitions**

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| Applicable EU Law | means any law of the European Union (or the law of one of the Member States of the European Union) to which the Service Provider is subject; |
| Commercially Sensitive Information  | means information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to UCL that, if disclosed by UCL, would cause the Service Provider significant commercial disadvantage or material financial loss; |
| Confidential Information | any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Service Provider, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information; |
| Current Standard  | means the current standards for encryption recommended by the Information Commissioner’s Office, such as FIPS 140-2 (cryptographic modules, software and hardware) and FIPS 197; |
| Data Controller | has the meaning set out in the Data Protection Legislation; |
| Data Processor | has the meaning set out in the Data Protection Legislation; |
| Data Protection Impact Assessment | means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the GDPR; |
| Data Protection Legislation | means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a party to this Agreement is subject, including: (a) the Data Protection Act 1998 and EC Directive 95/46/EC (up to and including 24 May 2018); and (b) the GDPR (from and including 25 May 2018); and/or (c) in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of Personal Data; |
| Data Protection Particulars | means, in relation to the Processing under this Agreement:1. the subject matter and duration of the Processing;
2. the nature and purpose of the Processing;
3. the type of Personal Data being Processed; and
4. the categories of Data Subjects,

as set out in Schedule 2; |
| Data Subject Request | means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising its rights under the Data Protection Legislation; |
| Data Subject | has the meaning given to it in the Data Protection Legislation; |
| Data Transfer Risk Assessment | means a risk assessment which set out details of the following:1. the Personal Data that will be transferred;
2. the Restricted Country or Countries to which the Personal Data will be transferred;
3. the means by which the Data Processor will ensure an appropriate level of protection and appropriate safeguards in respect of the Personal Data that will be transferred to a Restricted Country so as to ensure the Data Processor’s compliance with Data Protection Legislation; and
4. in providing and evaluating the risk assessment, the Data Processor shall ensure that it has regard to the Data Protection Legislation in connection with transfers of Personal Data to any Restricted Country;
 |
| Data Transfer | means transferring the Personal Data to, and/ or accessing the Personal Data from and/ or Processing the Personal Data within, a jurisdiction or territory that is a Restricted Country; |
| ElRs  | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;  |
| FOIA  | means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Regulator or relevant government department in relation to such legislation; |
| 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 repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016; |
| Good Industry Practice | means, at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of similar services to those being carried out under this Agreement, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws (including the Data Protection Legislation); |
| Information:  | has the meaning given under section 84 of FOIA; |
| Permitted Purpose | means the purpose of the Processing as set out in more detail in the Data Protection Particulars; |
| Personal Data Breach | has the meaning set out in the Data Protection Legislation; |
| Personal Data | means any Personal Data (as defined in the Data Protection Legislation) processed by either Party in connection with this Agreement; |
| Personnel | means all persons engaged or employed from time to time by the Data Processor in connection with this Agreement, including employees, consultants, contractors and permitted agents; |
| Process or Processing | has the meaning set out in the Data Protection Legislation; |
| Regulator | means the UK Information Commissioner (including any successor or replacement); |
| Restricted Country | means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with EC Directive 95/46/EC and/or Article 45(1) of the GDPR (as applicable); |
| Request for Information | means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| Security Requirements | means the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the seventh data protection principle of the Data Protection Act 1998 and/ or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable; |
| Sensitive Personal Data | which in the GDPR is referred to as “special categories of personal data” has the meaning set out in the Data Protection Legislation; |
| Standard Contractual Clauses | means (i) the Standard Contractual Clauses approved by the Commission for transfers from data controllers in the EEA to data controllers outside the EEA; and/or (ii) the Standard Contractual Clauses approved by the Commission for transfers from data controllers in the EEA to data processors outside the EEA each as updated and/or amended from time to time;  |
| Third Party Request | means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation. |

1. **Interpretation**
2. Clause and Schedule headings are inserted for convenience only and shall not affect the interpretation of this Agreement.
3. References to Clauses and Schedules are to the Clauses and Schedules of this Agreement.
4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
5. A reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision.
6. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
7. Words in the singular shall include the plural and in the plural include the singular.

**Schedule 2: Data Protection Particulars**

***[Note: the following details should be completed before the contract is signed]***

**Subject matter of the processing:**

**Duration of the processing:**

**Nature and purpose of the processing:**

**Type of personal data:**

**Categories of data subject:**

**Obligations and rights of the Data Controller:**

These are as set out in the Agreement and this Schedule.

**Sensitive Personal Data to be encrypted (if any):**

**Methods and standards of encryption used:**