**Standard Contract Clauses for controllers to processors**

**The Parties**

|  |  |
| --- | --- |
| Name of the data exporting organisation: |  |
| Address: |  |
| Telephone: |  |
| Fax: |  |
| Email address: |  |
| Other information needed to identify the organisation:  [Note: for companies outwith the UK, is possible, it is helpful to include the registration number and country of incorporation] | (delete as appropriate)  A company/limited liability partnership/charity registered in England and Wales/Scotland/Northern Ireland.  Company/charity number: |
| (the “**data exporter**”) | |
|  |  |
| And |  |
| Name of the data importing organisation: |  |
| Address: |  |
| Telephone: |  |
| Fax: |  |
| Email address: |  |
| Other information needed to identify the organisation:  [Note: for companies outwith the UK, is possible, it is helpful to include the registration number and country of incorporation] | (delete as appropriate)  A company/limited liability partnership/charity registered in England and Wales/Scotland/Norther Ireland.  Company/charity number: |
| (the “**data importer**”) | |

**Clause 1. Definitions**

## For the purposes of the Clauses:

(a) ‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘Commissioner’ shall have the same meaning as in the UK GDPR;

(b) ‘the data exporter’ means the controller who transfers the personal data;

(c) ‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system covered by UK adequacy regulations issued under Section 17A Data Protection Act 2018 or Paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018;

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

(e) ‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the UK;

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

**Clause 2. Details of the transfer**

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

**Clause 3. Third-party beneficiary clause**

## 3(1) The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

## 3(2) The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

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

## 3(4) The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

**Clause 4. Obligations of the data exporter**

The data exporter agrees and warrants:

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

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

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

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

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

## 4(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not covered by adequacy regulations issued under Section 17A Data Protection Act 2018 or Paragraphs 4 and 5 of Schedule 21 Data Protection Act 2018;

## 4(g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the Commissioner if the data exporter decides to continue the transfer or to lift the suspension;

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

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

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

## **Clause 5. Obligations of the data importer[[1]](#footnote-1)**

The data importer agrees and warrants:

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

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

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

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

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

## (ii) any accidental or unauthorised access; and

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

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

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

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

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

5(i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;

5(j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

**Clause 6. Liability**

6(1) The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

## 6(2) If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

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

## 6(3) If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

**Clause 7. Mediation and jurisdiction**

## 7(1) The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

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

(b) to refer the dispute to the UK courts.

7(2) The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

**Clause 8. Cooperation with supervisory authorities**

8(1) The data exporter agrees to deposit a copy of this contract with the Commissioner if it so requests or if such deposit is required under the applicable data protection law.

8(2) The parties agree that the Commissioner has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8(3) The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

**Clause 9. Governing law**

## The Clauses shall be governed by the law of the country of the United Kingdom in which the data exporter is established, namely [Scotland].

## **Clause 10. Variation of the contract**

## The parties undertake not to vary or modify the Clauses. This does not preclude the parties from (i) making changes permitted by Paragraph 7(3) & (4) of Schedule 21 Data Protection Act 2018; or (ii) adding clauses on business related issues where required as long as they do not contradict the Clause.

**Clause 11. Sub-processing**

11(1) The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses[[2]](#footnote-2). Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor’s obligations under such agreement.

11(2) The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

11(3) The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the laws of the country of the UK where the exporter is established.

11(4) The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the Commissioner.

**Clause 12. Obligation after termination**

12(1) The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

12(2) The data importer and the sub-processor warrant that upon request of the data exporter and/or of the Commissioner, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

**Appendix 1**

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

**Data exporter**

|  |  |
| --- | --- |
| **The data exporter’s business or organisation type is:** |  |
| **The data exporter is (please specify briefly your activities relevant to the transfer):**[Note: insert the activities the University is undertaking which are relevant to the transfer]Example: The data exporter is delivering various degree programmes in collaboration with the partner institution. | |
|  | |
| **The data exporter is using the personal data which is being transferred for the following purposes or activities:**  [Note: think about why the exporter is using the personal data to be transferred and why it is making the transfer.] | |
|  | |

**Data importer**

|  |  |
| --- | --- |
| **The data importer’s business or organisation type is:** |  |
| **The data importer is (please specify briefly your activities relevant to the transfer):**[Note: insert the activities the partner institution is undertaking which are relevant to the transfer]Example: The data importer is based out with the UK in [specify country] and is delivering various degree programmes in collaboration with the University. | |
|  | |
| **The data exporter is using the personal data which is being transferred for the following purposes or activities:**  [Note: think about why the exporter is using the personal data to be transferred and why it is making the transfer] | |
|  | |

**Data subjects**

|  |
| --- |
| **The personal data transferred concern the following categories of data subjects (please specify):**  [Note: insert the categories of persons whose personal data may be transferred by the University to the partner institution]  Examples: students, staff, visiting staff, advisors, consultants, relatives of students, patients, complainants. |
|  |

**Categories of data**

|  |
| --- |
| **The personal data transferred concern the following categories of data (please specify):**  [Note: insert the categories of personal data which are likely to be transferred by the University to the partner institution]  Examples: Name, Address, Postcode, email address, data of birth, marital status, student record, employment details, financial records. |
|  |

**Special categories of data**

|  |
| --- |
| **The personal data transferred concern the following special categories of data (please specify):**  [Note: insert any special categories of personal data which are likely to be transferred by the University to the partner institution]  Examples: Physical or mental health conditions, racial or ethnic origin, political opinions, offences (including alleged offences), religious or other beliefs, sexual life or sexual orientation. |
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**Processing operations**

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| **The personal data transferred will be subject to the following basic processing activities (please specify):**  [Note: insert the way in which the personal data is likely to be processed by the data importer]  **EXAMPLE:**   * **Processing activities**: administration of education and training (e.g. registration and monitoring, calculation and publication of exam results, provision of references); provision of education (e.g. planning curricula and exams, producing educational materials); administration of student awards and fees; administration of library services/facilities (e.g. membership records, loan/access records); and alumni relations (e.g. promotion of alumni events/services, fundraising, alumni related mailings); * **The scope and purpose**: the scope and purpose of the data processing is as described in the Data Processing Agreement between the University and the partner institution; and * **Duration**: The duration of the data processing shall be for the term of the Data Processing Agreement between the University and the partner institution. (amend as appropriate)] |
|  |

**DATA EXPORTER**

Name: [insert name of signatory]

Authorised Signature …………………………………………………………………

**DATA IMPORTER**

Name: [insert name of signatory]

Authorised Signature …………………………………………………………………

**Appendix 2**

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

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| --- |
| **Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**[Note: insert details of the security measures which the importer will provide for the transferred data. You may refer to or re-use the importer’s security measures set out in the Processing details section of the contract] **EXAMPLE:**   * Carrying out an information risk assessment and identifying an individual within the organisation who is responsible for security measures; * Vetting staff through processes which comply with the data exporter’s requirements; * Establishing management controls such as ensuring password access to computerised copies of personal data, limiting access to certain individuals etc.; * Ensuring physical security and preventing unauthorised physical access to any part of such computer systems, networks and rooms in which the personal data is stored; * Not transmitting personal data unless that personal data is encrypted and the key or password to decrypt that personal data is communicated separately; * Restricting the number of paper copies of the data made and/or kept by the data importer to the minimum number reasonably required in order to discharge or exercise the data importer’s rights and obligations; * Preventing unauthorised physical access to any such paper copies (unless they have been shredded); * Generally restricting access to the personal data that is in the data importer’s possession in accordance with good practice for an academic institute (or such institute as applies); and  Compliance with any applicable confidentiality guidelines. (amend as appropriate) |
|  |

**DATA EXPORTER**

Name: [insert name of signatory]

Authorised Signature …………………………………………………………………

**DATA IMPORTER**

Name: [insert name of signatory]

Authorised Signature …………………………………………………………………

1. Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements. [↑](#footnote-ref-1)
2. This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision. [↑](#footnote-ref-2)