**TEMPLATE A**

**DATA PROCESSING AGREEMENT**

**[*Note: this template can be used where the University is a data controller and the other party a data processor. ]***

**Between**

**UNIVERSITY OF DUNDEE**

**And**

**PARTNER**

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

**PROCESSING DETAILS**

**Background**

The Partner will process Personal Data on behalf of UoD for the purposes set out in these Processing Details.

This Data Processing Agreement sets out the terms on which the Partner will process Personal Data on behalf of UoD. This Data Processing Agreement consists of the below Processing Details and the Processing Conditions including the Schedule.

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| **Parties** |
| UoD | **University of Dundee**, established by Royal Charter dated 20 July 1967 and a registered Scottish Charity (charity number SC015096), having its principal office at 149 Nethergate, Dundee, DD1 4HN |
| Partner | *[Note: insert the full name, company number (if relevant) and address of the Partner processing personal data on behalf of UoD.]* |

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| **Key processing Details** |
| Subject matter of the processing | *[Note: insert a description of the subject matter of the processing. This may be e.g. performance of an agreement or services. If there is an underlying agreement, please provide the name and signing date.]* |
| Duration of the processing | Processing Start Date: *[Note: insert the processing start date. The agreement will apply from that date.]*Duration of processing: *[Note: insert the duration of the processing by the Partner. This may be a specific time period or a way to calculate the duration.]* |
| The nature and purpose of the processing of Personal Data  | *[Note: insert details on the nature and purpose of the processing.]* |
| Types of Personal Data to be processed | *[Note: insert the types of personal data to be processed. This may be e.g. name, contact details, academic grades, etc.]* |
| Categories of Data Subject to whom Personal Data relates | *[Note: insert the categories of individuals (data subjects) whose personal data will be processed. This may be e.g. students, applicants, staff, etc.]*  |
| The obligations and rights of UoD | The obligations and rights of UoD as the Controller are set out in this Data Processing Agreement.  |
| Any Personal Data transferred outside the UK? (Y/N) If yes, what transfer mechanism is used to ensure compliance with clause 7.1? | *[Note: if data is transferred from UK, Partner to confirm transfer mechanism used, e.g. model clauses – see Schedule 2 (if required).* |

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| **Additional processing details** |
| UoD Contacts | Name: *[Note: insert UoD primary contact name]*Position: *[Note: insert UoD primary contact role]*Address: *[Note: insert work address of UoD primary contact]* E-mail: *[Note: insert UoD primary contact e-mail]*Cc: *[Note: insert Cc e-mail address for primary contact]*Telephone: *[Note: insert UoD primary contact phone number]* | Name: *[Note: insert UoD secondary contact name]*Position: *[Note: insert UoD secondary contact role]*Address: *[Note: insert work address of UoD secondary contact]*E-mail: *[Note: insert UoD secondary contact e-mail]*Cc: *[Note: insert Cc e-mail address for secondary contact]*Telephone: *[Note: insert UoD secondary contact phone number]* |
| Partner Contact | Name: *[Note: insert Partner contact name]*Position: *[Note: insert Partner contact role]*Address: *[Note: insert work address of contact]*E-mail: *[Note: insert Partner contact e-mail]*Cc: *[Note: insert Cc e-mail address for contact]*Telephone: *[Note: insert contact phone number]* |
| Security measures | *[Note: insert details of any security measures which the Partner must follow in connection with the University’s personal data (e.g. specific access restrictions, personnel security requirements, physical or technical security requirements, etc.) If no specific measures agreed, add “N/A”.]* |

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| Approved Sub-processors*[Note: Partner to confirm if it has any Sub-processors and to complete this section accordingly. It can be left blank if there are none.]* | Sub-processor name | Sub-processor function / role in processing | Does sub-processing include transfer of data from UK? (Y/N) | If yes, what transfer mechanism is used to ensure compliance with clause 12 |
| *[Note: insert Sub-processor full name]* | *[Note: describe Sub-processor’s role in processing]* | *[Note: respond Y/N depending on whether sub-processing includes a data transfer from UK]* | *[Note: if data is transferred from UK, Partner to confirm transfer mechanism used, e.g. model clauses]* |
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**Signed for and on behalf of**

**THE UNIVERSITY OF DUNDEE** …………………………………….

 Authorised Signatory

by (Insert name)

on (Date of signing)

at (Place of signing)

In the presence of this witness:

……………………………………………………….……………………Witness Sign

…………………………………………….………………………………Witness Name

…………………………………………….………………………………Witness Address

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**Signed for and on behalf of**

***[Note: insert full name of the Partner]*** …………………………………….

 Authorised Signatory

by (Insert name)

on (Date of signing)

at (Place of signing)

In the presence of this witness:

…………………………………………..…………………………………Witness Sign

…………………………………………………..…………………………Witness Name

…………………………………………………………..…………………Witness Address

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**PROCESSING CONDITIONS**

1. **General compliance obligations**
	1. Each party will comply with all applicable requirements of the Data Protection Laws. The obligations in this Data Processing Agreement are in addition to, and do not relieve, remove or replace, a party’s obligations or rights under the Data Protection Laws.
	2. In connection with the processing described in the Processing Details, UoD is the Controller and the Partner is the Processor. The Processing Details set out the subject matter, nature and purpose of processing by the Partner, the duration of the processing and the types of Personal Data and categories of Data Subject.
	3. The Partner shall:
		1. process Personal Data only on and in accordance with written instructions of UoD, including with regard to transfers of Personal Data to a third country, unless the Partner is required to process Personal Data by applicable law in which case the Partner shall inform UoD in writing of that legal requirement before undertaking the processing required by applicable law, unless applicable law prohibits the Partner from notifying UoD;
		2. promptly comply with any instruction from UoD requiring the Partner to amend, transfer, delete or otherwise process (or cease the processing of) Personal Data, or to stop, mitigate or remedy any unauthorised processing;
		3. maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless UoD or this Data Processing Agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator or Supervisory Authority requires the Partner to process or disclose Personal Data, the Partner must first inform UoD of the legal or regulatory requirement and give UoD an opportunity to object or challenge the requirement, unless the law prohibits such notice;
		4. ensure that persons who have access to and/or process the Personal Data are obliged to keep the Personal Data confidential;
		5. take all measures required pursuant to Article 32 (*Security of processing*) of the GDPR;
		6. not appoint another Processor without the prior written consent of UoD (which consent may be provided in the Processing Details in respect of the Approved Sub-processors);
		7. taking into account the nature of the processing, assist UoD by appropriate technical and organisational measures for the fulfilment of UoD’s obligation to respond to requests for exercising Data Subjects’ rights laid down in Chapter III (*Rights of the Data Subject*) of the UK GDPR;
		8. assist UoD in ensuring UoD’s compliance with its obligations under Data Protection Laws, including the obligations set out in the UK GDPR Articles 32 (*Security of processing*), 33 (*Notification of a personal breach to the supervisory authority),* 34 (*Communication of a Personal Data breach to the Data Subject*), 35 (*Data protection impact assessment*) and 36 (*Prior consultation*), taking into account the nature of processing and the information available to the Partner;
		9. at the choice of UoD, delete or return to UoD all Personal Data when the processing described in the Processing Details comes to an end and delete existing copies unless applicable law requires storage of the Personal Data (in which case the Partner shall notify UoD in writing of that storage requirement);
		10. provide to UoD all information necessary to demonstrate the Partner’s compliance with the obligations of this Data Processing Agreement and allow for and contribute to audits, including inspections, conducted by UoD or another auditor mandated by UoD; and
		11. immediately inform UoD if, in its opinion, an instruction from UoD infringes Data Protection Laws.
2. **Security of processing**
	1. The Partner shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
	2. Without prejudice to clause 3.1, the Partner shall have in place the security measures outlined in the Processing Details.
3. **General Obligations**
	1. The Partner shall:
		1. ensure that only those personnel who need to have access to the Personal Data are granted access to such Personal Data (and only for the purposes set out in the Processing Details) and that such personnel accessing the Personal Data:
		2. are reliable and have been trained in how to handle and Process Personal Data;
		3. have been informed of the confidential nature of the Personal Data;
		4. are aware of both the Partner's duties and their personal duties and obligations under the Data Protection Laws and this Data Processing Agreement; and
		5. notify UoD within five (5) days if it receives:
		6. a request from a Data Subject to access Personal Data or to exercise any other rights under Data Protection Laws;
		7. any communication from a Supervisory Authority in relation to the processing of the Personal Data; or
		8. a complaint from a Data Subject

and the Partner will give UoD its full co-operation and assistance in responding to any complaint, notice, communication or request.

1. **Appointment of Sub-processors**
	1. Where the Partner engages another Processor (“**Sub-processor**”) for carrying out processing on behalf of UoD in accordance with clause 1.3(f)(*General compliance obligations*), the Partner shall ensure that the same data protection obligations as set out in this Data Processing Agreement (in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of Data Protection Laws) shall be imposed on the Sub-processor by way of a written legally binding contract.
	2. Where the Sub-processor fails to fulfil its obligations under such written agreement, the Partner remains fully liable to UoD for the Sub-processor’s performance of its agreement obligations.
2. **Personal Data Breaches**
	1. The Partner shall notify UoD in writing without undue delay (and, in any event, no later than within 24 hours) on becoming aware of an actual or suspected Personal Data Breach and provide UoD with such details as UoD reasonably requests in respect of the same.
	2. Without prejudice to the foregoing generality, the Partner shall provide UoD in writing with:
	3. a description of the nature of the actual or suspected Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
	4. the name and contact details of the data protection officer or other contact point of the Partner where more information can be obtained;
	5. a description of the likely consequences of the actual or suspected Personal Data Breach; and
	6. a description of the measures taken or proposed to be taken by the Partner to address the actual or suspected Personal Data Breach, including, where appropriate, measures to mitigate possible adverse effects.
	7. Immediately following a Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. The Partner will reasonably co-operate with UoD, including:
		1. assist with any investigation;
		2. make available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Laws or as otherwise reasonably required by UoD; and
		3. take reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach.
	8. The Partner will not inform any third party of any actual or suspected Personal Data Breach without first obtaining UoD's prior written consent, except when required to do so by law.
	9. UoD has the sole right to determine:
		1. whether to provide notice of the Personal Data Breach to any Data Subjects, Supervisory Authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the discretion of UoD, including the contents and delivery method of the notice; and
		2. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
	10. The Partner will cover all reasonable expenses associated with the performance of the obligations under clauses 6.1 to 6.3. The Partner shall restore any Personal Data at its own expense.
	11. The Partner will reimburse UoD for reasonable expenses incurred by UoD when responding to a Personal Data Breach to the extent that the Partner caused such a Personal Data Breach, including all costs of notice and any remedy as set out in clause 6.5.
3. **Transfers of Personal Data from the UK**
	1. The Partner (or any Sub-processor) must not transfer any Personal Data outside of the UK unless the specific prior written consent of UoD has been obtained (which consent may be provided in the Processing Details) and the following conditions are fulfilled in each case:
		1. the Partner (or Sub-processor) is processing Personal Data in a territory which is subject to adequacy regulations under the Data Protection Laws that the territory provides adequate protection for the privacy rights of individuals; or
		2. the Partner (or Sub-processor) participates in a valid cross-border transfer mechanism under the Data Protection Laws, so that the Partner (and, where appropriate, UoD) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 (*Transfers subject to appropriate safeguards*) of the UK GDPR.
	2. If any Personal Data transfer between UoD and the Partner requires execution of SCC in order to comply with Data Protection Laws (where UoD is the entity exporting Personal Data to the Partner outside the UK), the parties will complete all relevant details in, and execute, appropriate SCC provided by UoD for such purpose, and take all other actions required to legitimise the transfer.
4. **Records**
	1. The Partner shall maintain written records, including in electronic form, of all processing activities carried out on behalf of UoD including but not limited to:
		1. the name and contact details of the Partner and UoD and, where applicable, UoD’s and/or the Partner’s representatives, and their data protection officers;
		2. the categories of processing carried out on behalf of UoD;
		3. the access, control and security of the Personal Data, approved Sub-processors and the purposes of processing;
		4. where applicable, transfers of Personal Data to a third country, including the identification of that third country and, the documentation of suitable safeguards; and
		5. a general description of the technical and organisational security measures to ensure a level of security appropriate to the risk for the rights and freedoms of Data Subjects.
	2. The Partner will ensure that the records are sufficient to enable UoD to verify the Partner’s compliance with its obligations under this Data Processing Agreement. The records referred to in clause 8.1 shall be made available to UoD in a timely manner and, in any event, within ten (10) days from UoD’s request.

1. **Liability and indemnity**
	1. The Partner shall indemnify and keep UoD indemnified in full and on demand in respect of any direct losses, claims, costs, expenses, proceedings and damages incurred by UoD arising out of or in connection with the negligence, bad faith, and/or wilful misconduct of the Partner in relation to this Data Processing Agreement or Data Protection Laws.
	2. Nothing in this Data Processing Agreement will:
		1. limit or exclude any liability for death or personal injury resulting from negligence; or
		2. limit or exclude any liability for fraud or fraudulent misrepresentation; or
		3. limit any liabilities in any way that is not permitted under applicable law; or
		4. exclude any liabilities that may not be excluded under applicable law.
2. **Term of this Data Processing Agreement**
	1. This Data Processing Agreement will be deemed to come into effect on the Processing Start Date mentioned in the Processing Details (regardless of the date(s) of signing of this Data Processing Agreement).
	2. This Data Processing Agreement will remain in full force and effect for so long as the Partner retains any Personal Data in its possession or control.
	3. Any provision of this Data Processing Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.  This includes clause 9 (*Liability and indemnity*).
	4. The termination of this Data Processing Agreement will be without prejudice to any other rights or remedies of any party under this Data Processing Agreement or at law and shall not affect any claims or rights which a party may have against the other which have accrued prior to such termination.
3. **Notices**
	1. Any notice given under this Data Processing Agreement will be in writing and will be served personally, by first class post or (domestic/international) courier to the address of the relevant party’s contacts outlined in the Processing Details (including both UoD Contacts). Any notice so given will be deemed to have been duly served if:
		1. personally delivered, on the day of delivery; or
		2. sent by post or courier within the United Kingdom, forty-eight (48) hours after posting; or
		3. sent by international courier, 7 days after posting.
	2. Any notice given under or in connection with this Data Processing Agreement shall be in the English language.
	3. This clause 11 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.
4. **Language**
	1. This Data Processing Agreement is drafted in the English language. If it is translated into any other language, the English language version shall prevail.
	2. All other documents provided under or in connection with this Data Processing Agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail.
5. **General**
	1. The definitions in Schedule Part 1 shall apply to this Data Processing Agreement.
	2. The following rules of interpretation shall apply to this Data Processing Agreement:
		1. any reference to a clause or Schedule Part is to the relevant clause or Schedule Part of or to this Data Processing Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the clause or Schedule Part in which it appears.
		2. headings are included for convenience only and shall not affect the construction or interpretation of this Data Processing Agreement.
		3. use of the singular includes the plural and vice versa and use of any gender includes the other genders;
		4. a reference to “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
		5. a reference to legislation or a legislative provision:

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

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

* + 1. any reference to a Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Scotland, be deemed to include a reference to what most nearly approximates in that jurisdiction to the Scottish legal term; and
		2. any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
	1. In the case of conflict or ambiguity between:
		1. any provision contained in these Processing Conditions and any provision contained in the Processing Details, the provision in the Processing Details will prevail; and
		2. any of the provisions of this Data Processing Agreement and any executed and applicable SCC, the provisions of the SCC will prevail.
	2. This Data Processing Agreement constitutes the entire understanding between the parties in relation to its subject matter and supersedes any prior arrangements, understandings, promises or agreements made or existing between the parties regarding its subject matter.
	3. No party shall be entitled to assign, novate, transfer, sub-license or sub-contract any of its rights or obligations under this Data Processing Agreement without the prior written consent of the other party.
	4. No amendment of this Data Processing Agreement shall be effective unless it is in writing and signed by or on behalf of each party.
	5. No failure or delay by a party to exercise any right or remedy provided under this Data Processing Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
	6. Nothing in this Data Processing Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Data Processing Agreement shall be deemed to constitute one party as an agent of another party or authorise a party to bind another party.
	7. A person who is not a party to the Data Processing Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him and this Data Processing Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Data Processing Agreement (but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act).
	8. If any provision or part-provision of this Data Processing 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 Data Processing Agreement.
	9. This Data Processing Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
	10. This Data Processing Agreement shall be interpreted and applied in accordance with the laws of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

**This is the Schedule referred to in the foregoing Processing Conditions between University of Dundee and the Partner named in the Processing Details.**

**SCHEDULE**

**PART 1**

**DEFINITIONS**

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| **“Approved Sub-processors”** | means the approved Sub-processors set out in the Processing Details; |
| “**Controller**”  | has the meaning given in the Data Protection Laws; |
| “**Data Processing Agreement**” | this data processing agreement between UoD and the Partner consisting of the Processing Details, the Processing Conditions and this Schedule; |
| “**Data Processing Details**” | means the data processing details annexed to and forming part of this Data Processing Agreement;  |
| “**Data Protection Laws**” | means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of personal data, electronic communications and privacy to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR; |
| “**Data Subject**” | has the meaning given in the Data Protection Laws; |
| “**parties**” | UoD and the Partner, and the word “party” shall be construed accordingly; |
| “**Personal Data**” | has the meaning given in the Data Protection Laws; |
| “**Personal Data Breach**” | has the meaning given in the Data Protection Laws; |
| “**processing**” | has the meaning given in the Data Protection Laws (and cognate expressions shall be interpreted accordingly); |
| **“Processing Start Date”** | means the processing start date set out in the Processing Details;  |
| “**Processor**” | has the meaning given in the Data Protection Laws;  |
| “**Schedule**”  | means this Schedule annexed to and forming part of the Data Processing Agreement; |
| “**Standard Contractual Clauses**” or “**SCC**” | the UK Information Commissioner’s Standard Contractual Clauses for the transfer of Personal Data from the UK to processors established in third countries (controller-to-processor transfers) as set out in Schedule Part 2 (if required) and as may be updated from time to time; |
| “**Sub-processor**” | has the meaning outlined in clause 5.1 (*Appointment of Sub-processors*); |
| “**Supervisory Authority**” | means the UK Information Commissioner’s Office and any other supervisory authority within the meaning of the Data Protection Laws; and |
| “**UK GDPR**”  | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (as transposed into UK legislation). |

**SCHEDULE**

**PART 2**

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