

DATA PROCESSING TERMS AND CONDITIONS

Instructions to Edinburgh Napier manager/employee outsourcing processing/contracting with external party – it is your responsibility to ensure that the additional written information required in the yellow highlighted sections must be included elsewhere in the documentation e.g. Principal Agreement or Procurement documentation.

BETWEEN:

(1) THE COURT OF EDINBURGH NAPIER UNIVERSITY, constituted by The Napier College of Commerce and Technology (No. 2) Regulations 1985 and the Napier University Order of Council 1993, of 219 Colinton Road Edinburgh EH14 1DJ, a registered Scottish Charity No. SC018373 (hereinafter referred to as “the Controller”); and

(2) ALL/ANY PROCESSORS contracted to provide services to the University which include the processing of PERSONAL DATA (hereinafter referred to as “the Processor”).

WHEREAS:

(A) The Controller has appointed the Processor to undertake **the Services (as defined by written instruction as required by Article 29)** on its behalf pursuant to the Principal Agreement.

(B) In order to perform the Services on the Controller’s behalf, the Processor will require **certain Personal Data (as defined in writing)** to be made available to it by the Controller, to include the following information in the Principal Agreement:

Subject matter of Processing

Duration of processing & arrangements for return/destruction of personal data

Nature and purpose of processing

Categories of Data Subject

Types of Personal Data

(C) The Parties now wish to enter into this Agreement (as defined below) in order to regulate the provision and use of the Personal Data.

IT IS HEREBY AGREED:

1. Definitions and Interpretation

1.1. The words and expressions below will have the meanings set out next to them:

“Agreement”

means this Data Processing Agreement;

“Data Protection Laws”

means the Data Protection Act 2018 and 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, and repealing Directive 95/46/EC (General Data Protection Regulation), and any other law or regulation that may apply to the processing of Personal Data or privacy under any applicable jurisdiction;

“Confidential Information”

means all confidential information relating to the Controller’s: students, staff, alumni, suppliers, contractors, customers or prospective customers (including Personal Information for all or any of the foregoing), research and development, technology, know-how, business

plans, business strategies, current and projected financial or operational situations and all other information relating to the Controller's academic institution and business relating thereto: all of the foregoing imparted by the Controller to the Processor during the term of this Agreement or coming into existence as a result of the Processor's obligations hereunder which is either marked as confidential or which ought reasonably be regarded as confidential;

"Data Controller"

means "data controller" or "controller" as defined in the Data Protection Laws;

"Data Processor"

means "data processor" or "processor" as defined in the Data Protection Laws;

"Data Subject"

means "data subject" as defined in the Data Protection Laws;

"Personal Data"

means "personal data" as defined in the Data Protection Laws and provided to the Processor by the Controller hereunder;

"Personal Data Breach"

means "personal data breach" defined in the Data Protection Laws

"Party" or "Parties"

means a party or the parties to this Agreement;

"Principal Agreement"

means the principal agreement between the Parties in relation to the provision of the Services;

"Security Requirements"

means the security requirements set out in Part 1.B of the Schedule relating to the processing of the Personal Data;

"Services"

means the services to be provided by the Processor to the Controller as described in the Principal Agreement, which includes the processing of Personal Data; and

1.2. In this Agreement unless otherwise expressly stated:

1.2.1. references to Clauses are to clauses of this Agreement;

1.2.2. reference to the Schedule are to the schedule to this Agreement which forms part of this Agreement and is incorporated herein;

1.2.3. references to the singular include references to the plural and vice versa;

1.2.4. headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.5. any phrase introduced by the terms "including", "include", "in particular" or any similar expression are illustrative and do not limit the sense of the words preceding those terms and such terms shall be deemed to be followed by the words "without limitation";

1.2.6. references to a statute, or any section of any statute, include any statutory amendment, modification or re-enactment and instruments and regulations under it in force from time to time;

1.2.7. references to regulatory rules include any amendments or revisions to such rules from time to time; and

1.2.8. references to regulatory authorities refer to any successor regulatory authorities.

2. Processing

2.1. The Processor hereby undertakes to the Controller that it will undertake the Services in accordance with the Principal Agreement and shall process any Personal Data only in accordance with the specific written instructions of the University, ensuring adequate

security measures are in place to protect the personal data and using all reasonable skill and care throughout the term of this Agreement. The Processor shall not process any other Personal Data other than as authorised to do so, except where required by any applicable law. If it is so required, the Processor shall promptly notify the Controller before such processing the Personal Data unless prohibited by such applicable law.

- 2.2. The Controller and the Processor hereby acknowledge that in relation to the Personal Data and for the purposes of the Data Protection Laws, the Controller is the Data Controller and the Processor is the Data Processor.

3. The Term

This Agreement shall continue in full force unless or until terminated by either Party giving to the other three-month's written notice to terminate at any time, as detailed in the Principal Agreement or unless terminated by either Party in pursuance of Clause 9.

4. Obligations of the Controller

- 4.1 The Controller shall provide the Personal Data to the Processor together with such other information as the Processor may reasonably require in order for the Processor to provide the Services in accordance with the Principal Agreement.
- 4.2 The Controller's legal basis for processing this information is as laid out in its Privacy Notices, available at: staff.napier.ac.uk/dpstatements

5. Obligations of the Processor

- 5.1 The Processor undertakes to the Controller that it shall process the Personal Data only in accordance with: (i) the Controller's express written instructions from time to time; (ii) the terms of this Agreement; (iii) the terms of the Principal Agreement; and (iv) with all Data Protection Laws.
- 5.2 The Processor shall ensure that only such of its employees who may be required by the Processor to assist it in meeting its obligations under this Agreement shall have access to the Personal Data. The Processor shall ensure that all employees used by it to provide the Services have undergone training in the laws of data protection and in the care and handling of the Personal Data in accordance with such laws. The Processor will ensure that all of its employees who have access to the Personal Data are bound by the duty of confidentiality.
- 5.3 The Processor hereby agrees to assist the Controller with any request from a Data Subject, including subject information requests and a Data Subject's other rights under the Data Protection Laws, which may be received by the Data Controller or the Data Processor from time to time without additional charge.
- 5.4 The Processor undertakes to the Controller that it will not disclose the Personal Data or any part thereof to any third party unless and only to the extent instructed to do so by the Controller, except as necessary to comply with European Union or UK law to which it is subject.
- 5.5 The Processor undertakes to the Controller that it will not export the Personal Data or any part thereof outside the European Economic Area in any circumstances other than at the specific written permission of the Controller.
- 5.6 The Processor shall provide such co-operation as the Controller reasonably considers to be necessary to enable the Controller to verify the Processor's compliance with the Data Protection Laws and the terms of this Agreement. Such co-operation may include allowing its data processing facilities, procedures and documentation to be submitted for scrutiny by auditors of the Controller.
- 5.7 The Processor warrants that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised or accidental access, loss, destruction, damage, theft, use or disclosure of the Personal Data and in order for it to

comply with Article 32 of the GDPR. The Processor further undertakes to maintain such processes and procedures for the term of this Agreement. **The Processor to provide written evidence of such technical and organisational measures to satisfy the Controller.**

- 5.8 The Processor shall promptly assist the Controller in complying with any obligations under the Data Protection Laws in respect of the Processor's processing of the Personal Data only, including obligations to investigate, remediate and provide information to regulatory authorities or Data Subjects about Personal Data Breaches (as such term is defined in the Data Protection Laws) without undue delay, to carry out privacy impact assessments and to consult with regulatory authorities regarding processing which is the subject of a privacy impact assessment.
- 5.9 The Processor shall notify the Controller's Data Protection Officer promptly if: (a) it receives a legally binding request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited; (b) it is of the opinion that an instruction from the Controller violates applicable European Union or UK law, unless it is legally prohibited from notifying the Controller on important grounds of public interest.
- 5.10 The Processor shall without undue delay and in any event within twenty four (24) hours of becoming aware notify the Controller's Data Protection Officer in writing of any Personal Data Breach. The Processor will provide all reasonable assistance to the Controller regarding any Personal Data Breach. The Processor will also provide all reasonable assistance to the Controller in relation to its obligations to notify the regulatory authorities and affected Data Subjects. The Processor must have a written data security incident/breach policy or procedure in place.

6. Indemnity

The Processor hereby agrees to indemnify the Controller against all losses, costs, expenses, damages, liabilities, demands, claims, fines, actions or proceedings which the Controller may incur arising out of any breach by the Processor of Clause 5 and/ or Clause 8.

7. Ownership

All right, title and interest in the Confidential Information shall vest solely in the Controller or its licensees.

8. Confidentiality

- 8.1 The Processor shall procure that all Confidential Information disclosed to it by the Controller under this Agreement or which at any time during the term of the Agreement come into the Processor's knowledge, possession or control, shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by this Agreement and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Agreement and then only under appropriate confidentiality provisions approved in writing by the Controller.
- 8.2 The obligations of confidence contained in this Clause 8 shall not prevent the Processor from disclosing information to the extent required by law or for any regulatory purposes, or to comply with the requirements of any Stock Exchange, provided that prior written notice is given to the Controller of such disclosure.
- 8.3 The obligations of confidence contained in this Clause 8 shall not apply to any information which:
- 8.3.1 is or becomes generally available to the public through no act or default of the Processor or its directors, employees or agents; or
 - 8.3.2 the Processor can demonstrate from its written records, prior to its receipt from the Controller was in its possession and at its free lawful disposal; or

- 8.3.3 the Processor can demonstrate from its written records, is after its receipt from the Controller, generated by employees of the Processor independently of, and without knowledge of, the Confidential Information; or
- 8.3.4 the Processor can demonstrate from its written records, is subsequently disclosed to it without any obligation of confidence by a third party who has not derived it directly or indirectly from the Controller.
- 8.4 The obligations of confidence contained in this Clause 8 shall survive the termination of this Agreement for whatever reason for a period of: (i) three (3) years following the final disclosure of the Confidential Information by the Controller to the Processor; or (ii) if longer, but only to the extent reasonably required, for as long as the ongoing confidentiality of the Confidential Information, or any part thereof, remains of value to the Controller and or its interests.
- 8.5 In the event that the Processor receives a request for any information contained in the Personal Data pursuant to the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, the Environmental Information Regulations 2004 or the Environmental Information Regulations (Scotland) 2004, not to respond to the person making such request but to inform the Data Controller within two (2) working days, and the Data Processor further agrees to assist the Data Controller with all such requests for information which may be received from any person within such timescales as may be prescribed by the Data Controller.

9. Termination

- 9.1 This Agreement may be terminated with immediate effect without any requirement to give notice if the Principal Agreement terminates for any reason.
- 9.2 This Agreement may be terminated with immediate effect by either Party giving written notice to the other where:
 - 9.2.1 the other Party is in breach of any material obligation under this Agreement which is either incapable of remedy or where the breach is capable of remedy, the Party in breach has failed to remedy the breach within 21 days of receipt of notice requiring it to do so; or
 - 9.2.2 a resolution is passed or an order is made for the winding up of the other Party (otherwise than for the purposes of solvent amalgamation or reconstruction) or an administrator, a receiver or an administrative receiver is appointed or an encumbrancer takes possession of any of the other Party's property or assets or if the other Party is dissolved; or
 - 9.2.3 the other Party ceases or threatens to cease to carry on business in its jurisdiction of incorporation.

10. Consequences of Termination

- 10.1 On termination of this Agreement for whatever reason, the Processor shall cease to use the Personal Data and Confidential Information and shall arrange for the prompt and safe return of all Personal Data and Confidential Information belonging to Controller together with all copies of the Personal Data Confidential Information in its possession or control or that of its agents or contractors, save where it is required to retain such data for compliance with applicable European Union or UK law.
- 10.2 Termination of this Agreement shall not affect any rights or obligations of either Party which have accrued prior to the date of termination and all provisions which are expressed to, or do by implication, survive the termination of this Agreement shall remain in full force and effect.

11. Assignment & Subcontracting

- 11.1 The Processor shall not be entitled to assign this Agreement nor all or any of its rights or obligations hereunder, without the prior written consent of the Controller.
- 11.2 The Processor shall not be entitled to sub-contract performance of its obligations hereunder without the Controller's prior written consent and the Processor shall, at all times, be responsible as between itself and the Controller for the observance by its assignees of the obligations contained in this Agreement as if such sub-contractors were the Processor.
- 11.3 The Controller shall be entitled, at its discretion, to withhold such consent referred to in 11.2 and prior to issuing such consent the Controller may require the party that the Processor proposes to sub-contract the performance (or any part thereof) of its obligations hereunder, to enter into a direct contractual relationship with the Controller in respect of the processing of any Personal Data by such party.
- 11.4 Where the Controller gives consent to subcontracting, the Processor shall: (i) ensure that it has a written contract (the "Processing Contract") in place with the relevant subcontractor which meets the requirements of Data Protection Laws and which imposes on the subcontractor the same obligations in respect of processing of the Controller Personal Data as are imposed on the Processor under this Agreement; (ii) remain fully liable to the Controller for any acts or omissions of the subcontractor under the Processing Contract.

12. Restricted Transfers

- 12.1 Subject to clause 12.3, the Controller (as "data exporter") and the Processor, (as "data importer") hereby enter into the Model Clauses in respect of any Restricted Transfer from the Controller to the Processor.
- 12.2 The Model Clauses shall come into effect under clause 12.1 on the earlier of:
 - 12.2.1 the data exporter becoming a party to them;
 - 12.2.2 the data importer becoming a party to them; and
 - 12.2.3 commencement of the relevant Restricted Transfer.
- 12.3 Clause 12.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of the Data Protection Laws.

13. General Terms

Order of precedence

- 13.1 This Agreement is intended to supersede any provisions relating to the processing of Personal Data in the Principal Agreement. Except as modified in this Agreement, the terms of the Principal Agreement shall remain in full force and effect. Nothing in this Agreement reduces the Processor's obligations under the Principal Agreement in relation to the protection of Personal Data or permits the Processor to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Principal Agreement. In the event of any conflict or inconsistency between this Agreement and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.
- 13.2 Subject to clause 13.2, with regard to the subject matter of this Agreement, in the event of inconsistencies between the provisions of this Agreement and any other agreements between the parties, including the Principal Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Agreement, the provisions of this Agreement shall prevail.

Changes in Data Protection Laws, etc.

- 13.3 The Controller may:

- 13.3.1 by at least 30 (thirty) calendar days' written notice to Processor from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under clause 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Laws, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Laws, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Laws; and
- 13.3.2 propose any other variations to this Agreement which the Controller reasonably considers to be necessary to address the requirements of the Data Protection Laws or any guidance issued by the UK Information Commissioner from time to time.
- 13.4 If the Controller gives notice under clause 13.3.1:
 - 13.4.1 the Processor shall ensure (and ensure that any affected Sub-processors promptly co-operate) that equivalent variations are made to any agreement put in place under clause 11; and
 - 13.4.2 the Controller shall not unreasonably withhold or delay agreement to any consequential variations to this Agreement proposed by Processor to protect the Processors against additional risks associated with the variations made under clause 13.3.1 and/or 13.4.1.
- 13.5 If the Controller gives notice under clause 13.3.2, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in the Controller's notice as soon as is reasonably practicable.

14. Notices

Any notice under or in connection with this Agreement shall be in writing (but not by fax, e.mail or similar means) and shall be delivered personally, or sent by courier or by recorded or registered mail to the following addresses:

Notices to Controller:

Address: Sighthill Campus, Sighthill Court, Edinburgh EH11 4BN

Marked for the attention of: The University Secretary/ The Data Protection Officer

Notices to the Processor

Processors must provide their contact details and address for the delivery of notices within the Principal Agreement.

A notice shall become effective on the date it is delivered to the address of the recipient Party shown above. A Party may notify the other of a change to its notice details.

15. Severability

Should any provision of this Agreement be held to be illegal, invalid or unenforceable in any respect by any judicial or other competent authority under the law of any jurisdiction:

- 15.1 if by substituting a shorter time period or more restricted application of the provision, it would be valid and enforceable, such shorter time period or more restricted application shall be substituted.
- 15.2 if Clause 15.1 is not applicable:
 - 15.2.1 such provision shall, so far as it is illegal, invalid or unenforceable in any jurisdiction, be given no effect by the Parties and shall be deemed not to be included in this Agreement in that jurisdiction;
 - 15.2.2 the other provisions of this Agreement shall be binding on the Parties in that jurisdiction as if such provision were not included herein;
 - 15.2.3 the legality, validity and enforceability of the provision in any other jurisdiction shall not be affected or impaired; and

15.2.4 the Parties shall negotiate in good faith to agree an alternative provision in terms which as closely as possible achieve the intention of the Parties in the original provision, do not substantially impair the Parties' original interests and do not render such provisions invalid or unenforceable.

16. Variation

Subject to clause 13.3, no variation or amendment to this Agreement shall bind either Party unless made in writing and signed by duly authorised officers of both Parties.

17. Waiver and Remedies

A failure to exercise or any delay in exercising any right or remedy provided by this Agreement or by law does not constitute a waiver of that right or remedy or a waiver of any other rights or remedies.

18. Entire Agreement

18.1 This Agreement and the Principal Agreement constitutes the entire agreement and understanding of the Parties relating to its subject matter and supersedes all prior proposals, agreements and understandings between the Parties or their advisors relating to such subject matter.

18.2 Each of the Parties hereby acknowledges and agrees that in entering into this Agreement, it does not rely on any statement, representation, warranty, undertaking, agreement or understanding of any nature whatsoever made by any person other than as expressly included in this Agreement as a warranty (a "Prior Representation") and to the extent that it is so included that Party's only remedy shall be a contractual one for breach of warranty under the terms of this Agreement for damages. To the extent that, notwithstanding the foregoing a Prior Representation has been made and relied upon by either Party, the relevant party unconditionally and irrevocably waives any claims, rights or remedies it may have in relation thereto.

18.3 Nothing in this Clause 18 or in this Agreement shall operate to limit or exclude any liability of either Party, or the remedies available to either Party for fraud, including fraudulent acts and/ or fraudulent misrepresentations.

19. Further Assurance

The Parties shall execute all further documents as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to protect the rights of the Parties under it.

20. Governing Law

This Agreement shall be governed in all respects by the laws of Scotland and each Party hereby irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the Scottish Courts.