**Service Agreement**

**This Agreement** dated is made by and between:

1. **The Open University**, a body incorporated by Royal Charter (number RC 000391), with charitable status in England and Wales, registered as a charity in Scotland (No. SC038302), and with its address at Walton Hall, Milton Keynes, MK7 6AA, Buckinghamshire, United Kingdom (the “OU”); and
2. [insert company name] a company incorporated in England and Wales with company registration number [insert number], and whose registered office is [insert address] (the ‘Service Provider’);

each a “**Party**”; and together the “**Parties**”.

**IT IS AGREED** as follows:

1. **Definitions**
	1. In this Agreement, the following words shall have the following meanings:

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| --- | --- |
| **Agreement** | Means this document, including its schedules, as amended from time to time in accordance with clause 15.2 |
| **Commencement Date** | means the commencement date as set out in the Specification; |
| **Completion Date** | means the completion date as set out in the Specification; |
| **Fees** | means the fees to be paid to the Service Provider by the OU as specified in Schedule 1; |
| **Materials** | means all reports, studies, specifications, documents, papers, information, data (in whatever form or medium or format), wherever such Material is located or stored, and all copies of the Materials; |
| **OU Contact** | means person identified as the OU contact in the Specification as may be varied from time to time by written notice to the Service Provider;  |
| **Outcomes** | means those targets and/or results (if any) set out in the Specification; |
| **Parties** | means the OU and the Service Provider; and ‘Party’ shall mean either one of them; |
| **Services** | means the Services to be provided by the Service Provider as more fully described in the Specification;  |
| **Specification** | means Schedule 1 to this Agreement. |

1. **Services**
	1. In consideration of the payment of the Fees by the OU to the Service Provider, the Service Provider shall provide the Services to the OU from the Commencement Date, all in accordance with the provisions of this Agreement.
	2. The Service Provider shall expend such time and effort as may be necessary to complete the Services, provide any Materials and achieve any Outcomes, all by the Completion Date or such other dates as may be agreed by the Parties from time to time.
	3. The Services shall be performed by the persons named in the Specification, or such other persons as may be agreed from time to time by the Parties.
	4. If the Service Provider wishes persons other than persons named in the Specification to perform the Services, the Service Provider shall only do so after obtaining the prior written approval of the OU.
	5. The Service Provider shall provide the Services in such places and locations as set out in the Specification or as agreed by the Parties from time to time.
	6. Where the Specification requires that Services are to be performed within a specific timeframe or be completed by a particular date, then the time for performance of the Services shall be of the essence and the Service Provider shall perform such Services and/or complete such Services, by such date.
	7. Where the Specification does not require that Services are to be performed within a specific period or be completed by a particular date, then the Service Provider shall nonetheless perform such Services and/or complete such Services in a timely manner.
	8. The Service Provider shall follow, and shall ensure that any person engaged by the Service Provider follows, all reasonable requests and directions of the OU and shall ensure that all Services are performed in compliance with all reasonable rules and instructions of the OU, including without limitation, rules and instructions relating to safety, security and IT usage as may be notified from time to time to the Service Provider (or persons engaged by the Service Provider). Without limiting the foregoing, if the Service Provider requires access to the OU’s computer network, the Service Provider agrees to abide by the OU’s IT policies as notified from time to time to the Service Provider.
	9. The Service Provider shall report to the OU Contact in respect of all matters relating to the performance of the Services.
2. **Relationship between the Parties**
	1. The relationship of the Service Provider to the OU shall be that of independent contractor; and at no time shall the Service Provider, nor any persons engaged by the Service Provider, hold themselves out as being an employee of the OU.
	2. Save as expressly specified in writing, neither the Service Provider, nor any person engaged by the Service Provider, shall hold themselves out as the agent of the OU, and shall not have any authority to act on behalf of the OU, to conclude any contracts or incur any obligation or liability on behalf of or binding upon the OU, or to sign any document on the OU's behalf.
	3. The Service Provider shall be solely responsible for the payment to the appropriate authorities of any income tax, National Insurance contributions, Value Added Tax and any other taxes, revenues or duties arising under this Agreement. The OU shall have no responsibility for any such payments (except as set out in clause 5.4). The Service Provider hereby indemnifies the OU in respect of any claims that may be made by the relevant authorities against the OU in respect of demands for tax or National Insurance or similar contributions relating to the provision of the Services and/or this Agreement.
3. **Conflicts of Interest**
	1. The Service Provider shall not, during the period of this Agreement, provide similar Services to any person or company if those Services could or are likely to conflict with the interests of the OU and/or the Service Provider’s duties under this Agreement.
	2. Subject to clause 4.1, and the confidentiality and non-use obligation in clause 9, nothing in this Agreement shall be taken to restrict the Service Provider from providing similar Services to any other person or company.
4. **Fees**
	1. The Service Provider shall provide the OU with invoices for the Fees due to the Service Provider in accordance with the payment milestones set out in the Specification. In the absence of payment milestones set out in the Specification, the Service Provider shall provide the OU with invoices monthly in arrears for Fees due in respect of Services delivered.
	2. The OU shall pay all valid invoices within 30 days of receipt.
	3. Unless otherwise stated in the Specification, the Fees are inclusive of all expenses incurred by the Service Provider in the performance of the Services. Where the Specification states that certain expenses will be paid to the Service Provider by the OU in addition to the Fees, and subject to the provisions set out in the Specification, the OU shall pay such properly incurred expenses in accordance with the OU expenses policy (a copy of which is available on request).
	4. All amounts stated are exclusive of VAT which, subject to the provision of a valid VAT invoice, will be paid by the OU in addition.
5. **OU’s obligations**
	1. During the term of this Agreement, the OU shall:
		1. co-operate with the Service Provider as the Service Provider reasonably requires;
		2. provide the information and documentation that the Service Provider reasonably requires;
		3. make available to the Service Provider such facilities as the Service Provider reasonably requires; and
		4. ensure that the OU’s staff and agents co-operate with and assist the Service Provider.
6. **Reporting**
	1. The Service Provider will provide reports at the times and in the format specified in the Specification, and as may be reasonably requested from time to time by the OU.
7. **Ownership of Materials**
	1. All intellectual property (including without limitation copyright, trademarks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items) in the Materials generated in the performance of the Services shall belong to the OU.
	2. In consideration of the payment of the Fee, the Service Provider hereby assigns to the OU absolutely by way of future assignment (where possible, and otherwise, agrees to assign) all right, title and interest in and to any and all intellectual property in the Materials generated in the performance of the Services and irrevocably and unconditionally waives any claim to any moral rights in such Materials.
	3. The Service Provider hereby agrees to do all such acts and execute all such deeds and documents as the OU may reasonably require, in order to vest legal and beneficial ownership in the Materials generated in the performance of the Services in the OU or as the OU may direct and/or in order to protect and/or enforce the OU’s rights in such Materials. At the OU’s request and expense (but without further payment of Fees) the Service Provider agrees to execute and deliver promptly to the OU any documents or instrument which the OU considers desirable, or which are required by law for obtaining the full benefits of this clause 8 use all reasonable endeavours to enable the OU at its discretion to make formal application anywhere in the world to obtain and maintain intellectual property in the Materials generated in the performance of the Services.
	4. The Service Provider warrants, represents and undertakes that all Materials created in the performance of the Services shall be original works created by the Service Provider and shall:
		1. not include intellectual property owned by or licensed to a third party except for intellectual property which the Service Provider has the right to use (including the right to use the intellectual property for the purposes of this Agreement);
		2. not include content that is obscene; and
		3. not subject the OU to any claim for the infringement of any intellectual property rights of a third party.
8. **Confidentiality**
	1. The Service Provider shall keep all information obtained or generated in the performance of the Services (“Confidential Information”) confidential and secret and shall only use the Confidential Information for the purpose of performing the Services. The Service Provider shall inform its officers, employees and agents of the obligations on the Service Provider under this clause, and ensure that its officers, employees and agents comply with such obligations.
	2. The obligations of confidentiality and non-use set out in clause 9.1 shall not apply to any information which:
		1. is, or becomes, publicly available through no fault of the Service Provider;
		2. is provided to the Service Provider without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
		3. was known to, or in the possession of, the Service Provider, and at its free disposal, prior to being provided to the Service Provider under this Agreement (as evidenced by written records);
		4. is required to be disclosed by operation of law or by an order of a court of competent jurisdiction.
	3. This clause 9 shall survive termination of this Agreement.
9. **Use of sub-contractors**
	1. Notwithstanding the provision of clause 2.4, the Service Provider shall be responsible for the work of any sub-contractor and for such sub-contractor’s compliance with the provisions of this Agreement.
10. **Insurance**
	1. The Service Provider shall obtain, and maintain during the term of this Agreement, insurance policies:
		1. to cover the liabilities that may arise from the Service Provider, and the Service Provider’s employees or sub-contractors performing the Services; and
		2. as may be required by the OU from time to time,

and such insurance policies shall remain in force during the term of this Agreement is in force.

* 1. At the request of the OU, the Service Provider shall supply a copy of the insurance policies to the OU.
1. **Warranties, liability and indemnities**
	1. The Service Provider warrants, represents and undertakes that:
		1. it has full capacity and authority to enter into this Agreement;
		2. it will perform the Services with all due skill and diligence and in a good and workmanlike manner, and in accordance with the best practice within the industry of the Service Provider (‘Best Practice’);
		3. the persons performing the Services will have the necessary skills, professional qualifications and experience to perform the Services in accordance with the provisions of this Agreement and Best Practice;
		4. it will complete the Services by the Completion Date;
		5. it will use its best efforts to achieve the Outcomes; and
		6. it has obtained all necessary and required licences, consents and permits to perform the Services.
	2. Unless otherwise agreed in writing by the Parties, the Service Provider shall be responsible for all costs, fees, expenses and charges for training necessary or required for persons performing the Services under this Agreement.
	3. If the Service Provider performs the Services (or any part of the Services) negligently or in breach of this Agreement, then if requested by the OU, and without prejudice to any other right or remedy of the OU, the Service Provider will re-perform the relevant part of the Services. The OU’s request must be made within 6 months of the Completion Date or the date on which the Service Provider completes performing the Services (whoever is later).
2. **Termination**
	1. If the Service Provider or the persons specified to carry out the Services become unavailable and the Parties cannot agree on a suitable replacement to perform the Services, then either Party may terminate this Agreement by written notice to the other Party.
	2. Either Party may terminate this Agreement by giving 30 days’ written notice to the other Party.
	3. Without prejudice to the other remedies or rights a Party may, either Party may terminate this Agreement, at any time, on written notice to the other Party (‘Other Party’). The notice will take effect as specified in the notice:
		1. if the Other Party is in material breach of its obligations under this Agreement and where the breach is capable of remedy within 30 days, the Other Party has not remedied the breach within 30 days of receiving written notice which specifies the breach and requires the breach to be remedied; or
		2. if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party’s assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
	4. Upon termination of this Agreement for any reason, the Service Provider shall deliver, and require that its employees, agents and sub-contractors deliver, to the OU all Materials and any other property of the OU which are in the possession or control of the Service Provider or the Service Provider’s employees, agents or sub-contractors at the date of termination.
3. **Compliance with Laws**
	1. The Service Provider shall, in performing the Services comply with all applicable laws, regulations and codes of practice. Breach by the Service Provider of any provision of this clause 14 shall be deemed to be a material breach of this Agreement and shall entitle the OU to terminate this Agreement immediately by notice to the Service Provider.
	2. *Data Protection.* If in the course of performing the Services the Service Provider needs to process personal data within the meaning of the Data Protection Act 1998 or any re-enactment thereto, or any applicable law, the Service Provider shall comply with the provisions set out in Schedule 2 relating to Data Protection. The Service Provider is also required to comply with the OU’s ‘Data Protection Policy’ which is available upon request. Further advice on compliance with this clause 14.2 is available from the OU’s Data Protection Co-Ordinator (email Data-Protection@open.ac.uk or telephone +44 (0)1908 653994).
	3. *Equality*. Without limiting clause 14.1, the Service Provider agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation. The Service Provider shall in all matters arising in the performance of the Agreement comply with the provisions of Equality Act 2010 and any regulations made there under and shall ensure that they perform their responsibilities with due regard to the need to eliminate unlawful discrimination, and promote equality of opportunity.
	4. *Freedom of Information.* The Service Provider acknowledges that OU is subject to the FOIA and the Codes of Practice issued under the FOIA as may be amended, updated or replaced from time to time. The Service Provider acknowledges and agrees that:
		1. Subject to (b) below, the decision on whether any exemption applies to a request for disclosure of information under the FOIA is a decision solely for the OU;
		2. where the OU is managing a request under the FOIA to disclose any information that belongs to the Service Provider, the Service Provider shall co-operate with OU and shall use its best endeavours to respond to the OU within ten (10) working days of OU's request for assistance in determining whether or not an exemption to the FOIA applies.
		3. Where OU determines that it will disclose the Confidential Information, notwithstanding any objections from the Service Provider it shall use its reasonable endeavours to notify the Service Provider in writing prior to such disclosure.
	5. *Anti-bribery.* Without limiting clause 14.1, the Service Provider shall, and shall ensure that its sub-contractors, officers, employees, agents and representatives shall:
		1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 (irrespective of the jurisdiction in which such activity, practice or conduct is carried out); and
		2. comply with the University’s Anti-Bribery Policy (available [here](http://www.open.ac.uk/foi/main/sites/www.open.ac.uk.foi.main/files/files/ecms/web-content/Anti-bribery-and-Corruption-Policy.pdf));

If any breach of this clause 14.5 is suspected or known, the Service Provider must notify the OU immediately.

* 1. *Modern Slavery Act.* Without limiting clause 14.1, the Service Provider shall, and shall ensure that its sub-contractors, officers, employees, agents and representatives shall comply with all applicable laws, statutes, regulations relating to anti-slavery and human trafficking including but not limited to the Modern Slavery Act 2015 and not engage in any activity, practice or conduct which would constitute an offence under the Modern Slavery Act (irrespective of the jurisdiction in which such activity, practice or conduct is carried out).

If any breach of this clause 14.6 is suspected or known, the Service Provider must notify the OU immediately.

1. **General**
	1. *Force majeure.* Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party (a “Force Majeure Event”). For the avoidance of doubt neither party shall be entitled to rely on any strike, lockout or other industrial dispute involving its staff as constituting a Force Majeure Event, nor shall any delay or failure by a Party’s sub-contractors, officers, employees, agents or representatives amount to a Force Majeure Event unless such failure or delay was itself caused by a Force Majeure Event. The Party affected by a Force Majeure Event shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 3 months, either Party may terminate this Agreement by written notice to the other Party.
	2. *Amendments.* This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.
	3. *Assignment.* Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.
	4. *Entire agreement.* This Agreement contains the whole agreement between the Parties in respect of (subject matter of this agreement) and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.
	5. *Waiver.* No failure or delay by the either Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
	6. *Agency, partnership etc.* This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
	7. *Further assurance.* Each Party to this Agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.
	8. *Severance.* If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
	9. *Announcements.* No Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms.
	10. *Interpretation.* In this Agreement unless the context otherwise requires:
		1. words importing any gender include every gender;
		2. words importing the singular number include the plural number and vice versa;
		3. words importing persons include firms, companies and corporations and vice versa;
		4. references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
		5. reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
		6. any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
		7. the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
		8. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
		9. where the word ‘including’ is used in this Agreement, it shall be understood as meaning ‘including without limitation’.
	11. *Notices.* Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address of the relevant Party, or to the relevant facsimile number, set out below, or such other address or facsimile number as that Party may from time to time notify to the other Party in accordance with this clause 15.11. The relevant contact information for the Parties is as follows:

OU: For the attention of:

Stephen Hanlon

Procurement Manager

Finance Division

at the address set out at the top of this Agreement.

Email address:

[Insert email address:]

Service Provider:

[insert address]

 Email address:

[insert email address]

Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of facsimile messages, but only if a transmission report is generated by the sender’s facsimile machine recording a message from the recipient’s facsimile machine, confirming that the facsimile was sent to the number indicated above and confirming that all pages were successfully transmitted), or next working day after sending (in the case of e-mail).

In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

* 1. *Law and jurisdiction.* The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.
	2. *Third parties.* For the purposes of the Contracts (Rights of Third Parties) Act 1999 [and notwithstanding any other provision of this Agreement] this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

**AGREED** by the parties through their authorised signatories:

|  |  |  |
| --- | --- | --- |
| For and on behalf of**The Open University****Signed****Print Name****Title****Date** |  | For and on behalf of**[insert name]****Signed****Print Name****Title****Date** |

**Schedule 1 –Specification**

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| **Commencement Date:** |  |
| **Completion Date:** |  |
| **Fees:** |  |
| **Expenses:** |  |
| **Description of Services:** |  |
| **Outcomes/Targets:** |  |
| **Time and place for performance of the Services:** |  |
| **OU Contact** |  |
| **Persons performing the Services:** |  |
| **Reports:** |  |

Internal Note: Use this where there is no processing outside the uk and no sub-processor.

SCHEDULE 2

1. DATA PROTECTION

1. **Definitions**

In this Schedule 2 the following definitions shall apply:

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| "**Applicable EU Law**" | means any law of the European Union (or the law of one or more of the Member States of the European Union); |
| **" Controller", " Processor" and "Data Subject"**  | shall have the meaning given to those terms in the applicable Data Protection Laws; |
| "**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 Laws**" | means (a) 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 is subject, including the Data Protection Act 1998 or 2018 ("**DPA**") and the GDPR and all legislation enacted in the UK in respect of the protection of personal data as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time;  |
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| "**Data Processing Particulars**" | means, in relation to any Processing under this Agreement:(a) the subject matter and duration of the Processing;(b) the nature and purpose of the Processing;(c) the type of Personal Data being Processed; and(d) the categories of Data Subjects; |
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| "**Data Subject Request**" | means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object; |
| "**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 Laws);  |
| "**ICO**" | means the UK Information Commissioner's Office, or any successor or replacement body from time to time;  |
| "**ICO Correspondence**" | means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data;  |
| **"Losses"** | means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise; |
| "**Permitted** **Purpose**" | means the purpose of the Processing as specified in the Data Processing Particulars;  |
| "**Personal Data**" | means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data (as such Personal Data is more particularly described in Appendix 2 (*Data Processing Particulars*)); |
| "**Personal Data Breach**" | has the meaning set out in the Data Protection Laws and, for the avoidance of doubt, includes a breach of Paragraph 2.2.1(c);  |
| **"Personal Data Breach Particulars"** | means the information that must be included in a Personal Data Breach notification, as set out in Article 33(3) of the GDPR; |
| "**Personnel**" | means all persons engaged or employed from time to time by the Service Provider in connection with this Agreement, including employees, consultants, contractors and permitted agents;  |
| "**Processing**" | has the meaning set out in the Data Protection Laws (and "**Process**" and "**Processed**" shall be construed accordingly); |
| "**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 Article 25(6) of the DP Directive and/ or Article 45(1) of the GDPR (as applicable);  |
| "**Security Requirements**" | means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws (including, in particular, the seventh data protection principle of the DPA 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"** | means Personal Data that reveals such special categories of data as are listed in Article 9(1) of the GDPR;  |
| "**Third Party Request**" | means a written request from any third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulation.  |

1. DATA PROTECTION
	1. Arrangement Between The Parties
		1. The Parties shall each Process the Personal Data. The Parties acknowledge that the factual arrangements between them dictate the classification of each Party in respect of the Data Protection Laws. Notwithstanding the foregoing, the Parties anticipate that, in respect of the Personal Data, as between the OU and the Service Provider for the purposes of this Agreement, the OU shall act as the Controller and the Service Provider shall act as the Processor.
		2. The Service Provider shall only process Personal Data in relation to the Permitted Purpose in connection with the performance of its obligations under this Agreement.
		3. Each of the Parties acknowledges and agrees that Appendix 2 (*Data Processing Particulars*) to this Agreement is an accurate description of the Data Processing Particulars.
		4. Nothing within this Agreement relieves the Service Provider of its own direct responsibilities and liabilities under the Data Protection Laws.
		5. Each Party shall make due notification to any relevant Regulator.
		6. The Service Provider undertakes to the OU that it will take all necessary steps to ensure that it operates at all times in accordance with the requirements of the Data Protection Laws and the Service Provider will, at its own expense, assist the OU in discharging its obligations under the Data Protection Laws as more particularly detailed in this Paragraph 2 *(Data Protection)*. The Service Provider shall not, whether by act or omission, cause the OU to breach any of its obligations under the Data Protection Laws.
	2. **Data Processor Obligations**
		1. To the extent that the Service Provider Processes any Personal Data as a Processor for and on behalf of the OU (as the Controller) it shall:
			1. only Process the Personal Data for and on behalf of the OU for the purposes of performing its obligations under this Agreement, and only in accordance with the terms of this Agreement and any documented instructions from the OU;
			2. unless prohibited by law, notify the OU 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 the OU, including where it believes that any of the OU 's instructions under Paragraph 2.2.1(a) infringe any of the Data Protection Laws;
			3. take, implement and maintain appropriate technical and organisational security measures to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data processed by it, including (inter alia) where appropriate:
				1. compliance with the obligations imposed on the Supplier by the Specification;
				2. the pseudonymisation and encryption of the Personal Data;
				3. guaranteeing the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
				4. restoring the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and
				5. ensuring that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: https://www.ncsc.gov.uk/guidance/end-user-device-security

and where requested provide to the OU evidence of its compliance with such requirements promptly, and in any event within forty-eight (48) hours of the request;

* + - 1. within thirty (30) calendar days of a request from the OU, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the OU (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Paragraph 2 (*Data Protection*), and provide reasonable information, assistance and co-operation to the OU, including access to relevant Personnel and/ or, on the request of the OU, provide the OU with written evidence of its compliance with the requirements of this Paragraph 2 (*Data Protection*); not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without the OU's prior written consent, save in relation to Third Party Requests where the Service Provider is prohibited by law or regulation from notifying the OU, in which case it shall use reasonable endeavours to advise the OU in advance of such disclosure and in any event as soon as practicable thereafter;
			2. promptly comply with any request from the OU to amend, transfer or delete any Personal Data;
			3. notify the OU promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or Correspondence and shall:
				1. not disclose any Personal Data in response to any Data Subject Request or Correspondence without first consulting with and obtaining the OU's prior written consent; and
				2. provide the OU with all reasonable co-operation and assistance required by the OU in relation to any such Data Subject Request or Correspondence;
			4. notify the OU 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 in relation to the Personal Data (and follow-up in writing) and shall
				1. conduct or support the OU in conducting such investigations and analysis that the OU reasonably requires in respect of such Personal Data Breach;
				2. implement any actions or remedial measures necessary to restore the security of compromised Personal Data; and
				3. assist the OU to make any notifications to the ICO and affected Data Subjects;
			5. comply with the obligations imposed upon a Processor under the Data Protection Laws;
			6. not make (nor instruct or permit a third party to make) a transfer of any Personal Data to a Restricted Country except with the prior written consent of the OU and in accordance with any terms the OU may impose on such transfer as the OU deems necessary to satisfy the requirements to ensure that transfers of Personal Data outside of the UK have adequate protections in place as set out in the Data Protection Laws;
			7. use all reasonable endeavours, in accordance with Good Industry Practice, to assist the OU to comply with the obligations imposed on the OU by the Data Protection Laws, including:
				1. compliance with the Security Requirements;
				2. obligations relating to notifications required by the Data Protection Laws to the ICO and/ or any relevant Data Subjects;
				3. undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Laws, consulting with the ICO and/or any other relevant Regulator in respect of any such Data Protection Impact Assessments); and
				4. without undue delay and where feasible not later than 72 hours after having become aware of it notify Personal Data Breaches to the ICO and/or any other relevant Regulator unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons;
			8. Upon the earlier of:
				1. termination or expiry of this Agreement (as applicable); and
				2. the date on which Personal Data is no longer relevant to, or necessary for, the Permitted Purpose

the Service Provider shall cease Processing all Personal Data and return and/ or permanently and securely destroy so that it is no longer retrievable (as directed in writing by the OU) all Personal Data and all copies in its possession or control and, where requested by the OU, certify that such destruction has taken place (promptly, and in any event within forty-eight (48) hours of the request ) except to the extent required by Applicable EU Law to retain the Personal Data; not make (nor instruct or permit a third party to make) a transfer of any Personal Data to a Restricted Country except with the prior written consent of the OU and in accordance with any terms the OU may impose on such transfer as the OU deems necessary to satisfy the requirements to ensure that transfers of Personal Data outside of the UK have adequate protections in place as set out in the Data Protection Laws;

* + 1. Except as otherwise provided, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in any Personal Data.
	1. Supplier Personnel

2.3.1 The Service Provider shall take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to Personal Data (including, without limitation, ensuring such Personnel shall have undergone reasonable levels of training in Data Protection Laws and in the care and handling of Personal Data), and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings.

* 1. Appointing Sub-contractors
		1. The Service Provider shall not sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the OU
		2. Notwithstanding any consent or approval given by the OU under Paragraph 2.4.1 the Service Provider shall remain primarily liable to the OU for the acts, errors and omissions of any sub-contractor to whom it discloses Personal Data, and shall be responsible to the OU for the acts, errors and omissions of such sub-contractor as if they were the Service Provider's own acts, errors and omissions to the extent that the Service Provider would be liable to the OU under this Agreement for those acts, errors and omissions. Notwithstanding anything in this Agreement to the contrary, this Schedule 2 (*Data Protection*) shall continue in full force and effect for so long as the Service Provider Processes any Personal Data.
1. Indemnity
	1. the Service Provider shall indemnify on demand and keep indemnified the OU from and against:
		1. any monetary penalties or fines levied by the ICO and/or any other Regulator on the OU; the costs of an investigative, corrective or compensatory action required by the ICO and/or any other Regulator, or of defending proposed or actual enforcement taken by the ICO and/or any other Regulator
		2. any Losses suffered or incurred by, awarded against, or agreed to be paid by, the OU pursuant to a claim, action or challenge made by a third party against the OU (including by a Data Subject); and
		3. except to the extent that Paragraphs 3.1.1 and/ or 3.1.1 and/ or 3.1.2 apply, any Losses suffered or incurred, awarded against, or agreed to be paid by, the OU,

in each case to the extent arising as a result of a breach by the Service Provider (or its sub-contractors) of this Agreement and/ or their respective obligations under the Data Protection Laws.

* 1. Nothing in this Agreement will exclude, limit or restrict the Service Provider's liability under the indemnity set out in Paragraph 3.1.

APPENDIX 2

DATA PROTECTION PARTICULARS

|  |  |
| --- | --- |
| **The subject matter and duration of the Processing** |  |
| **The nature and purpose of the Processing** |  |
| **The type of Personal Data being Processed** |  |
| **The categories of Data Subjects** |  |

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***[Guidance Note: The above information is required by the GDPR (Article 28(3)) which requires data processing agreements to include details of the subject-matter, duration, nature and purpose of the processing and the type of personal data and categories of data subjects involved in the data processing.]***