

Schedule 20 (Processing Data)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings, and they shall supplement Schedule 1 (*Definitions*):

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| "Agreed Purposes" | has the meaning given to it in Paragraph 3.3 of this Schedule; |
| "Ancillary Processing" | the Processing of Business Contact Data in connection with the ongoing management of this Contract; |
| "Business Contact Data" | has the meaning given to it in Annex 1 of this Schedule; |
| "Core Processing" | the Processing of Service Recipient Data and Third Party Data for the purposes of fulfilling the obligations under this Contract, as further detailed in Annex 1 of this Schedule; |
| "Service Recipient Data" | has the meaning given to it in Annex 1 of this Schedule; |
| "Third Party Data" | has the meaning given to it in Annex 1 of this Schedule. |

2. Status of the Parties

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract dictates the status of each party under the DPA 2018. A Party may act as:

2.1.1 "Controller" in respect of the other Party who is "Processor";

2.1.2 "Processor" in respect of the other Party who is "Controller";

2.1.3 "Joint Controller" with the other Party;

2.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller",

in respect of certain Personal Data under this Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation. The Parties acknowledge and agree that when undertaking the Ancillary Processing and the Core Processing, for the purposes of the Data Protection Legislation, each Party is an Independent Controller.

- 2.2 It is not anticipated that any activities carried out under this Contract will result in the Parties being construed as Joint Controllers or that one Party will be construed as Controller in respect of the other Party who is

Processor. However, to the extent that the Parties determine either of these scenarios applies, then the Parties shall cooperate to determine and agree their respective responsibilities for compliance with the requirements of the Data Protection Legislation based on the terms set out in Paragraphs 3 and 4 and Annex 2 (*Joint Controller Agreement*) of this Schedule and including, at all times, ensuring the rights of Data Subjects are adequately addressed and protected.

3. Where one Party is Controller and the other Party its Processor

- 3.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller and may not be determined by the Processor.
- 3.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 3.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - 3.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
 - 3.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
 - 3.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 3.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and assurance that those measures comply with any Security Requirements; and
 - 3.3.5 providing assurance that the measures referred to in Paragraph 3.3.5 comply with the Security Requirements.
- 3.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
 - 3.4.1 process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 3.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in this Schedule 20, Clause 18 of the Core Terms and Schedule 16 (*Security*) (if used) (which the Controller may reasonably reject (including, where applicable, in accordance with its rights of rejection under those provisions) but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures.

3.4.3 ensure that:

- (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Annex 1 (*Processing Personal Data*));
- (b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are subject to any staff vetting required by this Contract, including the Security Requirements (if any) and Clauses 18 (*Data protection*), 19 (*What you must keep confidential*) and 20 (*When you can share information*);
 - (ii) are aware of and comply with the Processor's duties under this Schedule 20, the Security Requirements, and Clauses 18 (*Data protection*), 19 (*What you must keep confidential*) and 20 (*When you can share information*);
 - (iii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iv) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (v) have undergone adequate training in the use, care, protection and handling of Personal Data (including any training required by the Security Requirements);

3.4.4 not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained, and the following conditions are fulfilled:

- (a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
 - (i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based

Subcontractors and/or Subprocessors), the Supplier (and/or the applicable Subcontractor and/or Subprocessor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;

- (ii) the Supplier shall notify the Buyer immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Subcontractor's or Subprocessor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Paragraph 3.4.4(a); and
- (iii) in the event that the Supplier (and/or the applicable Subcontractor or Subprocessor):
 - (A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 3.4.4(a);
 - (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 3.4.4(a); and/or
 - (C) fails to notify the Buyer of any changes to its certification status in accordance with Paragraph 3.4.4(a)(ii) above,

the Buyer shall have the right to terminate this Contract with immediate effect; or

- (b) the Controller and/or the Processor have provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "**IDTA**"); or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard

Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or

- (ii) where the transfer is subject to EU GDPR, the EU SCCs,
as well as any additional measures determined by the Controller being implemented by the importing party;
 - (c) the Data Subject has enforceable rights and effective legal remedies;
 - (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 3.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 3.5 Subject to Paragraph 3.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
- 3.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 3.5.2 receives a request to rectify, block or erase any Personal Data;
 - 3.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 3.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
 - 3.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 3.5.6 becomes aware of a Data Loss Event.
- 3.6 The Processor's obligation to notify under Paragraph 3.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.

- 3.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 3.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 3.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 3.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 3.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 3.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 3.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 3.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
- 3.8.1 the Controller determines that the Processing is not occasional;
 - 3.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 3.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 3.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 3.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 3.11 Before allowing any Subprocessor to Process any Personal Data related to this Contract, the Processor must:
- 3.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
 - 3.11.2 obtain the written consent of the Controller;
 - 3.11.3 enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and

- 3.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 3.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 3.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

4. Where the Parties are Joint Controllers of Personal Data

In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 (*Joint Controller Agreement*) to this Schedule 20 (*Processing Data*).

5. Independent Controllers of Personal Data

- 5.1 With respect to Personal Data provided by one Party to another Party or Processed by each Party in connection with the Deliverables, for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Independent Controller.
- 5.2 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 5.3 The Supplier shall Process the Buyer's Business Contact Data and the Service Recipient Data for the purposes of fulfilling its obligations under this Contract (and pursuant to the terms of this Schedule) or in order to comply with an obligation imposed on it under applicable Law (the "**Agreed Purposes**").
- 5.4 The Supplier undertakes not to:
 - 5.4.1 use the Buyer's Business Contact Data or the Service Recipient Data for purposes other than in accordance with the Agreed Purposes;
 - 5.4.2 disseminate, communicate, sell, assign, license or provide the Buyer's Business Contact Data or the Service Recipient Data in any way whatsoever to third parties other than for the Agreed Purposes;
 - 5.4.3 turn the Buyer's Business Contact Data or the Service Recipient Data, by itself or by a third party acting on its behalf and/or for its account, into a commercial operation other than for the Agreed Purposes.
- 5.5 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 5.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its

data protection policies and procedures as the other Party may reasonably require.

5.6 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Contract.

5.7 The Parties shall only provide Personal Data to each other:

5.7.1 to the extent necessary to perform their respective obligations under this Contract;

5.7.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);

5.7.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

(a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:

(i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Subcontractors and/or Subprocessors), the Supplier (and/or the applicable Subcontractor and/or Subprocessor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;

(ii) the Supplier shall notify the Buyer immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Subcontractor's or Subprocessor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Paragraph 5.7.3(a); and

(iii) in the event that the Supplier (and/or the applicable Subcontractor or Subprocessor):

(A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms

required for compliance with this Paragraph 5.7.3(a);

- (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 5.7.3(a); and/or
- (C) fails to notify the Buyer of any changes to its certification status in accordance with Paragraph 5.7.3(a)(ii) above,

the Buyer shall have the right to terminate this Contract with immediate effect; or

- (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
 - (ii) where the transfer is subject to EU GDPR, the EU SCCs,
 - as well as any additional measures determined by the Controller being implemented by the importing party;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if

it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and

- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

5.7.4 where it is recorded in Annex 1 (*Processing Personal Data*).

- 5.8 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity to the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 5.9 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 5.10 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**Request Recipient**"):
 - 5.10.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 5.10.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
 - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 5.11 The Supplier shall promptly notify the Buyer upon it becoming aware of any Data Loss Event and shall:
 - 5.11.1 do all such things as reasonably necessary to assist the Buyer in mitigating the effects of the Data Loss Event;

- 5.11.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 5.11.3 work with the Buyer to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 5.11.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 5.12 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Annex 1 (*Processing Personal Data*).
- 5.13 Personal Data shall not be retained or Processed for longer than is necessary to perform each Party's respective obligations under this Contract which is specified in Annex 1 (*Processing Personal Data*).
- 5.14 Where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data.

Annex 1 - Processing Personal Data

1.1 The contact details of the Buyer's Data Protection Officer are:
DP.Enquiries@education.gov.uk

1.2 The contact details of the Supplier's Data Protection Officer are:
dataprotection@jisc.ac.uk

| Description | Details |
|---|---|
| Identity of Controller for each Category of Personal Data | <p>The Buyer is Controller and the Supplier is Processor Not applicable.</p> <p>The Supplier is Controller and the Buyer is Processor Not applicable.</p> <p>The Parties are Joint Controllers Not applicable.</p> <p>The Parties are Independent Controllers of Personal Data The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • "Business Contact Data" which comprises the following categories of Personal Data: <ul style="list-style-type: none"> ○ Personal Data of Supplier Staff for which the Supplier is the Controller; and ○ Personal Data of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Staff) engaged in the performance of the Buyer's duties under this Contract for which the Buyer is the Controller; • "Service Recipient Data" which comprises Personal Data of any students, directors, officers, employees, agents, consultants and contractors of the Service Recipients who use or otherwise benefit from the Deliverables; and • "Third Party Data" which comprises the following categories of Personal Data: <ul style="list-style-type: none"> ○ Personal Data of third parties involved in the provision of SAAG; and ○ Personal Data of third parties as part of, or otherwise in relation to, the provision of the cyber security services in accordance with Schedule 2 (<i>Specification</i>). |

| Description | Details |
|---|--|
| Subject matter and purposes of the Processing | <p>The Business Contact Data is Processed for the purposes of ensuring the effective management of this Contract and facilitating the relationship of the Parties.</p> <p>The Service Recipient Data is Processed to enable the Supplier to provide the Deliverables, including the technical support desk and CSIRT, and to enable the Buyer to liaise with the relevant Service Recipients to check the performance of the Contract and assess the Supplier's provision of the Deliverables.</p> <p>The Third Party Data is Processed to enable the Supplier to provide the Deliverables, including SAAG and the cyber monitoring and threat detection system.</p> |
| Duration of the Processing | All Personal Data shall be Processed during the Contract Period and, if applicable, the Termination Assistance Period. |
| Nature of the Processing | <p>The Ancillary Processing comprises the following Processing activities: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> <p>The Core Processing comprises the following Processing activities: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> |
| Type of Personal Data being Processed | <p>In relation to Business Contact Data: first and last name, business telephone number, email address, office location and position/job title and/or role.</p> <p>In relation to Service Recipient Data: first and last name, telephone number, email address, office or education location, position/job title and/or role, online identifiers such as IP address and device IDs, audio recordings.</p> <p>In relation to Third Party Data: first and last name, telephone number, email address, position/job title and/or role, professional body membership, online identifiers.</p> |
| Categories of Data Subject | Supplier Staff, personnel of the Buyer, users of the Network, users of CSIRT, users of SAAG, members of the public. |

| Description | Details |
|--|---|
| <p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p> | <p>Each Party, acting as an independent controller, shall retain Personal Data only for as long as necessary to fulfil the purposes for which it was collected, or as required by applicable law. Upon termination of this Agreement, each Party shall delete or anonymise any Personal Data in its possession that is no longer required in compliance with Clause 14 of the Core Terms, Schedule 16 (<i>Security</i>) and Schedule 30 (<i>Exit Management</i>).</p> |
| <p>Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract and international transfers and legal gateway</p> | <p>The Supplier and its Sub-contractors may process Personal Data in the United Kingdom, the European Economic Area (EEA), and the United States. Where Personal Data is transferred outside the UK or EEA, the Supplier shall ensure that such transfers are subject to appropriate safeguards in accordance with applicable Data Protection Legislation.</p> |
| <p>Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event (noting that any Protective Measures are to be in accordance with any Security Requirements)</p> | <p>The Supplier shall, and shall procure that its Subcontractors shall, adhere to the Security Requirements.</p> <p>The Supplier and, where applicable, its Subcontractors shall implement and maintain appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage.</p> |

Annex 2 - Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (*Joint Controller Agreement*) in replacement of Paragraph 2.2 of this Schedule 20 (*Where one Party is Controller and the other Party is Processor*) and Paragraphs 5.2 -5.14 of this Schedule 20 (*Independent Controllers of Personal Data*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the [Supplier/Buyer]:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using best endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

2. Undertakings of both Parties

- 2.1 The Supplier and the Buyer each undertake that they shall:
- 2.1.4 report to the other Party every [x] months on:

- (a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of this Contract during that period;

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1(a) to 2.1.1(e);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 1.2 and 1.3 to 2.1.1(a) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

- 2.1.7 use best endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
- (a) are aware of and comply with their duties under this Annex 2 (*Joint Controller Agreement*) and those in respect of Confidential Information
 - (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
- (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- 2.1.11 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- (a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
 - (i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Subcontractors and/or Subprocessors), the Supplier (and/or the applicable Subcontractor and/or Subprocessor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;

- (ii) the Supplier shall notify the Buyer immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Subcontractor's or Subprocessor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Paragraph 2.1.11(a); and
 - (iii) in the event that the Supplier (and/or the applicable Subcontractor or Subprocessor):
 - (A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 2.1.11(a);
 - (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 2.1.11(a); and/or
 - (C) fails to notify the Buyer of any changes to its certification status in accordance with Paragraph 2.1.11(a)(ii) above,the Buyer shall have the right to terminate this Contract with immediate effect; or
- (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as agreed with the non-transferring Party which could include:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement (the "**IDTA**"), as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU

SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or

- (ii) where the transfer is subject to EU GDPR, the EU SCCs,

as well as any additional measures determined by the Controller being implemented by the importing party;

- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

2.2 Each Joint Controller shall use best endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within forty eight (48) hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the Buyer and its advisors with:

- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;
- 3.1.2 all reasonable assistance, including:
 - (a) co-operation with the other Party and the Information Commissioner and any other regulatory authority investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (b) co-operation with the other Party including using such best endeavours as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Data Loss Event;

- (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and/or
 - (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner and/or any other regulatory authority investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Paragraph 3.2.
- 3.2 Each Party shall use best endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Data Loss Event which is the fault of that Party as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Data Loss Event, including providing the other Party, as soon as possible and within forty eight (48) hours of the Data Loss Event relating to the Data Loss Event, in particular:
 - 3.2.1 the nature of the Data Loss Event;
 - 3.2.2 the nature of Personal Data affected;
 - 3.2.3 the categories and number of Data Subjects concerned;
 - 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
 - 3.2.5 measures taken or proposed to be taken to address the Data Loss Event; and
 - 3.2.6 describe the likely consequences of the Data Loss Event.

4. Audit

- 4.1 The Supplier shall permit:
 - 4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
 - 4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to this Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.
- 4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. Impact Assessments

The Parties shall:

- 5.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- 5.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 UK GDPR.

6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner, or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner, or any other regulatory authority.

7. Liabilities for Data Protection Breach

- 7.1 If financial penalties are imposed by the Information Commissioner or any other regulatory authority on either the Buyer or the Supplier for a Data Loss Event ("**Financial Penalties**") then the following shall occur:
 - 7.1.1 if in the view of the Information Commissioner or any other regulatory authority, the Buyer is responsible for the Data Loss Event, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Data Loss Event. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Data Loss Event;
 - 7.1.2 if in the view of the Information Commissioner or any other regulatory authority, the Supplier is responsible for the Data Loss Event, in that it is not a Data Loss Event that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Data Loss Event; or
 - 7.1.3 if no view as to responsibility is expressed by the Information Commissioner or any other regulatory authority, then the Buyer and the Supplier shall work together to investigate the relevant Data Loss Event and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties

equally if no responsibility for the Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (*Resolving disputes*).

- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Data Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Data Loss Event shall be liable for the losses arising from such Data Loss Event. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "**Claim Losses**"):
- 7.3.1 if the Buyer is responsible for the relevant Data Loss Event, then the Buyer shall be responsible for the Claim Losses;
 - 7.3.2 if the Supplier is responsible for the relevant Data Loss Event, then the Supplier shall be responsible for the Claim Losses: and
 - 7.3.3 if responsibility for the relevant Data Loss Event is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either Paragraph 7.2 or Paragraph 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Data Loss Event, having regard to all the circumstances of the Data Loss Event and the legal and financial obligations of the Buyer.

8. Termination

If the Supplier is in Material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Buyer shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 14 of the Core Terms (*Ending the contract*) and the consequences of termination in Clause 14.5.1 of the Core Terms shall apply.

9. Sub-Processing

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- 9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
 - 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.