

THIS AGREEMENT is dated 1 February 2020

PARTIES

THE OPEN UNIVERSITY incorporated Royal Charter organisation and registered Charity in England and Wales with Registered Charity number RC000391 ("**University**").

OPEN UNIVERSITY STUDENTS ASSOCIATION LIMITED, a company limited by guarantee with registered number 12031028 and a registered Charity in England and Wales (registered number 1183837) and in Scotland (registered number SC049546), whose registered office is at PO Box 397, Walton Hall, Milton Keynes, MK7 6BE ("**Students Association**").

(each referred to as a "**Party**" and together the "**Parties**")

BACKGROUND

- (A) The University agrees to share and use the Personal Data of its students with the Students Association in the European Economic Area (EEA) on terms set out in the Agreement.
- (B) The Students Association agrees to share and use the Personal Data of its Student Members on the terms set out in this Agreement.
- (C) This is a free-standing Agreement that does not incorporate commercial business terms established by the Parties under separate commercial arrangements.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Agreed Purpose: has the meaning given to it in clause 2 of this Agreement.

Agreement: this Agreement, which is a free-standing document that does not incorporate commercial business terms established by the Parties under separate commercial arrangements.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: 1 February 2020.

Data Discloser: the Party transferring the Personal Data to the Data Receiver.

Deletion Procedure: has the meaning given to it in clause 8.3 and Schedule 1 to this Agreement.

Data Protection Authority: the relevant data protection authority in the territories where the Parties to this Agreement are established, here the Information Commissioner's Office (**ICO**).

Data Receiver: the Party receiving the Personal Data from the Data Discloser.

Data Sharing Code: the Information Commissioner's Data Sharing Code of Practice of May 2011.

Data Protection Legislation: (i) the General Data Protection Regulation as enacted into the laws of England and Wales by the Data Protection Act 2018 (**GDPR**) as revised and superseded from time to time; (ii) Directive 2002/58/EC as updated by Directive 2009/136/EC and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended); and (iii) any other laws and regulations relating to the processing of personal data and privacy which apply to a Party and, if applicable, the guidance and codes of practice issued by the Information Commissioner (such as the Data Sharing Code), and the equivalent of any of the foregoing in any relevant jurisdiction.

Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

Shared Personal Data: the personal data to be shared between the Parties under clause 4 of this Agreement.

Students and Student Members: means students registered at the University within the definitions set out in the OU Student Regulations and Students Association Articles of Association.

Subject Access Request: the exercise by a data subject of his or her right of access under Article 15 of the GDPR.

Term: an initial period beginning on the Commencement Date and ending on 31 July 2021 and then subject to review and renewal on an annual basis under clause 12.1.

- 1.2 **Controller, Processor, Data Subject, Personal Data, Special Categories of Personal Data, Processing** and "appropriate technical and organisational measures" shall have the meanings given to them in the Data Protection Legislation.
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.8 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 In the case of any ambiguity between any provision contained in the body of this agreement and any provision contained in the Schedules or appendices, the provision in the body of this agreement shall take precedence.
- 1.11 A reference to **writing** or **written** includes fax and email.
- 1.12 Unless the context otherwise requires the reference to one gender shall include a reference to the other genders.

2. PURPOSE

- 2.1 This agreement sets out the framework for the sharing of **Personal Data** between the Parties as **Controllers**. It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.
- 2.2 The Students Association is a student body providing a range of facilities and services for Students to supplement their academic studies. Ordinarily, all Students are automatically enrolled as Student Members of the Students Association and are able to participate in the functioning of the Students Association. However, some Students studying outside the UK may not be able to participate in the functioning of the Students Association due to the law of the country in which they are studying. In addition, some Students studying within secure environments may also not be able to participate in the functioning of the Students Association due to the nature of their situation and/or applicable law. Students may opt out of membership of the Students Association by notifying the Students Association of their wish to do so.
- 2.3 The Parties consider this data sharing initiative necessary for the purposes of enabling effective communication between the students of the University and the Students Association. It will serve to benefit the Parties by ensuring all relevant information is shared so that students are able to fully participate in the opportunities and services provided by the Students Association.
- 2.4 Members of the Students Association (including Students) may also access Personal Data when representing the Students Association on various committees of the University. It is recognised that there are significant benefits to both Parties of having this representation.
- 2.5 The Parties agree only to process Shared Personal Data, as described in clauses 4.1 and 4.3, for the following purposes:

- (a) To facilitate fair and proper elections for Students Association offices and representative positions via a secret ballot, in keeping with the duties under Section 22 of the Education Act 1994 (for this processing, the data is sent directly to the Students Association's nominated elections provider which is Electoral Reform Services Ltd (**ERS**) via secure encrypted means. ERS process the data to administer the elections on behalf of the Students Association).
- (b) To enable verification of individual Student Members' identity and study status/eligibility
- (c) To facilitate and enable the processing of Student complaints and moderation of shared online spaces, by either Party
- (d) To enable student engagement in governance, to satisfy the aims of either/both Party/Parties.
- (e) To facilitate event management between the Parties (e.g. Open University student consultation events, residential schools, the Open University Students Association biennial conference etc)
- (f) To enable the celebration and proper storage of the history of the Students Association for archiving purposes
- (g) To facilitate the working of the OU Students Shop (OUSA (Services) Ltd) to support the celebration and recognition of Students' achievements in completing their studies and graduating from the University
- (h) To facilitate research into the Student experience, for example, but not limited to, the National Students Survey and Students Association research projects
- (i) To enable the efficient and effective communication between the Parties in relation to clubs, societies and membership; and between the Students Association and its members
- (j) To enable effective management and planning of Students Association services and facilities by receiving relevant Student demographic information
- (k) To support the inclusion of representatives of the Students Association (including Student representatives) on University committees that may include discussions about, or the provisions of, data or statistics that could potentially include that of identifiable persons (including other Students)
- (l) To support investigations, or matters pertaining to student safety, wellbeing, safeguarding or the prevention or detection of crime in order to preserve a secure and safe environment for students, staff and visitors
- (m) To comply with any legal obligation to which either Party is subject.

The Parties shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause without the written consent of the other Party (the **Agreed Purpose(s)**).

2.6 The Parties confirm that a risk assessment has been conducted in relation to Personal Data that is to be shared and the necessity of sharing of this Personal Data. The Parties agree that this Agreement formalises a lawful transfer of Personal Data between the Parties and presents no new or additional privacy concerns.

2.7 Each Party shall appoint a single point of contact (**SPoC**) who will work together to reach an agreement with regards to any issues arising from the data sharing and to actively improve the effectiveness of the data sharing initiative. The points of contact for each of the Parties are the following post-holders or their equivalents:

- (a) **Students Association's SPoC** – Chief Executive, OU Students Association, oustudents-data-protection@open.ac.uk or 01908 858379
- (b) **University's SPoC** – Pro-Vice-Chancellor (Students), The Open University, PVC-STUDENTS-SUPPORT@open.ac.uk or 01908 659185

3. COMPLIANCE WITH NATIONAL DATA PROTECTION LAWS

3.1 Each Party must ensure compliance with applicable national data protection laws at all times during the Term.

3.2 Each Party has paid such fees as are required by its national Data Protection Authority which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to this Agreement, unless an exemption applies. The details are as follows:

- (a) Open University, United Kingdom, Registration number Z5521375.
- (b) Open University Students Association Limited, United Kingdom, Registration number ZA539704.

4. SHARED PERSONAL DATA

4.1 Personal Data necessary for the execution of the Agreed Purposes in clause 2.5, will be shared between the Parties during the Term of this Agreement, including:

4.2 From the University to the Students Association:

- (a) First name
- (b) Last name
- (c) Preferred pronoun
- (d) Faculty and Student Support Team
- (e) Registered modules, and qualifications where applicable
- (f) Study history
- (g) Expected completion date
- (h) Date of birth

- (i) Email address
- (j) Address
- (k) Postcode
- (l) Nation (where applicable)
- (m) Phone number
- (n) Personal Identifier Number
- (o) OU Computer User (OUCU) ID

4.3 From the Students Association to the University:

- (a) Details of students who have opted out of membership of the Students Association.
- (b) Details of Student Members who have been granted extended membership status in line with the relevant section of the Association's Articles.
- (c) Details of students who have been expelled from membership of the Students Association following disciplinary action.

4.4 The following types of Special Categories or Sensitive Personal Data will be shared between the Parties during the Term of this agreement:

- (a) Gender
- (b) Disability status
- (c) Accessibility requirements
- (d) Carer status
- (e) Dietary requirements

4.5 The following types of Personal Data and Sensitive Personal Data/Special Category Data may be shared between the Parties during the Term for the specific Purposes shown:

- (a) Personal Data (as listed in Clause 4.2),
- (b) For the purposes of Equal Opportunities monitoring
 - (i) Racial or ethnic origin;
 - (ii) Religious or philosophical beliefs;
- (c) For the purposes of Safeguarding, data including but not limited to:
 - (i) Data concerning a natural person's physical or mental health or condition;
 - (ii) Data relating to alleged or actual criminal offences, breaches of codes of conduct or student rules and regulations; and

- (d) For the purposes of Accessibility: Special Categories of Personal Data (as listed in Clauses 4.3).

4.6 Anonymisation and Pseudonymisation – the Data Discloser will, as far as is reasonably practical, anonymise or pseudonymise all Personal Data contained in statistics, reports and summaries to minimise the amount of personal data shared for the purposes of assessing, reviewing, and implementing organisational plans, projects or initiatives which may include data that, particularly in the case of very small datasets, could reveal Personal Data and Special Category Personal Data (relating to ethnicity, disability and/or physical and mental health status) for both prospective, current and past Students. Where a residual risk remains of Data Subjects being identifiable from the Shared Personal Data, the Data Receiver shall handle this Shared Personal Data in the strictest confidence and in compliance with the Data Protection Legislation.

4.7 The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.

5. FAIR AND LAWFUL PROCESSING

5.1 Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with clauses 5.2, 5.3 and clause 5.4 during the Term of this agreement.

5.2 Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data.

5.3 The Data Discloser shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the data subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 13 of the GDPR including:

- (i) if Shared Personal Data will be transferred to a third party, such as the Students Association, that fact and sufficient information about such transfer and the purpose of such transfer to enable the data subject to understand the purpose and risks of such transfer; and
- (ii) if Shared Personal Data will be transferred outside the EEA pursuant to clause 9 of this Agreement, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the controller to enable the data subject to understand the purpose and risks of such transfer.

5.4 The Data Receiver shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the data subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR including:

- (i) if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the data subject to understand the purpose and risks of such transfer; and
- (ii) if Shared Personal Data will be transferred outside the EEA pursuant to clause 9 of this Agreement, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the controller to enable the data subject to understand the purpose and risks of such transfer.

6. DATA QUALITY

- 6.1 The Data Discloser shall ensure that Shared Personal Data is accurate.
- 6.2 Shared Personal Data must be limited to the Personal Data described in clauses 4.1 and 4.3, of this Agreement.
- 6.3 Where either Party becomes aware of inaccuracies in the Shared Personal Data, they will notify the other Party within a reasonable period of time.

7. DATA SUBJECTS' RIGHTS

- 7.1 The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
- 7.2 The SPoC (or delegate) for each Party are responsible for maintaining a record of individual requests to exercise the Data Subject's rights, including the decisions made and any action that was taken or information that was exchanged. Records must include copies of the request, details of the data accessed and action taken and, where relevant, the data shared and notes of any meeting, correspondence or phone calls relating to the request. The SPoC for each Party are detailed in clause 2.7.
- 7.3 The Parties agree that the responsibility for complying with requests from Data Subjects to exercise their rights under the Data Protection Legislation falls to the Party receiving the request in respect of the Personal Data held by that Party.
- 7.4 Notwithstanding clause 7.3 the Parties agree to share information about requests from Data Subjects to exercise their right to rectification where such a request applies to Shared Personal Data and is material.

8. DATA RETENTION AND DELETION

- 8.1 The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.

8.2 Notwithstanding clause 8.1, Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.

8.3 The Data Receiver shall ensure that any Shared Personal Data are returned to the Data Discloser or destroyed in accordance with the agreed Deletion Procedure set out in Schedule 1 in the following circumstances:

- (a) on termination of the Agreement;
- (b) on expiry of the Term of the Agreement;
- (c) once processing of the Shared Personal Data is no longer necessary for the purposes it was originally shared, as set out in clause 2.5.

8.4 Following the deletion of Shared Personal Data in accordance with clause 8.3, the Students Association shall notify the University that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure in Schedule 1 to this Agreement.

9. TRANSFERS

9.1 For the purposes of this clause, transfers of personal data shall mean any sharing of personal data by the Data Receiver with a third party, and shall include, but is not limited to, the following:

- (a) storing Shared Personal Data on servers outside the EEA.
- (b) granting third parties located outside the EEA access rights to the Shared Personal Data.

9.2 If the Data Receiver appoints a third party processor to process the Shared Personal Data it shall comply with Article 28 and Article 30 of the GDPR and shall remain liable to the Data Discloser for the acts and/or omissions of the processor.

9.3 The Data Receiver may not transfer Shared Personal Data to a third party located outside the EEA unless it;

- (a) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and.
- (b) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.

10. SECURITY AND TRAINING

10.1 The Data Discloser shall only provide the Shared Personal Data to the Data Receiver by using secure methods as agreed and set out in Schedule 22.

- 10.2 The Parties undertake to have in place throughout the Term appropriate technical and organisational security measures to:
- (a) prevent:
 - (i) unauthorised or unlawful processing of the Shared Personal Data; and
 - (ii) the accidental loss or destruction of, or damage to, the Shared Personal Data
 - (b) ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (ii) the nature of the Shared Personal Data to be protected.
- 10.3 The level of technical and organizational measures agreed by the Parties as appropriate as at the Commencement Date having regard to the state of technological development and the cost of implementing such measures is set out in Schedule 2. The Parties shall keep such security measures under review and shall carry out such updates as they agree are appropriate throughout the Term.
- 10.4 It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures set out in Schedule 2, together with organisational policies and any other applicable national data protection laws and guidance and have entered into confidentiality agreements relating to the processing of personal data.
- 10.5 The level, content and regularity of training referred to in clause 10.4 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.

11. DATA SECURITY BREACHES AND REPORTING PROCEDURES

- 11.1 The Parties shall each comply with their obligation to report a Personal Data Breach relating to Student Members to the appropriate Data Protection Authority and (where applicable) data subjects under Article 33 of the GDPR and shall each inform the other Party of any Personal Data Breach which either:
- (a) is substantive and significantly affects the rights of a data subject; or
 - (b) involves a substantial security incident; or
 - (c) meets the requirement to notify any Data Protection Authority.
- 11.2 Parties are under a strict obligation to notify any potential or actual losses of the Shared Personal Data that meet the criteria specified in clause 11.1 to each SPoC (or delegate, see 11.2 (a) below) as soon as possible and, in the case of a notifiable breach, within two Business Days of identification and in any event, within five Business Days of

identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with the applicable national data protection laws and guidance.

- (a) For the University, the delegated Point of Contact for notification of potential or actual losses of Shared Personal Data is the Information Rights Team, Data-Protection@open.ac.uk or 01908 653994.

11.3 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

12. REVIEW AND TERMINATION OF AGREEMENT

12.1 The Parties shall review the effectiveness of this data sharing agreement every 12 months and upon the addition and removal of a Party, having consideration to the aims and purposes set out in clause 2.2 and clause 2.5. The Parties shall continue, amend or terminate the Agreement depending on the outcome of this review.

12.2 The review of the effectiveness of the data sharing agreement will include:

- (a) Assessing whether the purposes for which the Shared Personal Data is being processed are still the ones listed in clause 2.5 of this Agreement;
- (b) Assessing whether the Shared Personal Data is still as listed in clause 4.1 and clause 4.3 of this Agreement;
- (c) Assessing whether the legal framework governing data quality, retention, and data subjects' rights are being complied with; and
- (d) Assessing whether personal data breaches involving the Shared Personal Data have been handled in accordance with this Agreement and the applicable legal framework.

12.3 The Agreement shall automatically renew at the end of each Term unless, following a review of the terms of the Agreement, a Party wishes to amend or terminate the Agreement in accordance with clause 12.4 and 12.5.

12.4 Each Party shall seek to agree any suggested amendment to the Agreement at least 2 months in advance of the expiry of the Term. Any suggested amendment shall be in writing and signed by an authorised signatory of the Party suggesting the amendment.

12.5 Each Party can terminate the Agreement at any time on 6 months' notice and any such termination shall be in writing signed by an authorised signatory of the Party terminating.

12.6 Each Party reserves its rights to inspect the other Party's arrangements for the processing of Shared Personal Data and to terminate the Agreement where it considers

that the other Party is not processing the Shared Personal Data in accordance with this agreement.

13. RESOLUTION OF DISPUTES WITH DATA SUBJECTS

- 13.1 In the event of a dispute or claim brought by a data subject or the Information Commissioner's Office (or any other relevant Data Protection Authority) concerning the processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 13.2 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Information Commissioner's Office (or any other relevant Data Protection Authority). If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 13.3 Each Party shall abide by a decision of a competent court or of the Information Commissioner's Office (or any other relevant Data Protection Authority) which is final and against which no further appeal is possible.

14. WARRANTIES

- 14.1 Each Party warrants and undertakes that it will:
- (a) Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations.
 - (b) Make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement, unless the Clause contains confidential information.
 - (c) Respond within a reasonable time and as far as reasonably possible to enquiries from the Information Commissioner's Office (or any other relevant Data Protection Authority) in relation to the Shared Personal Data.
 - (d) Respond to Subject Access Requests in accordance with the Data Protection Legislation.
 - (e) Where applicable, maintain registration with the Information Commissioner's Office (or any other relevant Data Protection Authority) to process all Shared Personal Data for the Agreed Purpose.
 - (f) Take all appropriate steps to ensure compliance with the security measures set out in clause 10 above.

- 14.2 The Data Discloser warrants and undertakes that it is entitled to provide the Shared Personal Data to the Data Receiver and that it will ensure that the Shared Personal Data are accurate.
- 14.3 The Students Association warrants and undertakes that it will not disclose or transfer the Shared Personal Data to a third party controller located outside the EEA unless it complies with the obligations set out in clause 9.3 above.
- 14.4 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law

15. INDEMNITY

- 15.1 The Parties undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Agreement, except to the extent that any such liability is excluded under clause 17.2.
- 15.2 Indemnification hereunder is contingent upon
- (a) the Party to be indemnified (the **indemnified party**) promptly notifying the other Party (the **indemnifying party**) of a claim,
 - (b) the indemnifying party having sole control of the defence and settlement of any such claim, and
 - (c) the indemnified party providing reasonable cooperation and assistance to the indemnifying party in defence of such claim.

16. ALLOCATION OF COST

Each Party shall perform its obligations under this Agreement at its own cost.

17. LIMITATION OF LIABILITY

- 17.1 Neither Party excludes or limits liability to the other Party for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence;
 - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any matter for which it would be unlawful for the Parties to exclude liability.
- 17.2 Subject to clause 17.1, neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

17.3 Clause 17.2 shall not prevent claims, for:

- (a) direct financial loss that are not excluded under any of the categories set out in clause 17.2(a); or
- (b) tangible property or physical damage.

18. DIRECT MARKETING

18.1 If the Data Receiver processes the Shared Personal Data for the purposes of direct marketing, each Party shall ensure that:

- (a) the appropriate level consent has been obtained from the relevant data subjects to allow the Shared Personal Data to be used for the purposes of direct marketing in compliance with the Data Protection Legislation; and
- (b) effective procedures are in place to allow the data subject to "opt-out" from having their Shared Personal Data used for such direct marketing purposes.

19. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

20. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. SEVERANCE

21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

21.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. CHANGES TO THE APPLICABLE LAW

If during the Term the Data Protection Legislation change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that the SPoCs will negotiate in good faith to review the Agreement in the light of the new legislation.

23. NO PARTNERSHIP OR AGENCY

23.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

23.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

24. ENTIRE AGREEMENT

24.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

24.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

25. FURTHER ASSURANCE

Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

26. FORCE MAJEURE

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for two months or more, the Party not affected may terminate this agreement by giving five Business Days' written notice to the affected Party.

27. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. NOTICE

28.1 Any notice or other communication given to a Party under or in connection with this agreement shall be in writing, addressed to the SPoCs and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the SPoC.

28.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by email, at 9.00 am on the next Business Day after transmission, provided a hard copy of the email is also sent by post to the recipient within one Working Day.

28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

29. GOVERNING LAW

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

30. JURISDICTION


Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

31. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by Liz Marr
for and on behalf of the University


.....
Pro Vice Chancellor (Students)

Signed by Rob Avann
for and on behalf of the Students
Association


.....
Chief Executive

Schedule 1 Deletion procedure

Personal Data shall be deleted by each data controller in accordance with the Information Commissioner's **[guide to deletion of personal data](#)** (*click*)

Schedule 2 Appropriate technical and organisational security measures

Each Party must have appropriate security to prevent the Personal Data it holds from being accidentally or deliberately compromised. In particular, it must:

- design and organise security to fit the nature of the Personal Data it holds and the harm that may result from a Personal Data Breach;
- be clear about who in its organisation is responsible for ensuring information security;
- make sure it has the right physical and technical security, backed up by robust policies and procedures and reliable, well-trained staff; and
- be ready to respond to any breach of security swiftly and effectively.

The Parties agree to adhere to the following minimum security standards:

- Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;
- not leaving portable equipment containing the Personal Data unattended;
- ensuring that staff use appropriate secure passwords for logging into systems or databases containing the Personal Data;
- ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;
- In particular ensure that any Special Category Personal Data is stored and transferred (including where stored or transferred on portable devices or removable media) using security protection that meets FIPS 140-2 Level 1 standard;
- limiting access to relevant databases and systems to those of its officers, staff agents and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the Party;
- conducting regular threat assessment or penetration testing on systems.
- Ensuring all staff handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data.
- Allowing for inspections and assessments to be undertaken by the other Party in respect of the security measures taken, or producing evidence of those measures if requested.

