

DATA SHARING AGREEMENT (CONTROLLER TO CONTROLLER)

This agreement is dated 17th September 2018

PARTIES

- (1) **UNIVERSITY OF HULL** (RC000654) of Cottingham Road, Hull, HU6 7RX (**Data Discloser**)
- (2) **HULL UNIVERSITY UNION LIMITED** incorporated and registered in England and Wales with company number 8475916 whose registered office is at Student Central, Cottingham Road, Hull, HU6 7RX (**Data Receiver**)

BACKGROUND

- (A) The University of Hull is a higher education institution established by Royal Charter. Hull University Union Limited is a union of the University of Hull's students that is operated as a separate legal entity with its own constitution and memorandum and articles of association.
- (B) Although the University of Hull and Hull University Union Limited are separate legal entities, the University of Hull has a legal obligation to ensure that Hull University Union Limited operates in a fair and democratic manner and is accountable for its finances. University of Hull and Hull University Union Limited therefore work together in ensuring that the affairs of Hull University Union Limited are properly conducted and to support the efficient delivery of services to University of Hull students to meet their educational and welfare needs. The relationship between University of Hull and Hull University Union Limited necessarily involves the sharing of Personal Data.
- (C) The power that the University of Hull engages to share Personal Data with Hull University Union Limited is under section 22(1) of the Education Act 1998 (Article 6(1)(c) GDPR).
- (D) The University of Hull agrees to share the Personal Data with the Hull University Union Limited in the European Economic Area (**EEA**) on terms set out in the Agreement. The Hull University Union Limited agrees to use the Personal Data within the EEA on the terms set out in this Agreement.
- (E) 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: 14 September 2018.

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

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

Data Protection Legislation: (i) prior to 25 May 2018 the UK Data Protection Act 1998; (ii) from 25 May 2018 the General Data Protection Regulation as enacted into English law (**GDPR**) as revised and superseded from time to time; (iii) Directive 2002/58/EC as updated by Directive 2009/136/EC; (iv) the Data Protection Act 2018 and (v) 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 relevant data protection or supervisory authority.

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: shall mean students registered at the University of Hull on a university course resulting in a qualification.

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

Supervisory Authority: the relevant supervisory authority in the territories where the parties to this Agreement are established.

Term: three years from the Commencement Date.

1.2 **Controller, Processor, Data Subject and 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 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.

1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5 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.

1.6 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.

1.7 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.

2. Purpose

2.1 This Agreement sets out the framework for the sharing of **Personal Data** when the **Data Discloser** discloses personal data to the **Data Receiver**. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.

2.2 The Data Receiver operates the students' union for the Student population. The Data Discloser and Data Receiver both have responsibilities in respect of the fair and democratic operation of the students' union. In order to ensure the effective delivery of the union services it is necessary to share limited Personal Data about the Students. The aim of the data sharing initiative is to assist each Student to exercise their right to be a member of the union in an accessible and inclusive way. It will serve to benefit individuals by removing barriers to access the beneficial services of the union and promoting a diverse demographic of representation.

2.3 The Data Receiver agree to only process Shared Personal Data, as described in clause 3.1, for the following purposes:

- (a) To support the efficient and effective administration of and communication regarding elections, clubs, societies and union membership;
- (b) To support the efficient and effective engagement of eligible Students in the democratic functions of the students' union and verification of Student identity and eligibility;
- (c) The support the efficient and effective administration of student representation of Data Discloser committees, panels, boards and other representative bodies;
- (d) To enable the effective management and planning of Data Receiver services and facilities by receiving selected demographic information;
- (e) The marketing of other services provided directly by the Data Receiver. Students will be able to opt-out of receiving these communications at any time. Only approved third party suppliers will be allowed to communicate with Students and all their communication will be approved by the Data Receiver prior to transmission. Approved third party suppliers at the time of entering in to this Agreement are listed in clause 2.7;
- (f) Generation of demographic reports;
- (g) To support any investigations, or matters pertaining to, student safety, wellbeing, safeguarding or the prevention or detection of crime in order to ensure a secure and safe environment for students, staff and visitors; and
- (h) To comply with any legal obligation which either party is subject.

The Data Receiver shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause (**Agreed Purpose**).

2.4 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:

- (a) **For the Data Discloser:** Luke Thompson, Data Protection Officer, Governance and Compliance, University of Hull, Cottingham Road, Hull, HU6 7RX, 01482 466594, dataprotection@hull.ac.uk.
- (b) **For the Data Receiver:** Kevin Pearson, Finance and Resource Manager, Hull University Union, Student Central, Cottingham Road, Hull, HU6 7RX, 01482 466265, kevin.pearson@hull.ac.uk.

2.5 The Data Receiver must ensure that Students are afforded the rights as described in section 22(2)(c) of the Education Act 1994 (opting out of being a member of the union) and not unfairly disadvantage any Student who elects to exercise such rights. The Data Receiver will cease or adjust the use of the Personal Data relating to such individuals accordingly.

- 2.6 The Personal Data received by the Data Receiver from the Data Discloser shall not be passed to any third party unless the Data Receiver has a lawful basis to do so in accordance with Data Protection Legislation and its privacy notice subject to the following conditions:
- (a) Where the Data Receiver has obtained the specific permission from the Data Discloser;
 - (b) Where the Data Receiver has obtained explicit consent of the Student(s) concerned.
- 2.7 It is acknowledged by the Data Discloser that at the time of entering in to this Agreement, the Data Receiver will share the Shared Personal Data with the following third parties:
- (a) Students' Union Management Systems Ltd for the purpose of delivering, hosting and supporting the Data Receiver's central information management software (*SUMS*).
 - (b) Alterline Research Limited for the purpose of conducting surveys of students for research purposes.
- 2.8 The Personal Data provided by the Data Discloser to the Data Receiver shall not, without the explicit consent of the Student(s) concerned, be used for the purpose of marketing services provided by organisations or individuals other than the Data Receiver.
- 2.9 Information sent to Student(s) shall relate directly to the operational activities of the Data Receiver or to products and services provided by the Data Receiver.
- 2.10 Student(s) shall be given the option in each mailing or communication to opt out of future mailings or communications. The Data Receiver shall maintain a mechanism for Student(s) to opt out of having their Personal Data being processed by the Data Receiver at any time.

3. Shared Personal Data

- 3.1 The following types of Personal Data will be shared between the parties during the Term of this agreement:
- (a) Student number;
 - (b) Student title;
 - (c) Student forename;
 - (d) Student surname;
 - (e) Course code;
 - (f) Course name;
 - (g) Method of study;
 - (h) Nationality;
 - (i) Domicile;
 - (j) Gender;
 - (k) Date of birth;
 - (l) Year of course;
 - (m) Faculty;
 - (n) School;

- (o) Subject;
- (p) University email address;
- (q) Phone number;
- (r) Private email address;
- (s) Campus;
- (t) User ID; and
- (u) Level of study (UG/PGT/PGR).

3.2 Special categories of Personal Data will not be shared between the parties.

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

4. Lawful, fair and transparent processing

4.1 Each party must ensure compliance with the Data Protection Legislation at all times during the Term.

4.2 Each party has a valid registration with its national Data Protection Authority if required which covers the intended data sharing pursuant to this Agreement.

(a) Data Discloser's Registration Number: Z5907252

(b) Data Receiver's Registration Number: ZA010666

4.3 Each party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with this clause and the Data Protection Legislation during the Term of this Agreement.

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

4.5 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, 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 9.3 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.

4.6 The Data Receiver undertakes to inform 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.

5. Data quality

- 5.1 Shared Personal Data must be accurate and limited to the Personal Data described in clause 3.1 of this Agreement.

6. Not Used

7. Data retention and deletion

- 7.1 The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 7.2 Notwithstanding clause 7.1, parties shall continue to retain Shared Personal Data in accordance with its data retention policy which shall be either consistent with or more advantageous than any statutory or professional retention periods applicable in their respective countries and / or industry. In the event that the Data Receiver does not have a data retention policy, it agrees to apply the principles and timescales present in the data retention policy of the Data Discloser to the Shared Personal Data.
- 7.3 The Data Receiver shall cease use of and ensure that any Shared Personal Data are returned to the Data Discloser or irretrievably deleted 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 for, as set out in clause 2.3.
- 7.4 Following the deletion of Shared Personal Data in accordance with clause 7.3, the Data Receiver shall notify the Data Discloser that the Shared Personal Data in question has been irretrievably deleted.

8. Transfers

- 8.1 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) subcontracting the processing of Shared Personal Data;
 - (b) granting a third party controller access to the Shared Personal Data.
- 8.2 If the Data Receiver appoints a third party processor to process the Shared Personal Data, strictly and only upon the written consent of the Data Discloser, 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.
- 8.3 The Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA.

9. Security and training

- 9.1 The parties undertake to have in place throughout the Term, and evidence upon request, 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.
- 9.2 The parties shall keep such security measures under review and shall carry out such updates as they agree are appropriate throughout the Term.
- 9.3 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 together with any other applicable national data protection laws and guidance and have entered into confidentiality agreements relating to the processing of personal data.
- 9.4 The level, content and regularity of training referred to in clause 9.3 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.

10. Personal data breaches and reporting procedures

- 10.1 The parties shall each comply with its obligation to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) data subjects under Article 33 of the GDPR. The Data Receiver's SPoC shall each inform the Data Discloser's SPoC in writing, within two Business Days, of any Personal Data Breach relating to the Shared Personal Data irrespective of whether there is a requirement to notify any Supervisory Authority or data subject(s).
- 10.2 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.

11. Review and termination of agreement

- 11.1 Parties shall review the effectiveness of this data sharing initiative every twelve months having consideration to the aims and purposes set out in clause 2.2 and clause 2.3. The parties shall continue, amend or terminate the Agreement depending on the outcome of this review.
- 11.2 The review of the effectiveness of the data sharing initiative will involve:
- (a) assessing whether the purposes for which the Shared Personal Data is being processed are still the ones listed in clause 2 of this Agreement;
 - (b) assessing whether the Shared Personal Data is still as listed in clause 2 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.

11.3 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.

12. Resolution of disputes with data subjects or the Supervisory Authority

12.1 In the event of a dispute or claim brought by a data subject or the Supervisory 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.

12.2 The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the Supervisory 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.

12.3 Each party shall abide by a decision of a competent court of the Data Discloser's country of establishment or of the Supervisory Authority.

13. Warranties

13.1 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 on request to the data subjects who are third party beneficiaries a copy of this Agreement, unless it contains confidential information.
- (c) Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Supervisory 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 all relevant Supervisory Authorities 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.

13.2 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.

14. Allocation of cost

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

15. Limitation of liability

15.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or
- (c) any matter for which it would be unlawful for the parties to exclude liability.

15.2 Subject to clause 15.1, 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.

15.3 Without prejudice to clause 15.1, one party's liability to the other under or otherwise in connection with this Agreement or its subject matter shall not exceed £500,000.

16. Third party rights

16.1 Except as expressly provided in clause 6 (data subjects rights) a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

17. Freedom of Information

17.1 The Freedom of Information Act 2000 provides a right of public access to information held by the Data Discloser. Any requests sent to the Data Receiver by members of the public regarding shared data should be referred to the SPoC within two Business Days.

18. Direct marketing

If the Data Receiver processes the Shared Data for the purposes of direct marketing, they shall ensure that:

- (a) the appropriate level consent has been obtained from the relevant data subjects to allow the Shared 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 deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

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.

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. Including, without limitation the Data Sharing Agreement dated 3 November 2015 between the Parties.

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.

25. Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, 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.

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 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).

28.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; or
- (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.

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

28.4 A notice given under this agreement is not valid if sent by email.

29. Governing law

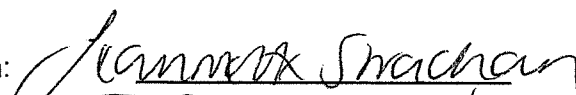
This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

30. Jurisdiction

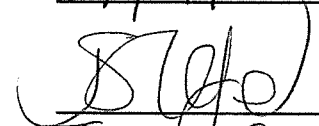
Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Agreement or its subject matter or formation.

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

Signed for and on behalf of the University of Hull

Sign: 
 Name: J. STRACCHAN
 Designation: REGISTRAR
 Date: 17/9/18

Signed for and on behalf of the Hull University Union Ltd

Sign: 
 Name: JANE V STAFFORD
 Designation: CEO - Hull University Union
 Date: 17.9.18

