



Data Processing Agreement

Data Processing Agreement

BETWEEN:

- (1) **ATLANTIC TECHNOLOGICAL UNIVERSITY ("ATU")**, Port Rd, Gortlee, Letterkenny, Co. Donegal, F92 FC93

("Data Controller")

and

- (2) **As per Page 8 below**

("Supplier" "Data Processor")

(together the **Parties** and each a **Party**).

RECITALS

- (A) This Data Processing Agreement sets out the framework for the disclosure of Personal Data by ATU as Data Controller to the Supplier as Data Processor.
- (B) In order to ensure compliance with their respective obligations under the General Data Protection Regulation (GDPR) (EU) 2016/679 ("**GDPR**"), the Parties have agreed to enter into this agreement ("**the Agreement**").

IN CONSIDERATION of the mutual benefit to the Parties of the arrangements referred to in this Agreement and for other valuable consideration the receipt of which is hereby acknowledged by both Parties, **IT IS AGREED** as follows:

1. INTERPRETATION

- 1.1 In this Agreement, unless the contrary intention is stated, a reference to:

Data Controller, Data Processor, Data Subject, Personal Data, Special Categories of Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures shall have the meanings given to them in the GDPR;

- 1.2 **Other Defined Terms:**

"Agreed Purpose" means the provision of the Services by the Supplier to ATU under the Existing Agreement [and any other purposes specifically identified in Schedule 1].

"Applicable Data Protection Laws" means any and all legislation and regulations relating to the protection of Personal Data in force during the term of this Agreement, including (without limitation) the Data Protection Acts, the GDPR and all other industry guidelines (whether statutory or non-statutory) or codes of practice or guidance issued by the Data Protection Commission relating to the processing of Personal Data or privacy or any amendments and re-enactments thereof;

"Business Day" means a day which is not a Saturday, Sunday or public holiday in Ireland.

"Data Protection Commission" or **"DPC"** means the data protection authority in the territory of Ireland.

"Data Protection Acts" or **"DPA"** means the Data Protection Acts 1988-2018 as amended, revised, modified or replaced from time to time;

"Data Subject Request" has the meaning given to the term in Clause 3.8.1 (4)

“Effective Date” means the date the Supplier commences providing Services under the Existing Agreement.

“Existing Agreement” means the related agreement made between the parties which involves the disclosure of Personal Data as appended to this Agreement.

“Personnel” means the officers, employees, agents and contractors (including sub-contractors and sub-processors) of the Supplier;

“Services” means the services provided by the Supplier to ATU as set out in Schedule 1;

“Shared Data” has the meaning given to the term in Clause 3.1.

“Sub Processor” means any third party engaged by the Supplier to assist in fulfilling its obligations under the Existing Agreement and also has or will have access to the Shared Data.

“Third Country” means any country that is not within the European Economic Area.

2. GENERAL PROVISIONS

- 2.1 **Notices:** Notices and other communications under or in connection with this Agreement may be given in writing by hand, by ordinary pre-paid post or by e-mail. Any such notice, if so given, shall be deemed to have been served:
- (a) if sent by hand, when delivered;
 - (b) if sent by post, one business day after posting; and
 - (c) if sent by e-mail, upon production by the sender's email system of a delivery receipt (or equivalent) confirming delivery of the communication to the correct e-mail address.
- 2.2 **Severability:** If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of any other provision of this Agreement.
- 2.3 **Binding on Successors:** This Agreement and all of its provisions shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns.
- 2.4 **Accrued Rights:** Termination of this Agreement shall not affect any rights of the Parties accrued up to the date of termination.
- 2.5 **Further Assurance:** Each Party shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by any other party to implement this Agreement.
- 2.6 **Costs:** Each Party will pay its own costs in connection with or incidental to the preparation, negotiation and execution of this Agreement.
- 2.7 **No Partnership or Agency:** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the Parties, and neither of the Parties shall have any right or authority to act on behalf of the other or to bind the other in any way.
- 2.8 **Assignment:** The Data Processing Agreement is personal to the Supplier and the Supplier shall not assign or transfer any of its rights or obligations under the Data Processing Agreement without ATU's prior written consent.
- 2.9 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

- 2.10 **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and the Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts.
- 2.11 **Entire Agreement:** This Agreement [and the Existing Agreement] contains the entire agreement and understanding between the Parties with respect to the processing of personal data for the Agreed Purpose and supersedes and replaces all prior agreements and understandings, whether written or oral, with respect to the same subject matter. With regard to the processing of Personal Data, in the event of any conflict or inconsistency between the terms of this Agreement and the Existing Agreement, the terms of this Agreement shall prevail. Except as modified by this Agreement, the Existing Agreement shall remain in full force and effect.
- 2.12 **Waivers, Rights Cumulative:** Each of the rights of each Party under this Agreement may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that Party may have under this Agreement, law or otherwise; and may be waived only in writing and specifically. Delay by a Party in exercising, or the non-exercise by a Party of, any such right will not constitute a waiver of that right.
- 2.13 **Amendments:** ATU may at any time amend, replace or vary the terms of this Agreement and/or its Schedules (if necessary) to reflect any changes in Applicable Data Protection Laws or a new requirement under such law or ATU policy or where risks to the rights of data subjects are identified as a result of the processing. Any amendment to this Agreement must be in writing and duly signed for and on behalf of each of the Parties to this Agreement.
- 2.14 **Schedules:** 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.

3. DATA PROTECTION

- 3.1 For the purposes of the Services, the Parties acknowledge and agree that it will be necessary for the Supplier to receive from ATU and to process certain Personal Data relating to the categories of Data Subject specified in Schedule 1 (**Shared Data**).
- 3.2 For the purposes set out at clause 3.1 herein, ATU acknowledges and agrees that it is Data Controller and that it retains control of the Personal Data and remains responsible for its compliance obligations under Applicable Data Protection Laws including but not limited to providing any required notices and obtaining required consents and for written processing instructions it gives to the Supplier and the Supplier acknowledges and agrees that it is Data Processor and agrees to comply with its relevant obligations under Applicable Data Protection Laws and with this Agreement.

3.3 Processing of Shared Data by the Supplier:

3.3.1 The Supplier shall (and shall procure that its Personnel):

- (1) comply with Applicable Data Protection Laws;
- (2) ensure that its internal operating systems only permit properly authorised Personnel to access the Shared Data;
- (3) maintain detailed, accurate and up-to-date records regarding the processing of any Personal Data for the Agreed Purpose;
- (4) provide to ATU such details as it may require of its procedures and records for complying with and demonstrating compliance with Applicable Data Protection Laws; and
- (5) immediately inform ATU if, in its opinion, an instruction from ATU infringes Applicable Data Protection Laws.
- (6) at the direction of ATU, fully cooperate and assist ATU in conducting a data protection impact assessment and related consultations with any supervisory authority, if applicable, pursuant to Article 35 and 36 of GDPR, respectively.

3.3.2 The Supplier shall provide appropriate training to its Personnel with respect to:

- (1) the correct handling of the Shared Data so as to minimize the risk of a Personal Data Breach; and
- (2) the requirements of Applicable Data Protection Laws.

3.4 The Supplier's use of Shared Data:

3.4.1 The Supplier shall (and shall procure that its Personnel):

- (1) only process the Shared Data in accordance with Schedule 1 and in accordance with ATU's written instructions, unless required to process the Shared Data other than as instructed pursuant to some legal obligation to do so, in which case the Supplier shall inform ATU, except where prohibited by such law from doing so, and where required to disclose Shared Data, the Supplier shall comply with 3.6.1;
- (2) only process the Shared Data to the extent necessary for the Agreed Purpose;
- (3) not modify, amend or alter the Shared Data, except as directed by ATU;
and
- (4) implement and maintain a system for logging and identifying all Supplier personnel accessing the Shared Data and if requested by ATU, provide a copy of the access log to the ATU.

3.4.2 The Supplier shall implement appropriate technical and organisational measures to assure a level of security appropriate to the risk to the Shared Data, in particular, from a Personal Data Breach, including as appropriate and as notified in advance to ATU:

- (1) the pseudonymisation/encryption of the Shared Data;
- (2) the ability to ensure the ongoing confidentiality, integrity and availability of the Shared Data on the Supplier's information technology systems and any other systems used to process the Shared Data;
- (3) the ability to restore the availability and access to the Shared Data in the event of a physical or technical incident; and
- (4) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of processing of the Shared Data.

The security measures implemented by the Supplier are detailed in Schedule 1 hereto.

3.5 The Disclosure/Dissemination of the Shared Data:

Without limiting the Supplier's other obligations under this Agreement, the Supplier:

3.5.1 may disclose Shared Data to its Personnel who:

- (a) need to know it for the Agreed Purpose (and only to that extent);
- (b) have been adequately and appropriately trained in accordance with clause 3.3.2;
- (c) are subject to a binding contract to keep the Shared Data confidential (or are under a statutory obligation of confidentiality) and to only process the Shared Data in accordance with this Agreement.

3.5.2 may disclose the Shared Data to any other person only with the prior written consent of ATU, and, where ATU provides its consent, only where the person is subject to a binding commitment to keep the Shared Data confidential (or are under a statutory obligation of confidentiality) and to only process the Shared Data on the terms of ATU's consent.

3.6 Disclosure of Shared Data pursuant to a legal obligation:

3.6.1 If the Supplier is required by law to disclose the Shared Data, so far as permitted by law, the Supplier shall first:

- (1) give ATU notice of the details of the proposed disclosure;
- (2) give ATU a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the Shared Data; and
- (3) give ATU an opportunity to inform the Data Subject of the proposed disclosure, where ATU feels it is necessary to do so.

3.7 Third Party Processing: Without limiting Supplier's other obligations under this Agreement and the other provisions of this clause: -

- 3.7.1 The Supplier shall not engage any Sub- Processor, other than those set out at Schedule 1 hereto, to process the Shared Data without prior written consent or the prior written instructions of ATU.
- 3.7.2 Where ATU consents to the Supplier engaging any Sub-Processor, other than those set out at Schedule 1 hereto, to process the Shared Data, the Supplier shall impose on that Sub- Processor, by means of a legal contract, the same data protection obligations as set out in this Agreement and which shall ensure that if that Sub- Processor in turn engages another entity to process the Shared Data on its behalf that that entity is also required to comply with such obligations.
- 3.7.3 The Supplier shall inform ATU of any intended changes concerning the addition or replacement of those Sub-Processors set out in Schedule 1 hereto and shall not make any such changes without the prior written consent of ATU.
- 3.7.4 The Supplier shall remain liable to ATU for processing by Sub-Processors as if the processing was being conducted by the Supplier themselves.

3.8 Provision of assistance from the Supplier to ATU in relation to the Shared Data:

3.8.1 The Supplier shall:-

- (1) co-operate with ATU to the extent necessary to enable ATU to comply with any requests of the DPC or other competent supervisory authority;
- (2) make available to ATU all information necessary to demonstrate compliance with the obligations set out in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by ATU and its third party representatives;
- (3) comply with clause 3.3.1(4);
- (4) provide such co-operation and assistance as ATU may require in responding to requests from Data Subject's pursuant to their rights laid down in Chapter 3 of the GDPR and ensure that appropriate technical and organisational measures are put in place so as to be in a position to do so without undue delay;
- (5) provide such co-operation and assistance as ATU requires to enable ATU to comply with its obligations under Articles 32-36 of the GDPR, including without limitation, notifying ATU within 24 hours of becoming aware of any Personal Data Breach (including any suspected Personal Data Breach) in respect of the Shared Data and including in such notification, at least the applicable information referred to in Article 33(3) of the GDPR and the Supplier shall not communicate with the DPC or any Data Subject in respect of the said Personal Data Breach or any third party without the prior written consent of ATU.

3.8.2 If the Supplier receives any direct request from a Data Subject pursuant to Chapter 3 of the GDPR or any other provision under Applicable Data Protection Laws, the Supplier shall, within 2 Business Days of receiving such request, notify ATU, including in such notification full details of the request and provide such information, co-operation and assistance as ATU may require in order to assess and respond to the request.

3.9 Breach of the provisions of this clause and/or the Applicable Data Protection Laws

- 3.9.1 If the Supplier becomes aware that any unauthorised or unlawful processing of the Shared Data is taking place or has taken place, the Supplier shall give ATU notice of the full details of the contravention without undue delay.
- 3.9.2 The Supplier acknowledges and agrees that ATU's knowledge of, or response to, any notice given pursuant to clause 3.9.1, whatever form that may take, does not affect any other rights of ATU under this Agreement.

3.10 Return or Destruction of the Shared Data

On termination or expiry of this Agreement for whatever reason (or at any other time on request by ATU), the Supplier shall cease processing the Shared Data and, at ATU's choice, either return or securely destroy all copies of the Shared Data unless subject to a legal obligation to retain same.

3.11 Third Country Transfers:

3.11.1 The Supplier acknowledges and agrees that neither it, nor any of its Personnel may: -

- (1) transfer the Shared Data to any Third Country except to the extent that the transfer is expressly permitted by ATU in writing; and
- (2) the transfer is lawful on the basis of either Article 45, 46 and/or 47 of the GDPR.

3.11.2 In the event that any transfer mechanism entered into under clause 3.11 (2) ceases to be valid, the Supplier shall at ATU's discretion:-

- (1) enter into and/or procure that any relevant Sub-Processor enters into an appropriate alternative data transfer mechanism;
- (2) destroy any Personal Data in its and/or its Sub-Processor's possession; or
- (3) return any Personal Data in its and/or its Sub-Processor's possession to ATU.

3.12 The Supplier warrants and represents that: -

- (1) its employees, agents and any other person or persons accessing the Personal Data on its behalf are reliable and trustworthy and have received the required training on Applicable Data Protection Laws;
- (2) it and anyone operating on its behalf will process the Personal Data in compliance with Applicable Data Protection Laws and other applicable law;
- (3) it has no reason to believe that Applicable Data Protection Laws prevent it from providing any of the Existing Agreement's contracted services; and
- (4) it will take appropriate technical and organisational measures to prevent the accidental, unauthorised or unlawful processing of Personal Data and the loss or damage to, the Personal Data.

3.13 The Supplier agrees to indemnify, keep indemnified and defend at its own expense ATU against all costs, claims, damages or expenses incurred by ATU or for which ATU may become liable due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this Agreement and/or Applicable Data Protection Laws provided that the Supplier shall not be liable for any claim [brought by a Data Subject] arising from its processing of any Shared Data to the extent that any such claim is a direct result of the Supplier's compliance with the written instructions of ATU. Any limitation of liability set forth in the Existing Agreement will not apply to this Agreement's indemnity obligations.

4.0 TERM AND TERMINATION

This Agreement shall commence on the Effective Date and shall continue until the date on which the Processor ceases to process Personal Data on behalf of ATU under the Existing Agreement or by ATU at any time by serving written notice on the Supplier to terminate the Agreement at any time. For the avoidance of doubt termination of this Agreement, for whatever reason, shall not affect the accrued rights and obligations of either Party arising out of this Agreement and all provisions which are expressed to survive this Agreement (or impliedly do so) remain in full force and effect.

IN WITNESS OF WHICH, this Agreement has been duly executed by the undersigned signatories on behalf of the parties on the date below written, and each signatory represents and warrants to the party (other than that which he or she represents) that he or she has the authority to sign on behalf of the party which he or she purports to bind.

SIGNED for and on behalf of ATU

By:

Name:

Title:

SIGNED for and on behalf of the Supplier

By:

Name:

Title:

This agreement is dated (the **Effective Date**)

Contact Information

	ATU	Supplier
Address	Port Rd, Letterkenny, Co. Donegal, F92 FC93, Ireland	
Company Registration Number	n/a	
Name of Data Protection Officer	Edel Hegarty	
DPO Phone Number	091 742769	
DPO Email Address	dataprotection@atu.ie	

Schedule

Nature of Supplier's Services to ATU	
Duration of the Processing	
Nature & Purpose of the Processing	
Categories of Data Subjects	
Types of Personal Data Processed pursuant to this Agreement	
Sub-Processors (per clause 3.7)	
Security Measures implemented by the Supplier	
Other Relevant Information	