**DATA PROCESSING AGREEMENT**

Date: ***[insert date of agreement]***

Between:

1. **[*insert processor name*]**, a **[*company*]** registered in **[*Northern Ireland*]**, with registered address at **[*insert address*]** and registered number **[*charity number / company number]***(**Company A**); and
2. **[*insert controller name]***, a **[*company / charity*]** registered in **[*Northern Ireland*]** of **[*insert address]***and registered number **[*charity number / company number*]** (**Company B**),

together, the **parties**.

**RECITALS**

1. Company A has agreed to provide certain services to Company B, which are likely to include the processing of Personal Data by Company A on behalf of Company B.
2. The parties believe that for the purposes of the applicable Data Protection Legislation, Company A will be acting as a ‘Processor’ and Company B will be acting as a ‘Controller’ in respect of the data in question.
3. The parties have entered into this agreement to govern the terms of such processing.

**IT IS HEREBY AGREED AS FOLLOWS**

1. **CONSIDERATION**
	1. In consideration for the sum of £1 (the adequacy and receipt of which each party hereby acknowledges), as well as in exchange for each party agreeing to comply with its obligations under this Agreement each party agrees to be legally bound by the terms set out herein.
2. **INTERPRETATION**
	1. In this Agreement the following words shall have the following meanings:

 **Agreement** means this agreement and any schedules attached hereto;

 **Controller** has the meaning given to it in the applicable Data Protection Legislation;

 **Data Processing Particulars** means those particulars set out in the table attached at Schedule 1;

 **Data Protection Legislation** means the Data Protection Act 2018 (**DPA**) and/or the General Data Protection Regulation (EU 2016/679) (**GDPR**) to the extent applicable in the Relevant Territory from time to time, along with any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the Relevant Territory;

 **Data Subject** means any individual who can be identified from the Relevant Data;

 **Personal Data** has the meaning given to it in the applicable Data Protection Legislation;

 **Processor** has the meaning given to it in the applicable Data Protection Legislation;

 **Relevant Data** means any Personal Data processed by Company A on behalf of Company B as part of the Services (as described more fully in the Data Processing Particulars);

 **Relevant Territory** means the territory identified in Schedule 1;

 **Services** means the services listed in Schedule 1; and

 **Services Agreement** means any agreement entered into between the parties in relation to the Services.

* 1. Clause and schedule headings do not affect the interpretation of this Agreement. References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this Agreement. Words in the singular include the plural and in the plural include the singular. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. References to **including** and **include(s)** shall be deemed to mean respectively including without limitation and include(s) without limitation.
	2. If there is any contradiction between the terms set out herein and the provisions in the Services Agreement, unless those terms reference this Agreement and expressly override it, the terms set out herein shall take precedence.
1. **COMPLIANCE WITH APPLICABLE LAWS**
	1. Each party agrees to comply with the applicable Data Protection Legislation in relation to its processing of the Relevant Data and acknowledges that this clause is not intended to relieve, remove or replace a party’s obligations under any the Data Protection Legislation.
2. **STATUS OF EACH PARTY**
	1. The parties acknowledge and agree that in respect of its use of the Relevant Data for the purposes of the Services, Company A is the **Processor** and Company B is the **Controller**.
3. **TERMS OF PROCESSING – PROCESSOR OBLIGATIONS**
	1. Without prejudice to the generality of clause 3.1, Company A shall, in relation to any Relevant Data:

(a)   process the Relevant Data only in accordance with the written instructions of Company B (which shall include the provisions agreed in the Services Agreement and schedule 1 to this Agreement) unless Company A is required by the laws of any member of the European Union or by the laws of the European Union applicable to Company A to process Relevant Data (**Applicable Laws**). Where Company A is relying on laws of a member of the European Union or European Union law as the basis for processing Relevant Data, Company A shall promptly notify Company B of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Company A from so notifying Company B;

(b)   ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Relevant Data and against accidental loss or destruction of, or damage to, Relevant Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Relevant Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Relevant Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c)   ensure that all personnel who have access to and/or process Relevant Data are obliged to keep the Relevant Data confidential; and

(d)   not transfer any Relevant Data outside of the European Economic Area unless the prior written consent of Company B has been obtained;

(e)   assist Company B, at Company B’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f)   notify Company B within 24 hours on becoming aware of a breach of the Relevant Data;

(g)   at the written direction of Company B, delete or return Relevant Data to Company B on termination of the Services Agreement; and

(h)  maintain complete and accurate records and information to demonstrate its compliance with this clause 5.2 and allow for audits by Company B or Company B’s designated auditor in respect of the processing of the Relevant Data by Company A or its sub-processors (upon receiving reasonable notice from Company B).

   5.3 Company B consents to Company A appointing a third party Processor to host the Relevant Data for the provision of the Services. Company A confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party’s standard terms of business. As between Company B and Company A, Company A shall remain fully liable for all acts or omissions of any third-party Processor appointed by it pursuant to this clause.

1. **CONTROLLER OBLIGATIONS**
	1. Subject to Company A’s obligations set out in clause 5 above, Company B undertakes that in its role as a Controller it will:
		1. comply with Data Protection Laws in respect of its management of the Relevant Data;
		2. rely on a valid legal ground under Data Protection Laws for its use of the Relevant Data, including (unless otherwise expressly agreed with Company A in writing) obtaining Data Subjects’ appropriate consent if required or appropriate under Data Protection Laws;
		3. take reasonable steps to ensure that any Relevant Data which it collects or retains is accurate, complete and current, adequate, relevant and limited to what is necessary in relation to the processing, and kept in a form which permits identification of Data Subjects for no longer than is necessary for the processing unless a longer retention is required or allowed under applicable law;
		4. implement appropriate technical and organizational measures to ensure, and to be able to demonstrate that its management of Relevant Data is performed in accordance with Data Protection Legislation; and
		5. respond to Data Subject requests to exercise their rights of (a) access, (b) rectification, (c) erasure, (d) data portability, (e) restriction of processing, (f) objection to the processing, and (g) the rights related to automated decision-making and profiling, if and as required under Data Protection Legislation.
	2. Company B warrants and represents to Company A that:
		1. it has all necessary authority and lawful basis to transfer (or authorise a third party to transfer) the Relevant Data to Company A for use for the purposes of the provision of the Services; and
		2. all instructions it providers (or authorises a third party to provide) to Company A in relation to any Relevant Data are lawful and in accordance with all Data Protection Legislation.

1. **GENERAL**
	1. If any provision is held in whole or in part to be unenforceable or illegal, then that part of the provision shall not form a part of this Agreement and the enforceability of the remainder shall not be affected. Upon such a finding, the parties to this Agreement shall negotiate in good faith mutually satisfactory provisions to substitute for those found illegal or unenforceable.
	2. This Agreement does not confer any rights on any person that is not a party to this Agreement pursuant to the Contract (Rights of Third Parties) Act 1999.
	3. This Agreement may be signed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.
	4. This Agreement shall be governed by and construed in accordance with the laws of Northern Ireland and the parties hereto submit to the exclusive jurisdiction of the courts of Northern Ireland.

S**CHEDULE 1**

1. Data PROCESSING Particulars

|  |  |
| --- | --- |
| **Services** | *[Describe the services being provided by Company A for Company B]* |
| **Territory** | *[In which countries will the Services be provided?]* |
| **Subject matter of the Processing**  | *[describe what sort of data you will be processing]* |
| **Duration of the processing** | *[How long will you be processing the data for? This will usually be the same as the length of the services agreement.]* |
| **The nature and purpose of the processing** | *[What sort of processing activities will you be undertaking- eg collecting data from data subjects at events, storing data, contacting data subjects by email]**[Explain what you trying to achieve – eg to educate a certain group of individuals on a topic; to run an event.]* |
| **The type of personal data being processed** | *[Eg name and contact details; financial details, health records, HR records etc]* |
| **The categories of data subjects** | *[eg patients, employees, next of kin etc]* |
| **Permitted Purposes** | *[describe what you are permitted to do with the data, eg use data to contact data subjects by email in respect of an event ; run analysis to learn further information concerning a group of individuals; send invites; store; transfer to specific third parties; transfer outside the EU in order to…]* |
| **Permitted Sub-processors** | *[Add a list of third parties who you engage to help you process data on behalf of Company B. In most cases, this will be AWS – host service providers; marketing platforms; virtual data rooms etc]* |

 **THIS AGREEMENT SHALL COMMENCE ON THE DATE SHOWN AT THE BEGINNING OF IT.**

**Signed by [*insert name of person signing* ]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**for and on behalf of**

**[*insert name of Company A*]**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signed by [*insert name of person signing*] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**for and on behalf of**

**[*insert Company B name*]**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**