

Data Processor Agreement

The Parties

1. **Mid Sweden University**, org.nr 202100-4524
Institution (avdelning)
(851 70 Sundsvall)
(831 25 Östersund)
Hereinafter referred to as the *Controller*
2. **(Counter-party)**, org.nr XXX
(Address)
Hereinafter referred to as the *Processor*

1 Background and purpose

The General Data Protection Regulation 2016/679 of the European Parliament and of the Council, hereinafter referred to as the Data Protection Regulation, requires a written personal data processor agreement when one party shall Process Personal Data on behalf of another party. In pursuance thereof, the parties have agreed to enter into this Agreement as an annex to the Commission agreement XXXX (Indicate here the agreement with Reference No to which this Personal Data Processor Agreement relates, together with a short description of what the agreement relates to, e.g. operation and maintenance of system Y).

The purpose of this Data Processor Agreement (hereinafter referred to as DPA) is to regulate the respective rights and obligations of the parties which follow from the commission to process personal data, in order to ensure that the personal data are processed as indicated in the current data protection legislation.

Definitions

- 1.1. "Personal data" are every type of information relating to an identified or identifiable natural person, where an identifiable natural person is a person who directly or indirectly can be identified particularly through a reference to an identifier such as a name, an identification number, a localisation item or an online-identifier or one or more factors which are specific for a person's physical, physiological, genetic, mental, financial, cultural or social identity.
- 1.2. "Data subject" is the person to whom the personal data are related.
- 1.3. "Processing" or "To process" is a measure or a combination of measures concerning personal data or the registration of personal data, regardless of whether or not it is carried out automatically, such as the collection, registration, organisation, structuring, storage, amending or altering, fetching, reading, using, releasing by transfer, dissemination or making available in some other manner, adjusting or compiling, limiting, erasure or destruction.

- 1.4. "Personal data breach" is a security incident which leads to an unintentional or illegal destruction, loss or amendment or to the unauthorised revelation or unauthorised access to personal data which are transferred, stored or otherwise processed. Other terms in this agreement shall be interpreted in accordance with the Data Protection Regulation.

2 Instructions

- 2.1 [Add e.g. System XX Cloud service YY] contains information related to [add the categories of Data subjects, e.g. employees, students, employment applicant] such as [add the types of personal data, e.g. name, civic registration number, IP-address, salary data, absence due to sickness]. The processing of personal data in accordance with this DPA make take place only with the purpose of [add the purpose of the processing, e.g. operation, maintenance and administration system XX].

- 2.2 The Processor may only process personal data in accordance with the purpose indicated in the above paragraph. The processing is limited to [add a description of what is to be done, e.g. treatment and storage of personal data which the Controller has imported to system XX].

- 2.3 Personal Data shall be stored in the system as long as the purpose of the processing remains. The Controller is responsible for clearing personal data from the system. If personal data have been removed, the Controller shall, if it is technically possible, within a reasonable time take the measures required to ensure that the personal data cannot be recovered through any existing back-up system.

3 The responsibilities of the Controller

- 3.1. The Controller shall ensure that Processing takes place in accordance with the General Data Protection Regulation. The Controller is responsible for informing the Data subjects about the Processing, and if necessary for obtaining the consent of the Data subjects and in applicable cases consulting the Supervisory Authority regarding the Processing.
- 3.2. The Controller shall without delay inform the Processor of any changes in the Processing which affect the responsibilities of the Processor. The Controller shall also inform the Processor of measures taken by a third party, including the Supervisory Authority and the Data subjects, because of the Processing.
- 3.3. The Controller shall give the Processor documented instructions, either as a part of this DPA or separately, relating to the purpose, scope, type and duration of the Processing and the category of the Data subjects, to the extent that this is necessary for the Processor to be able to fulfil his/her responsibilities as defined by this DPA and the valid data protection legislation.
- 3.4. The Controller shall without delay give the Processor the directives or instructions which are requested according to item 4.2.

3.5. The Controller shall not without due reason refuse to approve such another Processor who requests a written approval from the Controller as indicated in item 4.4.

4 The responsibilities of the Processor

4.1. The Processor undertakes to follow the General Data Protection Regulation, and to keep up-to-date with the regulations and related legislation relevant to the agreed Processing.

4.2. The Processor guarantees that he/she has the necessary technical and organisational capacity and ability, including technical solutions, competence, financial and personnel resources, routines and methods to fulfil his/her obligations in accordance with this PDPA and valid data protection legislation.

At the request of the Controller, the Processor shall show that the obligations indicated in this DPA and in the valid data protection legislation are fulfilled by providing relevant documentation, referring to a relevant and approved code of conduct or certification, making possible and contributing to an audit and inspection and/or providing the Controller with other evidence.

4.3. The Processor and the person or persons working under his/her leadership may only Process Personal Data in accordance with the instructions given in this agreement or in writing by the Controller. If the Processor lacks instructions which he/she judges to be necessary for the fulfilment of the commission received from the Controller, the Processor shall without delay inform the Controller of this opinion and shall await the instructions which the Controller judges to be required. The receipt of the instructions shall be documented.

The Processor shall without unreasonable delay inform the Controller when the Processor considers that the processing conflicts with the valid data protection legislation or other applicable Act and shall thereafter await the Controller's instructions.

4.4. The Controller may at his/her own expense himself/herself or through a third party check that the Processor is following this agreement. The Processor shall then give the Controller such assistance as may be necessary.

The Processor is however required to grant the Controller or an independent third party which the Controller has engaged access to the premises and equipment for inspection only if this can take place without any security or integrity risk.

4.5. In the event that the Processor intends to engage further Processors to carry out in whole or in part the processing of personal data according to this agreement, the Processor shall obtain written approval from the Controller before this takes place. *[If this is already true when the agreement is reached, add: Such approval is hereby given to the Processor as indicated in Annex 1 to this PDPA.]* If general approval has been obtained, the Processor shall inform the Controller in order to provide the latter with an opportunity to oppose the choice of a new processor.

If an additional Processor is engaged, the Processor shall ensure in writing that this additional Processor undertakes to carry out the Processing on the same conditions and to the same standard as the Processor himself/herself. The Processor is fully responsible to the Controller for how the additional Processor processes the personal data, including security measures adopted or planned.

4.6. The Personal Data may only be processed within EU/EEC. The Processor may not without the written approval of the Controller transfer Personal Data to a third country. i.e. to a country outside EU/EEC. This applies regardless of whether the transfer takes place within the Processor 's own organisation or to another Processor. This applies also to e.g. service, support, maintenance, development, operation or similar tasks.

4.7. If a Personal Data breach or the risk of such an breach is discovered, the Processor shall without unnecessary delay inform the Controller of this. Information shall also be given to the Mid Sweden University's Administrative Director in his/her capacity as the university's security officer.

Documentation relating to the Personal Data breach shall be given to the Controller without unreasonable delay. The documentation shall contain all the necessary and available information which the Controller may need in order to be able to take suitable preventive measures and counter-measures and to fulfil his/her obligation concerning the reporting of the Personal Data breach to the competent supervisory authority.

4.8. The Processor shall take reasonable technical and organisational measures to protect the personal from unauthorised access, destruction and amendment in accordance with the requirements of the General Data Protection Regulation, with special attention to the requirements of Article 32. The Processor shall pay special attention to the instructions given by the Swedish Data Protection Authority in its general recommendations or other documents issued by them.

4.9. If it is probable that the Processing can lead to a high risk for the rights and freedom of natural persons, the Processor shall, in so far as it is relevant taking into consideration the type, scope, context and purpose of the Processing, carry out a data protection impact assessment with regard to the consequence of the planned Processing for the protection of Personal Data. The data protection impact assessment shall be designed on the basis of Article 35 in the Data Protection Regulation.

The Personal Data Processor shall consult the Supervisory Authority if the data protection impact assessment shows that the Processing will probably lead to a high risk for the Data subjects.

5 Confidentiality

5.1. The Processor may not without the express permission in advance from the Controller transfer, provide access to or in any other manner reveal information relating to the Processing of Personal Data which is covered by this DPA, other information which the Processor has received as a consequence of this agreement, or information which the Processor has received in his/her role according to this agreement. This does not apply when an obligation to reveal personal data follows from legislation, corresponding regulations or the decision of a Court of Law. In the event

of such a statutory obligation, the Processor shall, before the personal data processing begins, inform the Controller of this, provided that such information is not prohibited according to the law. Confidentiality according to this DPA shall apply even after this agreement has ceased to apply.

5.2. The Processor shall, through suitable technical and organisational measures limit access to the Controller's personal data and give authorisation only to those personnel who require access to the personal data in order to fulfil their undertaking according to this DPA, and shall see that such personnel have the necessary training and have been given sufficient instructions regarding the importance of handling personal data in a goal-oriented and secure manner.

5.3. The Processor shall note that the personal data which are processed on behalf of the Controller may be confidential in accordance with the Public Access to Information and Secrecy Act (2009:400). Those persons who are authorised to process personal data for the Processor shall understand the above regulations on secrecy and the associated professional secrecy obligation

5.4. The Processor shall ensure that those persons with an authorisation to process personal data are either covered by a statutory secrecy obligation or have accepted a secrecy obligation in a binding agreement.

6 Reimbursement

The Processor is entitled to seek reimbursement from the Controller for the Processing of Personal Data only if such a right is indicated in a special written agreement. Such a written regulation of the reimbursement is normally given in a binding contract agreed between the parties.

7 Responsibility towards a third party

7.1 In the event that a Data subject, the Supervisory Authority or other third party requests information from the Processor responsible for the Processing of Personal Data, the Processor shall refer the matter to the Controller. According to item 4.5 and section 5 of this Agreement, the Processor may not reveal Personal Data or other information concerning the Processing of Personal Data without express instructions from the Controller.

7.2. The Processor shall without delay inform the Controller of any contact from the Supervisory Authority which is related to or can be of importance for the Processing of Personal Data. The Processor is not authorised to represent the Controller or to act on behalf of the Controller towards the Supervisory Authority or other third party.

7.3. The Processor shall assist the Controller in preparing the information requested by the Supervisory Authority or by a Data subject, or in other ways make it easy for the Personal Data Control to meet the rights of the Data subject in accordance with the General Data Protection Regulation.

8 Damage

8.1. If a Data subject makes a claim against the Controller for compensation for damage or if an authorised authority imposes a fine or other administrative sanction because of the failure of the Processor to fulfil his/her obligations according to this DPA or valid data protection legislation, the Processor shall indemnify the Controller.

8.2. If a Data subject makes a claim against the Processor for compensation for damage or if an authorised authority imposes a fine or other administrative sanction because of the failure of the Controller to fulfil his/her obligations according to this DPA, the Controller's instructions or valid data protection legislation, the Controller shall indemnify the Processor.

In other respects, the responsibility regulations relating to damage according to the Commission agreement shall apply.

9 Amendment of the Agreement

9.1. If such is required because of legislation in this field or because of binding instructions from an authority, the parties shall without unnecessary delay make the necessary amendments to this DPA in order to ensure that it agrees with the legislation which led to the amendment.

9.2. In order to be valid, amendments and additions to this DPA shall be in writing and signed by both Parties.

10 Duration of the Agreement and termination of the Agreement

This Agreement shall apply from the date when it is signed and as long as the Processor Processes Personal Data on behalf of the Controller.

When the Agreement is terminated, the Processor shall transfer all Personal Data to the Mid Sweden University in a general and readable form, unless the parties have in writing agreed otherwise. The Processor shall subsequently ensure that all copies in the possession of the Processor are destroyed in a secure manner.

11 Interpretation and application, and the resolution of disputes

Any dispute regarding the interpretation and application of this DPA shall be resolved in accordance with Swedish law and in accordance with the regulations in the Commission agreement regarding disputes.

12 Disputes

Any dispute relating to the interpretation or application of this agreement shall be resolved in a Swedish public Court of Law.

This Agreement has been prepared in two identical copies, of which the parties have each taken one.

For Mid Sweden University:

For (Name of the Processor):

Place and date:

Place and date:

.....
(Signature)

.....
(Signature)

.....
(Name in block capitals and Position)

.....
(Name in block capitals and Position)

Annex (if appropriate)

1. Approved Personal Data Processors – Annex 1

Annex (Approved personal Data Processors)

The Personal Data Processor intends to engage the following Personal Data Processors for the Processing of Personal Data in connection with the appointment to work with [add e.g. system XX], to which the Personal Data Controller has given approval.

- 1.
- 2.
- 3.