



## PROCESSOR AGREEMENT *UTRECHT UNIVERSITY*

Adopted model JZ 20 April 2018

### *The Parties*

- **Utrecht University**, a legal entity governed by public law pursuant to Section 1.8 of the Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*, WHW), with its registered office at Heidelberglaan 8, 3584 CS Utrecht and duly represented by [**President of the Executive Board/Dean/Director/mandate holder**], hereinafter referred to as: '**the Controller**' or '**Utrecht University**';
- [**PROCESSOR'S NAME**], with its registered office at [**ADDRESS**] in [**TOWN/CITY**] and duly represented by [**REPRESENTATIVE**] (hereinafter referred to as: '**the Processor**');

hereinafter jointly referred to as: 'the Parties' and individually as 'the Party',

### *whereas:*

- the Controller has personal data of various Data Subjects at its disposal, including students, lecturers and/or staff, as described in Article 2 of this Processor Agreement;
- the Controller wishes to have various types of Processing carried out by the Processor in the performance of the agreement concluded with the Processor on **XX-XX-XX** (hereinafter referred to as: 'the Agreement'), for the purposes as described in Article 2 of this Processor Agreement;
- the Controller specifies the objects and the resources for the Processing, which are subject to the conditions stated in this agreement;
- the Processor is willing to carry out the Processing and to comply with the obligations concerning security and all other requirements of the General Data Protection Regulation (hereinafter: 'GDPR');
- also in view of the requirements laid down in the GDPR, the Parties wish to lay down their rights and obligations in writing in this Processor Agreement;

### *have agreed as follows*



## ARTICLE 1. DEFINITIONS

- 1.1. The *Data Subject* is a natural person to whom the personal data relate in accordance with the provisions of the GDPR.
- 1.2. A *Security Breach* is a shortcoming or breach of security of Personal Data;
- 1.3. The *Processor Agreement* is this agreement which follows the definitions of the GDPR.
- 1.4. The *Processor* is the processor within the meaning of Section 4 (8) of the GDPR.
- 1.5. *Special Personal Data* are Personal Data within the meaning of Section 9 (1) of the GDPR.
- 1.6. A *Data Breach* is a breach relating to Personal Data that is likely to constitute a risk to the rights and freedoms of natural persons within the meaning of Section 33 (1) of the GDPR.
- 1.7. *Services* are the services to be provided by the Contractor under the Agreement.
- 1.8. A *User* is a natural person affiliated to Utrecht University in any way, such as members of staff, lecturers and/or students, who is authorised by Utrecht University to provide a certain part of the Services.
- 1.9. A *Subcontractor* is a party engaged by the Processor to support the Processor in the provision of the Services. If the Subcontractor processes Personal Data on the instructions of the Processor, the Subcontractor will also be considered a sub-processor.
- 1.10. *Duty to Report* is the duty to report within the meaning of Section 33 of the GDPR.
- 1.11. A *Contractor* is a party performing the assignment under the terms of the Agreement.
- 1.12. *Personal Data* within the meaning of Section 4 (1) of the GDPR is any data concerning an identified or identifiable natural person, processed or to be processed by the Processor in any way within the context of the Agreement.
- 1.13. *Processing* is any act or collection of acts concerning Personal Data, including in any case the collection, recording, ordering, storing, updating, scanning, digitising, changing, retrieval, consultation, use, provision by means of forwarding, distribution or any other provision method, compiling, association, as well as the protection, deletion or destruction of data, irrespective of the form of these Personal Data (digital or paper), within the meaning of Section 4 (2) of the GDPR.
- 1.14. The *Controller* is the controller within the meaning of Section 4 (7) of the GDPR.



## **ARTICLE 2. TYPE OF PERSONAL DATA AND PROCESSING OBJECTS**

- 2.1. The Processor undertakes to process Personal Data on the instructions of the Controller subject to the conditions of this Processor Agreement. Processing will only take place in the context of the Agreement and the objects determined in agreement. The object and nature of the Processing is [.....]. It concerns the following types of Personal Data [.....] relating to the following categories of Data Subjects [.....].
- 2.2. The Processor will not process the Personal Data for any purpose other than that determined by the Controller.
- 2.3. The Processor will not take any independent decisions on the Processing of the Personal Data for other purposes, including the provision of these data to third parties and the duration of the storage of the data. The control over the Personal Data provided to the Processor in the context of this Processor Agreement or other agreements between the parties, and over the data processed by the Processor in that respect, is vested in the Controller.
- 2.4. The Processing of data by the Processor, including Personal Data, may never result in data from the datasets of the Controller being added to the Processor's databases. The Processor is not permitted to combine data obtained from the Controller.
- 2.5. The Personal Data to be processed on the instructions of the Controller remain the property of the Controller and/or the Data Subjects involved.

## **ARTICLE 3 PROCESSOR'S OBLIGATIONS**

- 3.1 The Processor guarantees compliance with the applicable legislation and regulations, including in any case the legislation and regulations concerning the protection of Personal Data, such as the GDPR.
- 3.2 The Processor will inform the Controller, should the latter so demand, about the measures taken by the Processor concerning its obligations under this Processor Agreement and the GDPR.
- 3.3 The Processor's obligations arising from this Processor Agreement also apply to persons Processing Personal Data under the authority of the Processor, including but not limited to employees, in the broadest sense. The Processor will in this respect arrange for the proper authorisations for access to the Personal Data of the Controller.
- 3.4 The Processor indemnifies the Controller against the consequences of any claims and proceedings brought by third parties, expressly including supervisory authorities such as the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) and Data Subjects, based on or arising from a breach of the GDPR and/or this Processor Agreement.



## **ARTICLE 4 TRANSFER OF PERSONAL DATA**

- 4.1. The Processor is entitled to process the Personal Data in countries within the European Economic Area (EEA). Transfer to countries outside the EEA is only permitted with the prior written permission of the Controller. The Controller may attach further conditions to its permission.
- 4.2. The Processor will notify the Controller of the country or countries in which the Personal Data are processed.

## **ARTICLE 5 ASSIGNMENT OF RESPONSIBILITIES**

- 5.1. The permitted Processing will be carried out within an automated environment monitored by the Processor.
- 5.2. The Processor is responsible for Processing the Personal Data under this Processor Agreement, in accordance with the instructions of the Controller, irrespective of the responsibility under the law.
- 5.3. The Controller is responsible for its own Processing of Personal Data, in which the Processor is not involved.

## **ARTICLE 6 ENGAGEMENT OF THIRD PARTIES OR SUBCONTRACTORS**

- 6.1 The Processor is not permitted to make use of third parties, including Subcontractors and sub-processors of Subcontractors, within the scope of the Agreement without the Controller's prior written permission, which permission may be subject to further conditions.
- 6.2 The Processor will in any case ensure that these third parties undertake in writing the same obligations as agreed between the Controller and the Processor. The Controller has the right to inspect the agreements between the Processor and these third parties. The Processor guarantees proper compliance with these obligations by these third parties and, in the event of any errors committed by these third parties, will be liable for any damage and/or loss as if the Processor itself had committed the error(s). The Processor indemnifies the Controller against any claims.

## **ARTICLE 7 DUTY TO REPORT**

- 7.1 In the event of an actual or suspected Security Breach and/or a Data Breach, the Processor will notify the Controller immediately, or no later than within 24 hours of the occurrence of the breach, following which the Controller will assess whether or not it will inform the Data Subject(s) and/or the relevant supervisory authority or supervisory authorities. The Processor guarantees that the information provided is complete, correct and accurate. The Duty to Report applies irrespective of the impact of the breach.
- 7.2 If legislation and/or regulations so require, the Processor will cooperate in informing the relevant authorities and/or Data Subjects.



- 7.3 The Duty to Report includes in any case reporting the fact that a breach has occurred, as well as:
- the cause or suspected cause of the breach;
  - the consequences, as far as known and/or expected;
  - the solution or proposed solution;
  - contact details for the follow-up on the report;
  - the number of persons whose data were breached (if no exact numbers are known: the minimum and maximum number of persons whose data were breached);
  - a description of the group of people whose data were breached;
  - the type or types of Personal Data breached;
  - the date on which the breach occurred (if no exact date is known: the period during which the breach occurred);
  - the date and time when the breach became apparent to the Processor or to a third party or subcontractor engaged by it;
  - whether the data were encrypted, hashed or in any other way made unintelligible or inaccessible to unauthorised persons;
  - what measures have already been taken to stop the breach and to limit the consequences of the breach.

## **ARTICLE 8 SECURITY MEASURES**

- 8.1 The Processor guarantees that in respect of the Processing of Personal Data to be carried out by it, it will take appropriate technical and organisational measures to secure the Personal Data against loss or any form of unlawful Processing (such as acquiring information by unauthorised persons, impairment, change or provision of Personal Data).
- 8.2 The Processor has in any case taken the following measures:
- logical access control, using passwords;
  - physical access security measures;
  - automatic logging of all actions performed concerning the Personal Data;
  - encryption of digital Personal Data files;
  - organisational measures concerning access security;
  - securing network connections via Secure Socket Layer (SSL) technology;
  - object-specific access restrictions.
- 8.3 The Processor will at all times have an appropriate and up-to-date security policy in place, setting out the details of the technical and organisational measures. The Processor will allow the Controller to inspect the security policy, should it so demand.



- 8.4 The Processor is responsible for compliance with the measures agreed by the Parties and to be taken by the Processor, as referred to in the preceding paragraphs of this article.

## **ARTICLE 9 DEALING WITH REQUESTS OF DATA SUBJECTS**

- 9.1 In the event that a Data Subject submits a request for inspection to the Processor, as referred to in Section 15 of the GDPR, or correction, addition, change or protection, as referred to in Sections 16 to 18 of the GDPR, the Processor will deal with this request in so far as the request relates to the Processing for the Processor's purposes. The Processor will inform the Controller of the receipt of the request and the manner of dealing with it. In all other cases the Processor will forward the request to the Controller and the Controller will subsequently deal with the request. The Processor is allowed to inform the Data Subject of the above.
- 9.2 If a Data Subject submits a request for inspection to the Controller, and if the Controller so demands, the Processor will cooperate in dealing with the request, in so far as this is possible and reasonable.

## **ARTICLE 10 SECRECY AND CONFIDENTIALITY**

- 10.1 All Personal Data the Processor receives from the Controller and/or collects by itself within the scope of this Processor Agreement are subject to a duty of secrecy towards third parties. The Processor will not use this information for any purpose other than that for which it received the information, even if the form is such that the information cannot be traced back to Data Subjects.
- 10.2 This duty of secrecy does not apply in so far as the Controller has given its explicit permission to provide the information to third parties, if providing the information to third parties is logically required in view of the nature of the instruction provided and the implementation of this Processor Agreement, or if there is a statutory obligation to provide the information to a third party. If the Processor is under a statutory obligation to provide information to a third party, the Processor will inform the Controller without delay in so far as legally permitted.

## **ARTICLE 11 AUDIT**

- 11.1 The Controller is entitled to carry out audits independently, or have them carried out by an independent third party which is bound by secrecy, to check compliance with all points of this Processor Agreement and everything related to it.
- 11.2 The Controller may carry out this audit once a year, or more often if there is a concrete suspicion that the Personal Data are being misused.
- 11.3 The Processor will cooperate in the audit and will make all information that is reasonably relevant to the audit available, including supporting data such as system logs, and will make staff available as promptly as possible.



- 11.4 The outcome of the audit will be assessed by the Parties in joint consultation and will be incorporated or not, depending on the outcome of the consultation, by either Party or by both Parties jointly.
- 11.5 The costs of the audit will be borne by the Processor if it appears that the work has not been performed in accordance with the Processor Agreement and/or if errors are found in the findings, that must be attributed to the Processor. In all other cases the costs of the audit will be borne by the Controller.

## **ARTICLE 12. TERM AND TERMINATION**

- 12.1 This Processor Agreement has been concluded for the duration as determined in the Agreement, and failing that, for the duration of the cooperation.
- 12.2 The Processor Agreement cannot be terminated early.
- 12.3 The Parties are only entitled to amend this Processor Agreement with mutual consent.
- 12.4 The Processor will give its full cooperation in modifying this Processor Agreement to make it suitable for any new privacy legislation.
- 12.5 In the event of termination or notice of termination of this Processor Agreement on request or on whatever ground or in whatever manner, the Processor will on its own initiative (i) make all Personal Data available to the Controller in the manner and format required by the Controller, (ii) immediately cease the Processing of the Personal Data, (iii) make all documents in which the Personal Data have been laid down available to the Controller, and (iv) delete all electronically stored Personal Data permanently from the data carrier or, in so far as permanent deletion from the data carrier is not possible, to destroy the data carrier. Should the Controller so demand, the Processor will confirm to the Controller in writing that it has met all the obligations pursuant to this article.

## **ARTICLE 13. PENALTY STIPULATION**

- 13.1 In the event of a breach of this Processor Agreement the Processor will be liable to pay the Controller an immediately payable penalty of EUR 25,000 per breach and EUR 2,500 for each day that the breach continues, with a maximum of EUR 100,000, without prejudice to the Controller's right to claim full compensation.

## **ARTICLE 14. APPLICABLE LAW AND DISPUTE SETTLEMENT**

- 14.1 The Processor Agreement and its performance are governed by Dutch law.
- 14.2 Logs, measurements performed and audit reports drawn up by the Controller will constitute conclusive evidence, unless the contrary is proved by the Processor.
- 14.3 Any disputes which might arise between the Parties in connection with this Processor Agreement will be submitted to the competent court in Utrecht.



**Utrecht University**

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*name*

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*signature*

**Processor**

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