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**ISSDA Deposit Licence Agreement for Restricted Access Datasets**

This form should be completed by the Depositor and returned to ISSDA via email to [issda@ucd.ie](mailto:issda@ucd.ie), together with the **ISSDA Data Deposit Form**.

**Section 1: Deposit Agreement**

**This deposit agreement relates to the following digital data, associated metadata and related documentation (hereinafter collectively referred to as “Dataset”):**

|  |  |
| --- | --- |
| Dataset Title |  |
| Deposit date |  |
| Study number (assigned by ISSDA) |  |

**Depositor: The organisation or person who is entitled to transfer and manage the Dataset, hereinafter referred to as “Depositor”.**

|  |  |
| --- | --- |
| Organisation |  |
| Represented by |  |
| Address |  |
| Email |  |
| Telephone |  |

**Archive: The organisation that is entitled to archive and manage the Dataset, hereinafter referred to as “ISSDA”.**

|  |  |
| --- | --- |
| Organisation | University College Dublin, National University of Ireland, Dublin via the Irish Social Science Data Archive (ISSDA) |
| Represented by | ISSDA Director or nominee |
| Address | UCD Library, James Joyce Library,  University College Dublin,  Belfield,  Dublin 4,  Ireland. |
| Telephone | +353 (0)1 7167591 |
| Email | [issda@ucd.ie](mailto:issda@ucd.ie) |

**Contact details of Depositor’s Data Protection Officer or notice party to be disclosed to the Requester.**

|  |  |
| --- | --- |
| Name and Position |  |
| Address |  |
| Telephone |  |
| Email |  |

*Considering that:*

1. The objective of ISSDA is to make research files permanently and digitally available through its digital archival system to researchers (the “**Archive”**).
2. ISSDA will only include and publish research files in its Archive if this can be done in a responsible manner.
3. Access to research files deposited in the Archive can be requested by our Designated Community. ISSDA’s Designated Community consists of higher education institutions (HEIs) and research-performing organisations (RPOs) across multiple sectors and jurisdictions with broad relevance to the Social Sciences and Public Health. Access to research files is for the purposes of conducting research. An application for access to the research files can be made by researchers in the Designated Community (“**End Users**”).
4. The Depositor wishes to make use of the possibilities for digital archiving and accessibility of the deposited Dataset offered by ISSDA. From a data protection point of view ISSDA acts as data processor on behalf of the Depositor.
5. **Any capitalized terms not defined in this** Deposit Agreement **shall have the meaning ascribed to such term in** Article 4 General Data Protection Regulation 2016/679, the "**GDPR**".

*agree as follows:*

1. **Deposit agreement**
   1. The Depositor will grant ISSDA a worldwide, perpetual, royalty free, transferable, sublicensable and non-exclusive licence to the Dataset.
   2. The Depositor grants ISSDA the right to include the Dataset in its Archive.
   3. ISSDA may migrate the contents of the Dataset to a suitable format of its choice to best serve the needs of the End Users. The content of the Dataset will not be altered.
   4. Subject to the terms of this Deposit Licence Agreement, ISSDA will receive the right to sub-licence the Dataset, or substantial parts of it, to End Users on a non-exclusive, non-transferable and non-sublicensable basis, by means of electronic distribution. In addition, ISSDA will have the right to make a copy of the Dataset, whether or not on behalf of End Users, or allow End Users to download a copy.
   5. The licence granted by the Depositor under clause 1.1 will be granted free of charge. Any sub-licence granted by ISSDA under clause 1.3 shall be granted free of charge.
2. **Depositor**
   1. The Depositor represents and warrants that it is the sole owner of the intellectual property rights to the Dataset pursuant to, but not limited to the Copyright and Other Intellectual Property Law Provisions Act 2019 and other relevant legislation, and/or, to the extent the Depositor is not owner or the sole owner, the Depositor represents and warrants that it has all necessary consents and permissions of the titleholder(s) or co titleholder(s) to grant a licence to the Dataset under this Deposit Agreement.
   2. The Depositor confirms that the Dataset has been collected in compliance with all applicable law and applicable standards of good research and scientific practice.
   3. The Depositor is responsible for identifying the category at Appendix 1 that is appropriate to the Dataset deposited with ISSDA. The Depositor has notified ISSDA that the Dataset is subject to Restricted Access.
3. **Archive**
   1. ISSDA will, to the best of its ability and resources, permanently archive the Dataset, preserving its readability and accessibility.
   2. ISSDA will archive the Dataset unaltered and in its original software format as far as possible, taking into account the technological state of the art and the cost of implementation. ISSDA will have the right to change the design and/or functionality of the format of the Dataset in so far as it is necessary to ensure the digital preservation, distribution, or reusability of the Dataset. The content of the Dataset will not be altered.
   3. All or part of the Dataset files will be made available to End Users in accordance with Clause 7.
4. **Dataset**
   1. The Dataset will consist of all the files transferred by the Depositor and the metadata provided by the Depositor as described in Section 1. Metadata is understood to mean the contents of all fields that must be completed in the archival system at the time of deposit in order to describe the Dataset.
   2. The Depositor warrants that the Dataset corresponds to the metadata provided by the Depositor in the Data Deposit Form.
   3. The Depositor will provide the files in a preferred format, as defined on ISSDA’s File Format Policy at the time of deposit. In the event that a format is not defined as a preferred format, the Depositor will contact ISSDA before delivery. A different file format may only be supplied with the written consent of ISSDA.
   4. The Depositor will provide documentation with the Dataset that explains its creation, contents and any specific values (such as codes, characters and abbreviations), its structure (such as folder structures and relationships between files) and its actual use (such as that of software) to third parties (“**Related Documentation**”). The Depositor acknowledges that the Related Documentation described in Section 1 and shared by the Depositor shall be available to Researchers via ISSDA’s website without restriction.
   5. ISSDA will make the metadata associated with the Dataset freely available.
   6. The metadata associated with the Dataset will be included in ISSDA’s databases and publications and will be accessible to everyone.
   7. The Depositor will make the Dataset available to ISSDA in a manner and through a medium that ISSDA deems suitable.
5. **GDPR** 
   1. The Depositor has identified the Dataset as containing personal data. The Depositor shall pseudonymise any personal data included in the Dataset which shall be made available to ISSDA under a unique corresponding code and without any directly identifiable personal data. The metadata and file names shall not contain any personal data. Only bibliographical data which exclusively refer to personal data that are necessary for the accountability of the Dataset, such as its creator, rights holders and citations (hereinafter: “**Bibliographical Data**”) are allowed. It is explicitly forbidden to include directly identifying personal data in the deposited Dataset, the metadata and file names.
   2. The Depositor represents and warrants that any personal data (as defined by Article 4 of the GDPR) contained in the Dataset has been processed in accordance with all applicable legislation and regulations relating to the protection of personal data including (without limitation) the Data Protection Acts 1988-2018, GDPR, the Health Research Regulations and all other applicable legislation or codes of practice relating to the processing of personal data or privacy or any amendments and re-enactments thereof (“**Data Protection Legislation**”). Without prejudice to the generality of the foregoing, the Depositor represents and warrants that it has an appropriate legal basis for processing any personal data contained in the Dataset and it has obtained all consents and permissions necessary for the processing of such personal data. The Depositor warrants that such legal basis, consents and permissions permit the Dataset to be deposited with ISSDA in the manner proposed by this Agreement.
   3. It is agreed that the Depositor will remain the controller of the Dataset within the meaning of the GDPR and ISSDA will be a processor within the meaning of the GDPR. The Parties shall complete the data processing agreement, attached at Appendix 3 (the “**Data Processing Agreement**”) except in the case of Bibliographical Data.
   4. The End User shall be an independent Data Controller of the Dataset.
6. **Removing the Dataset and/or changing its accessibility**
   1. The Depositor may submit a reasoned request to ISSDA to make the Dataset temporarily or permanently unavailable to End Users or to remove it entirely or partly from the archival system. ISSDA will assess the request in view of its objective. ISSDA will assess the request with due observance of the GDPR.
   2. If there are compelling reasons to do so, ISSDA has the right to remove the Dataset, or part of it, from ISSDA, or to limit or exclude access to it temporarily or permanently. In such cases, ISSDA will reasonably inform the Depositor.
7. **Availability to third parties**
   1. ISSDA will make the Dataset, or parts of them, available to End Users who have submitted the Data Request Form and with whom they have agreed the End User Licence (see Appendix 2) . The Depositor acknowledges the terms of the End User Licence (the “**Licence**”) and agrees that ISSDA may make the Dataset available in accordance with this Licence. To the extent that the Depositor wishes to impose special conditions on access to the Dataset, the Depositor must complete Appendix 1 Part C (“**Special Conditions**”) at the time the Dataset is made available to ISSDA and these Special Conditions shall be implemented by ISSDA.

* 1. If the End User is not a member of the Designated Community or, if an End User wishes to use the Dataset for commercial use, ISSDA will forward any such requests to the Depositor. The Depositor shall have sole discretion to grant a licence for commercial purposes and ISSDA shall not be a party to any subsequent agreement between the Depositor and the End User for such purposes.
  2. The Depositor will ensure the availability of a stable email address and check it regularly so that permission requests can be processed within a reasonable period of time.
  3. Notwithstanding the above, ISSDA may make the Dataset or substantial parts of it available to third parties:

1. if ISSDA is obliged to do so by virtue of laws and regulations, a judicial decision, or by a supervisory body;
2. if this is necessary for preserving the Dataset or the archival system;
3. if ISSDA ceases to exist and/or terminates its activities in the field of data archiving, or transfers its activities to a similar institution in compliance with Article 8.

7.5 When a Dataset no longer contains any personal data within the meaning of the GDPR, the Depositor and ISSDA may decide to change its access category.

1. **Using Datasets**
   1. End Users to whom a Dataset is made available shall be obliged to include in their research results an unambiguous acknowledgement of the source, as specified in the Licence.
   2. In the event that ISSDA becomes aware that an End User is in violation of a Licence, ISSDA will contact the Depositor and the End User will be excluded from further use of Datasets until the issue has been resolved with the Depositor.
   3. The Depositor will notify ISSDA as soon as possible of a failure to cite the source or an infringement of copyright or database rights as referred to in this Clause 8, to allow ISSDA to take the measures that it deems necessary, including, but not limited to, exclusion from further use of Datasets.
2. **Death of the Depositor or liquidation of its organisation**

Upon the death of the Depositor or the liquidation or termination of its organisation, if no legal successors or co-entitled parties are known to ISSDA, ISSDA will be entitled to do whatever it deems reasonably necessary with a view to achieving its objective. As the Dataset contains pseudonymised data, ISSDA will request another organisation to act as the Controller. This request will only be made to an organisation that, according to its statutes or by law, has scientific research, or the support or promotion of it, among its core tasks and/or objectives. This has been confirmed as UCD Library.

1. **Liability**
   1. The Depositor will indemnify and shall keep indemnified ISSDA against any costs, actions, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) arising from or in connection with any third-party claim against ISSDA with regard to the Dataset, the deposit thereof with ISSDA or its availability through ISSDA for further research. This indemnity includes, but is not limited to, any claim that the Dataset infringes Data Protection Legislation or infringes the intellectual property rights of a third party.
   2. The End User by way of the Data Request Form indemnifies the Depositor directly.
   3. ISSDA bears no legal responsibility for the accuracy or comprehensiveness of the Dataset supplied.
   4. Except to the extent provided in Clause 10.1, neither ISSDA nor Depositor accepts any liability for use of the Dataset by any End User
   5. Neither ISSDA nor Depositor accepts any liability for any direct, indirect, consequential or incidental damages or losses arising from the unavailability of, or break in access to, the archive, for whatever reason.
2. **Duration, cancellation, termination of the agreement**
   1. This agreement takes effect on the date this Deposit Agreement is signed by the Depositor. ISSDA will then publish the Dataset as soon as possible.
   2. This Deposit Agreement will remain in effect for an indefinite period of time, unless:
3. Pursuant to Clause 7 of this Deposit Agreement, the Dataset has been permanently removed from the archival system;
4. Clause 9 applies.
5. **Applicable law**
   1. This agreement is governed by Irish and relevant EU law.
   2. Disputes that cannot be resolved amicably will be submitted to the Irish courts.
6. **General**

13.1 Each Party warrants to the other that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.

* 1. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In the event that any signature is delivered by e-mail delivery of a “pdf” format data file and utilising electronic signature, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such “pdf” electronic signature page were an original thereof.

**Agreed and signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Depositor**

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

**Agreed and signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**UCD via Irish Social Science Data Archive**

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

**Appendix 1: Dataset availability**

The Dataset will be distributed and made available by ISSDA in the manner set out below. If the Dataset contains personal data within the meaning of the GDPR, with the exception of Bibliographical Data, the only access category permitted is Restricted Access. Metadata will always be made freely available. The Depositor is responsible for identifying the category that is appropriate to the Dataset deposited with ISSDA. Restricted Access Datasets (whether wholly partly restricted) will only be made available directly to End Users, in consultation with ISSDA.

|  |  |
| --- | --- |
| Open Access |  |
| The files in the Dataset will be directly accessible to third parties. Third parties do not have to register with ISSDA. The Dataset will be placed in the public domain or made available under an Open Access Licence. | |

|  |  |
| --- | --- |
| **Restricted Access** | **Please select** |
| The files in the Dataset will be made available to End Users by ISSDA only after the Depositor has given its express consent. End Users will be obliged to comply with ISSDA End User Licence (See Appendix 2). After receiving a permission request for access to the Dataset, the Depositor can approve the request, reject it, or impose additional conditions of use on an End User.  The Depositor gives ‘blanket permission’ to ISSDA make the Dataset available to End Users under the following conditions:   * + - 1. Data should not be accessed for commercial gain or by any commercial entity for any purpose. These requests should be forwarded to the data depositor directly to consider.       2. Data should only be made available to researchers within the EEA or countries with GDPR adequacy decisions, as per <https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en>   All requests from researchers outside the EEA or adequacy decision countries should be forwarded to the data depositor directly to consider. | |

|  |  |
| --- | --- |
| **Teaching Access** | **Please select** |
| The files in the Dataset will be made available to End Users by ISSDA for the purposes of teaching. The Dataset may be used only for the purpose of teaching for the duration a specific module/workshop. The Dataset must be re-applied for each time the module/workshop is run. | |

**Appendix 2 ISSDA End User Licence**

University College Dublin National University of Ireland Dublin (“**UCD**”) operates the Irish Social Science Data Archive (“**ISSDA**”) and facilitates access by members of the Designated Community to Datasets. This licence sets out the conditions for using the Dataset, that has been deposited in the ISSDA Archive by the Depositor and includes Section 1 and Section 2 (the “**End User Licence**”). Anyone to whom ISSDA, on behalf of the Depositor, makes a Dataset available agrees to the following conditions. Acceptance of the End User Licence establishes an agreement between UCD, via ISSDA, and the End User.

**TERMS OF USE**

These terms of use cover the use of the Dataset supplied by ISSDA, on behalf of the Depositor, in accordance with the Data Request Form at Section 1 above.

**The End User undertakes and agrees:**

1. To act in accordance with the National Policy Statement on Ensuring Research Integrity in Ireland, the General Data Protection Regulation 2016/679 (“**GDPR**”) and all applicable legislation and regulations relating to the protection of personal data including (without limitation) the Data Protection Acts 1988-2018, GDPR, the Health Research Regulations and all other applicable legislation or codes of practice relating to the processing of personal data or privacy or any amendments and re-enactments thereof (“**Data Protection Legislation**”) and any other applicable laws and regulations.

1. That ISSDA grants to the End User a non-exclusive royalty free, non-transferable, non-sublicensable licence to use and to make copies of any part of the Dataset only for the Intended Use specified in Section 1 Part C and only for use in the EEA. The End User is not permitted to use the Dataset for any other purpose without the prior written approval of ISSDA or, where applicable, the Depositor.
2. This licence is strictly for research use only. Any request to use the Dataset for commercial use will be forwarded to the Depositor who shall have sole discretion as to whether or not to grant such access. ISSDA shall not be a party to any arrangement between the End User and Depositor in relation to the commercial use of the Dataset.
3. This End User Licence will become effective on the date this End User Licence is signed by the End User and will expire on the Project Expiry Date specified in Section 1 Part C.
4. ISSDA will communicate project expiry date to end user at a minimum of 30 days prior to expiry date. On or before the Project Expiry Date (or such later date as approved by ISSDA), the End User will destroy or delete the Dataset and all copies (including any hard or soft copy) which are in its possession or control and shall make no further use of the Dataset. The end user will complete and return a data destruction form to ISSDA no longer than 7 days after the expiry date.
5. This End User Licence does not operate to transfer any interest in intellectual property including but not limited to copyright or other right to the End User from the Dataset funders, ISSDA, the original data creators or Depositors or any other rights holder.
6. To respect all intellectual property rights to the Dataset, such as copyrights, database and/or neighbouring rights. This includes (but isn’t limited to):

1. acknowledging, in any work based in whole or part on resources provided by ISSDA, the original data creators, Depositors or copyright holders and ISSDA, and to declare, in any such work, that those who carried out the original analysis and collection of the Dataset bear no responsibility for the further analysis or interpretation of it.
2. ensuring that all such works acknowledge that copyright and all other intellectual property rights in the Dataset and associated documentation are vested in the original data creators or Depositors. Please see the ISSDA website ([www.ucd.ie/issda](http://www.ucd.ie/issda)) for appropriate wording.
3. ensuring that all such works acknowledge ISSDA in the following way: “Accessed via the Irish Social Science Data Archive - [www.ucd.ie/issda](http://www.ucd.ie/issda)”.
4. referencing the recommended bibliographic citation in any publication that employs resources or Datasets provided by ISSDA.
5. To ensure that strictly only the Lead Researcher, and the Research Team, have access to the Dataset provided under this Licence. The Lead Researcher shall be responsible for controlling access to the Dataset and the Dataset shall only be accessed by members of the Research Team under the direction of the Lead Researcher. The Lead Researcher shall notify ISSDA of any additional members of the Research Team.
6. To ensure that reasonable steps are taken to secure access to the Dataset including, that the means of access (such as passwords) are kept secure and not disclosed to a third party (excluding those listed in Part A) or used for any purpose that is not the Intended Use, except by special written permission or licence obtained from ISSDA.
7. The End User acknowledges and agrees that the Dataset contains pseudonymised personal data within the meaning of Article 4 of the GDPR. The End User agrees not to use the Dataset to attempt to obtain or derive information relating specifically to an identifiable individual or household or to combine the Dataset with any other information which could re-identify an individual or household. As the End User has determined the purpose and means of processing the Dataset, the End User is a Controller within the meaning of the GDPR and shall be solely responsible for compliance with the Data Protection Legislation to the extent that the End User processes the Dataset for the Intended Use.
8. To be aware at all times of the risk of inadvertently disclosing information, which might result in the re-identification of an individual. All use of the Dataset and production of all analysis and output should be sensitive to this risk.
9. To notify the Depositor of any suspected or confirmed data breaches or unauthorised access to the Datasets within 48 hours of the End User identifying or being made aware of such a breach. Any notice under this Clause 11 shall be sent to the Depositor’s contact identified at Schedule 1 Part D
10. To undertake to abide by the conditions laid out in the Statistics Act, 1993, and, in particular, Section 34 thereof (as amended or replaced). Please see <http://www.irishstatutebook.ie/1993/en/act/pub/0021/index.html>
11. To send to ISSDA citations of any publication based in whole or part on resources provided by ISSDA for inclusion in a database of related publications.
12. That ISSDA may submit details of the End User’s research, as outlined in Part C, for statistical purposes to the Depositor.
13. To notify ISSDA of any errors discovered in the Dataset or accompanying documentation.

Any breach of any of the provisions of this Agreement will lead to immediate termination of the Lead Applicant and Research Team’s access to all services provided by ISSDA either permanently or temporarily and may result in legal action being taken against the End User or Research Organisation. The End User acknowledges that the Depositor will be notified in the event of a breach of any of the terms of this Agreement. Permission to use the Dataset for the specified purpose may be withdrawn by ISSDA at any time, without notice and without cause, by written notice to the End User, signed by or on behalf of the Director of ISSDA.

**INDEMNITY**

The End User agrees to indemnify and shall keep indemnified ISSDA against any costs, actions, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) arising from or in connection with any third party claim made against ISSDA relating to End Users use of the Dataset or any other activities in relation to the Dataset where such use is in breach of this licence.

The End User also agrees to indemnify and shall keep indemnified the Depositor in connection with against any costs, actions, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) arising from or in connection with any their use of the Data.

**DISCLAIMERS**

To the extent that applicable law permits:

1. ISSDA bears no legal responsibility for the accuracy or comprehensiveness of the Dataset supplied.
2. ISSDA is in no way liable for the Dataset (including the contents, metadata or related documentation), including infringements of privacy rights within the meaning of the GDPR or third-party infringement of intellectual property, unless in the event of intent or gross negligence on the part of ISSDA.
3. Neither ISSDA nor the Depositor accepts any liability for, any direct, indirect, consequential or incidental damages or losses arising from use of the Dataset,
4. ISSDA does not accept any liability for, and the End User shall not be entitled to claim against them in respect of, the unavailability of, or break in access to, the archive, for whatever reason.
5. Whilst steps have been taken to ensure all licences, authorisation and permissions required for the granting of this Licence have been obtained, this may not have been possible in all cases, and no warranties or assurance are given in this regard. To the extent that additional licences, authorisations and permissions are required to use the Dataset in accordance with this Licence, it is the End User's responsibility to obtain them.

**Appendix 3: Data Processing Agreement**

**Data Processing**

1. **Interpretation**
   1. **Defined Terms**: In this Appendix 3:

“**Data**”means pseudonymised Personal Data included in the Dataset which is made available by the Depositor under a unique corresponding code and without any directly identifiable Personal Data and which is processed by ISSDA on behalf of the Depositor in connection with the Archive;

1. “**Personnel**” means the officers, directors, employees, contractors, of a Party;

Any capitalised terms used in this Appendix 3 that are not defined will have the meaning given to them in the Deposit Licence or the Data Protection Legislation as applicable

1. **Status of the Parties** 
   1. It is acknowledged that in the course of processing the Data for the Archive, ISSDA is a data processor (the “**Processor**”) and the Depositor is a data controller (the “**Controller**”) in relation to the Data. The Data and processing activities are more particularly described in Schedule 1.
   2. The Deposit Licence and this Appendix 3 constitutes the Controller’s instruction to the Processor to Process the Data. The Controller recognizes that each End User who receives a copy of the Data via the Archive will Process that Data as an independent controller. The Processor’s obligations as set out in this Appendix 3 relate only to the storage of Data in the Archive and transfer of Data to End Users. The Processor shall not have any obligations with regard to Processing activities undertaken by an End User.
2. **Data Processor’s Obligations**

The Processor undertakes and agrees with the Controller that:

* + 1. it shall only process:
       1. Data strictly in accordance with the instructions of the Controller, which instructions shall be:
* documented in writing; and
* given by officers of the Controller or employees of the Controller holding a senior or managerial role;
  + - 1. in accordance with the nature and purpose of the processing set out in Clause 1.1 above;
      2. the minimum volume of Data which is strictly necessary for the performance of the Archive;
    1. it shall comply at all times with Data Protection Legislation and shall ensure that any Processing of Data by the Processor shall be carried out in full compliance with Data Protection Legislation;
    2. it shall inform the Controller as soon as practicable if, in its opinion, it receives an instruction from the Controller which infringes Data Protection Legislation;
    3. it shall disclose Data only to those members of its Personnel to whom such disclosure is necessary for the exercise of its rights, and performance of its obligations, under this Appendix 3 and the Deposit Licence, and shall procure that such persons are made aware of, and agree in writing to observe the obligations of confidentiality set out this Agreement and of security in Clause 4 (*security*) of this Appendix 3;
    4. it is generally authorised by the Controller to sub-contract processing of Data provided only that the Processor shall (i) ensure that the sub-processor is bound by data protection obligations that are substantially the same as, and in any event no less onerous than those contained in this Appendix 3; (ii) remain fully liable to Controller for the performance of that sub-processor’s obligations; and (iii) provide details of all such sub-processors to the Controller upon written request. The Processor shall notify the Controller of any intended changes concerning the addition or replacement of sub-processors, thereby giving the Controller the opportunity to object to such changes. The Controller agrees that the Processor may continue to use those Sub-processors already engaged by the Processor as at the date of the Deposit Licence and as set out in Schedule 1
    5. it shall not sell, transfer, disclose or otherwise allow access to any Data to any party other than its Personnel or End Users, save where the prior written consent of the Controller has been obtained;
    6. it shall not copy or maintain any Data on any other systems, application or other medium other than as required for the performance of the Archive;
    7. it shall not transfer any Data to an End User outside the European Economic Area unless that End User is located in a country that the European Commission has deemed to offer an adequate level of data protection on the basis of Article 45 Regulation (EU) 2016/649. The Processor shall check the prevailing adequacy decisions approved by the European Commission at the time the End User has applied for the Data. If an End User is based in a country outside of the European Economic Area in respect of which the European Commission has not adopted an adequacy decision at the time the End User has applied for the Data, the Processor shall not transfer the Data to the End User and shall refer the request to the Controller. The Controller shall be solely responsible for determining whether the Data can be sent to an End User in a country without an adequacy decision and, where the Controller has decided to do so, for entering into the appropriate contractual arrangements with that End User;
    8. it shall take all steps reasonably required to ensure that the Data is accurately recorded and kept up to date;
    9. it shall not process the Data in such a way as to cause the Controller to breach any of its obligations under Data Protection Legislation; and
    10. it shall, on reasonable notice, make available to the Controller all information necessary to demonstrate its compliance with the obligations set out in Data Protection Legislation and shall, on reasonable notice, allow the Controller access to the Processor’s premises, Personnel and relevant records to the extent reasonably necessary to enable it to verify the Processor’s compliance with Data Protection Legislation and its obligations under this Appendix 3.

1. **Security**

The Processor shall implement appropriate security measures to prevent accidental or unauthorised, loss, destruction, damage, alteration, disclosure or unlawful or unauthorised access to any Data in the custody of the Processor, and the Processor shall ensure that its Personnel are aware of and comply with those measures.

1. **Data Breach**
   1. **Notify Breach**: The Processor shall without undue delay after becoming aware of it ,notify the Controller of any unauthorised access to, or unauthorised use, alteration, disclosure, accidental loss or destruction of, any Data in the custody of the Processor (each a “**data** **breach**”).
   2. **Obligations in Case of Breach**: In the event of any data breach, the Processor shall:
      1. take action to investigate the cause of the data breach;
      2. give such assistance to the Controller, as it might reasonably require, to comply with its obligations under Articles 32 to 36 of the GDPR.

1. **Data Subject Requests and Complaints**
   1. **Notification**: The Processor shall without undue delay notify the Controller of any request from a data subject to exercise any of his or her rights under Data Protection Legislation or any complaint from any data subject.
   2. **No Accession**: The Processor shall not accede to any such request or deal with any complaint except on the written instructions of the Controller.
   3. **Assistance**: The Processor shall, on request by the Controller and at the Controller’s expense, and taking into account the nature of the processing, assist the Controller by appropriate technical and organisational measures, for the fulfilment of the Controller’s obligation to respond to requests for exercising the data subject’s rights under Data Protection Legislation.

1. **Destruction of Data**

The Depositor acknowledges that the purpose of the Archive is to make Data permanently available to researchers for research purposes. Upon termination of the Deposit Licence, the Processor shall, upon the request of the Controller, immediately destroy or return all Data and shall certify such destruction in writing to the Controller on request from time to time.

1. **Warranties and Representations**
   1. The Controller represents and warrants to the Processor, on a continuing basis for the duration of the Deposit Licence that:
      1. all consents, if required, for the processing of all the Data by the Processor in the manner contemplated by this Appendix 3 have been validly obtained and are in full force and effect; and
      2. the Controller has complied with all of its obligations (however arising) in respect of all the Data.
2. **Liability** 
   1. Notwithstanding anything to the contrary in this Appendix 3, the parties agree that each party shall be liable to the other for (i) any compensation paid to a Data Subject as a result and to the extent of a claim under Article 82 GDPR or other government agency having jurisdiction over the provision of the services and/or (ii) any administrative fines or penalties imposed by the competent supervisory authorities under Article 83 GDPR or other government agency having jurisdiction over the provision of the services against a party, to the extent that such compensation, fine, penalty or portion thereof is allocable or attributable to such party’s infringement or violation of its responsibilities and obligations under GDPR or other applicable Data Protection Legislation.
   2. The Controller acknowledges that the Processor is reliant on the Controller for direction as to the extent to which the Processor is entitled to use and process the Personal Data. Consequently, the Processor will not be liable for any claim brought by a Data Subject arising from any action or omission by the Processor, to the extent that such action or omission resulted directly from the Controller's instructions.
   3. The Controller will indemnify the Processor against all third-party claims against the Processor with regard to the Data or the deposit thereof in the Archive, its format and/or contents (including but not limited to any claim that the Data infringes Data Protection Legislation or, infringes the intellectual property rights of a third party) or its availability for further research.

**SCHEDULE 1**

|  |  |
| --- | --- |
| Record of Processing | |
| Name and contact details of the Controller and where applicable the name and contact details of the Data Protection Officer |  |
| The Subject Matter of the Processing |  |
| The Duration of the Processing |  |
| The Purpose of the Processing | The Controller wishes to deposit the Data in the Processor’s Archive to be made available to researchers in the Designated Community (“**End Users**”) for the purposes of conducting research (the “Purpose”). To achieve this, the Processor is permitted to process the Data in the following ways;   * Storage of data * Transfer of data to End Users * In relation to access from countries outside of the EEA, End Users must follow the process in accordance with clause 3 (h) of the data processing agreement. * Erasure of data, upon controllers request only * Destruction of deposited datasets, upon controllers request only |
| The Types of Personal Data Processed |  |
| The Categories of Data Subjects |  |
| Technical and Organizational Security Measures |  |
| Transfers to third parties (to be completed by the Processor if applicable) | Will there be any transfer to an IT service provider, cloud services, subcontractors? |
| Transfers to Third Countries (to be completed by the Processor if applicable) | Where applicable any transfers to third country or international organization, including the identification of that third country or international organization and the relevant condition for secure transfer:  (adequate jurisdiction, Standard Contractual Clauses, Binding Corporate Rules, Authorization from Data Commission) |
| The Retention Periods |  |
| Sub-Processors |  |