Data Processing Agreement

in connection with a

research project

With effect from [Insert date], the following agreement on the processing of personal data has been entered into:

Aalborg University ('the Data Controller')

CVR No.: 29102384

At the Department of…

PO box 159

DK-9100 Aalborg

Denmark

and

Name and corporate form (A/S, ApS etc.) of company/institution ('the Data Processor')

CVR No. XXXXXXXX

Address

Postcode and town/city

Country

(Hereinafter also referred to collectively as 'the Parties' and individually as 'the Party')

1. Definitions
   1. The 'Data Processing Agreement' means the present data processing agreement including any appendices.
   2. The 'General Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) with subsequent amendments.
   3. The 'Danish Data Protection Act' means the Danish supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and the free movement of such data.
   4. The 'Data Protection Rules' means the General Data Protection Regulation, the Danish Data Protection Act and any executive orders issued in accordance with the General Data Protection Regulation and the Danish Data Protection Act, case law, as well as decisions made by the Danish Data Protection Agency.
   5. 'Sub-processor(s)' are the (sub-)processor(s) to whom the Data Processor delegates one or more of the tasks or derived tasks which the Data Controller has asked the Data Processor to perform.
   6. A 'Third Country' means a country or a state that is not a member of the European Union (EU), and which has not acceded to the agreement with the EU concerning the European Economic Area (the so-called EEA countries).
   7. 'General Agreement' means any cooperation agreement concluded by the Parties, and which regulates the Parties' cooperation, including e.g. conditions regarding publication, governing law etc.

Unless otherwise stated below, the definitions which follow from the General Agreement also apply to the Data Processing Agreement. Furthermore, the terms used (for example processing, personal data etc.) in the Data Processing Agreement have the same meaning ascribed to them in the Data Protection Rules.

1. PURPOSE OF THE AGREEMENT
   1. The Data Processing Agreement concerns the Parties' obligations under the Data Protection Rules in connection with the conduct of the research project '[Insert project title]' ('the Project').
   2. The objective of the Project is to [insert brief description of the project’s objective], and for this purpose, the Data Processor must, on behalf of the Data Controller, among other things [insert brief description of the task(s) to be undertaken by the Data Processor]
2. THE DATA CONTROLLER'S OBLIGATIONS
   1. The Data Controller is obliged to instruct the Data Processor on the handling of Personal Data. The instructions are set out in clause 3.3 of the Data Processing Agreement. Any changes to the instructions must be agreed in writing.
   2. The Data Controller is obliged to inform the Data Processor how the personal data must be handled, including whether the Personal Data must be deleted or returned once the Processor has completed the agreed task. This is described in detail in clause 11 of the Data Processing Agreement.
   3. The Data Controller's instructions to the Data Processor:

This form must be filled in by the AAU researcher responsible for the project – as specifically as possible and using layman's language.

|  |  |
| --- | --- |
| For what purpose do the data need to be processed? | To be completed upon conclusion of agreement |
| Which type(s) of processing is the Data Processor to perform?  *(Collection, storage, analysis, transcribing etc.)* | To be completed upon conclusion of agreement |
| The Data Processor will be processing data about how many data subjects?  *(It is sufficient to state 'up to' or 'approximate number').* | To be completed upon conclusion of agreement |
| What type of data is to be processed?  *(Name, age, sex, nationality, health data, significant social problems etc.)* | To be completed upon conclusion of agreement |
| What specific type of data is to be processed:   * General personal data   *(Name, address, age, self-published data etc.)*   * Confidential personal data   *(Civil registration number, grades, significant social problems etc.)*   * Sensitive personal data   *(Health data, race, political opinions etc.)* | Tick upon conclusion of agreement  General personal data  Confidential personal data  Sensitive personal data |
| Which categories of data subjects are to be processed?  *(Adults or children (aged 0-17 years). Specify if the data subjects are affected by special circumstances, such as physical, mental or cognitive disorders, language difficulties, abuse etc.)* | To be completed upon conclusion of agreement |
| Who will be processing the data for the Data Processor?  *(For all individuals, please state full name as well as position or relationship with the Data Processor)* | To be completed upon conclusion of agreement |
| Specify the time period during which the Data Processor will be processing the data.  *(Start date and end date)* | To be completed upon conclusion of agreement |
| Specify whether the Data Processor is to delete or return data after completion of the data processing task. | It is recommended that this be filled in upon conclusion of the agreement; alternatively the Data Processor must be informed at least four weeks before the end of the data processing period. Cf. section 11. |

1. DATA PROCESSOR'S OBLIGATIONS
   1. The Data Processor acts solely on behalf of and on instructions from the Data Controller in connection with the performance of the agreed Project tasks. The Data Controller thus decides the purposes for which the processing of personal data may take place.
   2. The Data Processor undertakes to comply with the Data Protection Rules.
      * Among other things, the Data Processor must (list not exhaustive):

* Process personal data in accordance with the general principles laid down in Art. 5 of the General Data Protection Regulation.
* Assist the Data Controller in complying with and protecting the rights of the data subject(s).
* Prepare a record of processing activities, cf. Art 28(2) of the General Data Protection Regulation.
  1. Upon request, the Data Processor must provide the Data Controller with sufficient information to allow the Data Controller to ensure that appropriate technical and organisational security measures have been implemented. Among other things, this includes information about where the personal data are located, as well as physical access to the personal data, if so required by the Data Controller.
  2. The Data Processor must ensure that only persons who have a need for such information for the purpose of fulfilling the purpose of the agreement and instructions have access to the personal data.
  3. The Data Processor must not, except when instructed by the Data Controller, disclose data which come into the possession of the Data Processor in connection with the performance of the Data Processor’s task. Moreover, the Data Processor must not use or process data from the data processing task for their own purposes or for purposes other than those stipulated by the Data Controller. If, in contravention of this agreement, the Data Processor processes data for their own purposes or for purposes other than the purposes stipulated by the Data Controller, an independent legal basis must exist, and the Data Processor will have the independent status of Data Controller for such processing.
  4. If the Data Controller finds that an impact assessment must be carried out, cf. Art. 35 of the General Data Protection Regulation, the Data Processor must contribute to carrying out this impact assessment, if so requested by the Data Controller.
  5. The Data Processor must implement appropriate technical and organisational security measures, cf. Art. 32 of the General Data Protection Regulation, to protect the personal data against accidental or unlawful destruction, loss or deterioration, and against any unauthorised disclosure, abuse or processing of the personal data in violation of the Data Protection Rules. As a minimum, the Data Processor is obliged to comply with the following security measures:
     + Electronic registration (logging) of all use of personal data. As a minimum, the registration must contain information about time and user access.
     + Systems, including both software and hardware, used in connection with data processing, must be safe to use and updated.
     + Personal data which must be stored and/or transferred electronically must be encrypted.
     + Personal data must be password-protected.
     + Data storage media and prints must be stored in a safe manner, so that they are not accessible to unauthorised persons.
     + The Data Processor must ensure that only staff members with a work-related purpose have access to the personal data.
     + It must be ensured that the Data Processor's staff members are trained properly and provided with adequate instructions and guidelines on the processing of personal data. The Data Processor is obliged to ensure that the staff members involved in processing personal data are familiar with the security requirements.
     + In connection with the repair and servicing of media containing personal data, and in connection with the discarding of such media, measures must be taken to protect the personal data.
     + The above security regulations also apply to the extent that the Data Processor makes use of home or remote workstations.
  6. If the Data Processor is to store personal data for a shorter or longer period of time, the Data Processor is obliged to state where the data are stored. The Data Processor must, within reasonable time, inform the Data Controller of any change of storage location.

This form must be filled in by the Data Processor.

|  |  |
| --- | --- |
|  | Data centre location  (physical address) |
| Main storage location | To be completed upon conclusion of agreement |
| Back-up storage location | To be completed upon conclusion of agreement |
| Storage by sub-processor, if relevant | To be completed upon conclusion of agreement |

1. CONFIDENTIALITY AND SECRECY
   1. In connection with the processing of personal data, the Data Processor's staff members, business partners, external consultants, temporary staff etc. are subject to the duty of secrecy and confidentiality applying to staff members in the public administration. Reference is made to section 27 of the Danish Public Administration Act and sections 152-152(f) of the Danish Criminal Code
   2. The Data Processor and any Sub-processors are obliged to inform their own staff members, business partners, external consultants, temporary staff etc. about the duty of secrecy.

* 1. The Data Processor must keep the personal data confidential, and is thus only entitled to use the personal data as part of the fulfilment of the Data Processor's obligations under the Data Processing Agreement.
  2. The Data Processor's obligations to maintain secrecy and confidentiality also apply after termination of the agreement.

1. SUB-PROCESSORS
   1. Any transfer of the personal data on the part of the Data Processor to one or more Sub-processors is subject to prior written consent by the Data Controller.
   2. If written consent has been obtained in accordance with the above, it is the responsibility of the Data Processor to ensure that the Sub-processors comply with the Data Processing Agreement, as the agreement also applies to Sub-processors. The Data Processor must have concluded data processing agreements with any Sub-processors on terms similar to the terms set out in the present Data Processing Agreement, and must generally ensure compliance with Art. 28(2) and (4) of the General Data Protection Regulation.
   3. At the request of the Data Controller, the Data Processor must supply a copy of the sub-processor agreement(s).
2. PROCESSING ABROAD
   1. The Data Processor must not process the personal data outside Denmark without the prior written consent of the Data Controller.
   2. If written consent has been obtained from the Data Controller in accordance with the above, the Data Processor must ensure that, if the Data Processor or any Sub-processors, cf. clause 6 above, perform data processing in another country, the Data Processor and any Sub-processors must, in addition to the Data Protection Rules, comply with all applicable rules in the country in question.
   3. If the Data Processor, subject to prior written consent from the Data Controller, performs data processing in a Third Country, the Data Processor must ensure compliance with the rules set out in the General Data Protection Regulation, Chapter V (Art. 44-50).
   4. Notwithstanding clauses 7.1-7.3 above, according to Art. 28 of the General Data Protection Regulation, the Data Processor may transfer the personal data to a Third Country if required under EU law or other national legislation. The Data Processor is obliged to inform the Data Controller's technical and administrative contact, cf. section 12, in reasonable time prior to the data transfer.
3. INSPECTION, SUPERVISION AND CONTROL
   1. In the event that the Data Controller, including an external consultant/representative and/or relevant public authorities, in particular the Danish Data Protection Agency, wants to carry out a physical inspection of the above-mentioned measures, the Data Processor is obliged – subject to a reasonable notice – to make themselves available for such inspection.

Please select one of the two following terms:

* 1. Supervision and control can be carried out through the Data Controller requesting that the Data Processor obtain an audit declaration prepared by an independent expert on the basis of a recognised standard, and submit the audit declaration to the Data Controller's technical and administrative contact, cf. section 12. The Data Processor must submit the audit declaration in connection with the conclusion of the Data Processing Agreement, and subsequently, the Data Controller may request that the Data Processor submit the audit declaration every 12 months, or every six months, as deemed necessary by the Data Controller, e.g. due to the particular sensitivity of the data.

Or

* 1. Supervision and control can be carried out by the Data Controller requesting that the Data Processor fill in and submit the checklist enclosed in Appendix 1 to the Data Controller's technical and administrative contact, cf. section 12. The Data Processor must fill in the checklist in connection with the conclusion of the Data Processing Agreement, and subsequently, the Data Controller may request that the Data Processor fill in the checklist every 12 months, or every six months, as deemed necessary by the Data Controller, e.g. due to the particular sensitivity of the data. Notwithstanding the above, in case of breaches of confidentiality or similar deviations from the Data Processing Agreement, the Data Processor is obliged to fill in the checklist without undue delay, if so requested by the Data Controller.

1. DUTY TO NOTIFY
   1. Without undue delay, the Data Processor is obliged to notify the Data Controller of any deviations from the requirements set out in the Data Processing Agreement, e.g. of:
      * any deviations from the instructions given
      * any suspected breaches of confidentiality
      * any suspected instances of abuse, loss or deterioration of data
      * any accidental or unauthorised disclosure of or access to the personal data processed under this Data Processing Agreement
   2. A notification under clause 9.1 must be addressed to the Data Controller's technical and administrative contact, cf. clause 12.
   3. In the event of serious data protection breaches or similar serious inadvertent incidents, the Data Processor must immediately take appropriate steps to stop the breach/incident, and, if relevant, take measures to mitigate the potential adverse effects. If the data protection breach or the inadvertent incident is likely to entail a high risk to the rights and freedoms of the data subjects, the Data Processor must inform the data subjects of the breach/incident in accordance with Art. 34(1) and (2) of the General Data Protection Regulation.
   4. In case of serious data protection breaches or similar serious inadvertent incidents, the Data Processor must, at the request of the Data Controller, without undue delay, prepare a written statement in accordance with Art. 33(3) of the General Data Protection Regulation.

1. LIABILITY TO PAY COMPENSATION
   1. Liability to pay compensation to data subjects

In the event of claims for compensation by data subjects for material or non-material damage, Art. 82 of the General Data Protection Regulation applies.

* 1. The Parties' mutual liability to pay compensation

The Parties are liable to pay damages under the general rules of Danish law. Except in the case of substantial material breach of the Data Processing Agreement, the Parties will, however, not be held liable for any indirect losses, consequential losses, operational losses, loss of earnings or other financial consequential loss. As an example, though not exhaustive, non-compliance with instructions, cf. section 3, constitutes a substantial material breach.

Except in the case of intentional and grossly negligent acts or omissions, the Parties' mutual liability to pay compensation is, in every respect, limited to a total amount of DKK 500,000 for each party.

Any recourse claims between the Parties arising out of claims for compensation by data subjects are regulated by Art. 82 of the General Data Protection Regulation.

This term can replace 10.2 if the Data Processor is a sub-supplier to the project.

* 1. The Data Processor undertakes to indemnify and defend the Data Controller against all claims and legal claims and any liability, loss, fines, costs and expenses associated therewith as a result of the Data Processor's violations of the Data Protection Rules and the Data Processing Agreement committed by the Data Processor, the Data Processor's staff members, Sub-processors or representatives in connection with the processing of the personal data, the execution of the agreement or any other agreements made by the parties.

1. HANDLING OF PERSONAL DATA AFTER TERMINATION OF DATA PROCESSING AGREEMENT
   1. The Data Processor undertakes to ensure that the personal data be returned or deleted when the processing activities described in the instructions in clause 3.3 of the Data Processing Agreement terminate. The Data Processor is entitled, however, to store personal data, if required to do so pursuant to EU law or national law, cf. Art. 28(3)(g) of the General Data Protection Regulation.
   2. The Data Controller is obliged to specify whether the Data Processor is to delete or return the personal data, and the Data Controller is obliged to provide this information in writing to the Data Processor's contact, cf. section 12, at least four weeks before the time at which the Data Processor's handling of the personal data is due to cease, cf. the instructions in clause 3.3.
   3. If the personal data are to be returned, the Data Controller must, no later than two weeks before the date of return, designate a method therefor. In the event that the personal data are to be deleted, the Data Processor must describe the intended method of deletion no later than two weeks before the data processing is due to cease. If the Data Controller finds that the method is not sufficiently effective, this must be reported to the Data Processor no later than two weeks upon receipt of the description, and the Data Controller must inform the Data Processor of a method which is considered to be sufficiently effective.
   4. Upon the request of the Data Controller, the Data Processor must submit a written declaration stating that the personal data have been deleted as agreed, including a description of the method used.
   5. If the Data Controller does not stipulate whether the personal data must be deleted or returned, the Data Processor is entitled, at the time at which processing must cease, cf. clause 3.3 of the instructions, to send a description of how the Data Processor intends to delete the personal data to the Data Controller's technical and administrative contact, cf. clause 12, and if the Data Controller fails to respond within four weeks, the Data Processor is entitled and obliged to delete the personal data in accordance with the described manner.
2. CONTACTS
   1. The following persons are the Parties' contacts.

|  |  |
| --- | --- |
| **Data Controller** | |
| **Technical responsibility** | **Administrative responsibility** |
| Name: Insert project manager's name  Tel.: Insert project manager's tel. no.  Email: Insert project manager's email | Name: Insert name of the department's key staff member  Tel.: Insert key staff member's tel. no.  Email: Insert the department's shared mailbox. |

|  |  |
| --- | --- |
| **Data Processor** | |
| **Technical responsibility** | **Administrative responsibility** |
| Name: Insert name  Tel.: Insert tel. no.  Email: Insert email | Name: Insert name  Tel.: Insert tel. no.  Email: Insert email. |

1. COMMENCEMENT AND TERM
   1. The date of commencement of the Data Processing Agreement is the date on which it is signed by both Parties.
   2. Subject to one month's written notice to the Data Controller, the Data Processor is entitled to terminate the Data Processing Agreement, provided however, that the documentation described above regarding the handling of personal data after termination of the Data Processing Agreement has been received and accepted by the Data Controller.

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Insert name and title of authorised signatory] |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Insert name and title of authorised signatory] |

Signatures

**Data Processor**

Place/date

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name, Project Manager |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name, Head of Department |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Nina Schjoldager, Contract Manager |

**Data Controller**

Place/date