

# Data sharing agreement

This Agreement is dated 20 June 2024 (the “Effective Date”)

## PARTIES

- 1) **HERIOT-WATT UNIVERSITY**, Riccarton, Edinburgh, EH14 4AS, United Kingdom, a charity registered in Scotland, No SC000278 (“**HWU**”)
- 2) **THE UNIVERSITY OF DUNDEE**, established by Royal Charter dated 20 July 1967 and a registered charity (charity number SC015096) and having its principal office at 149 Nethergate, Dundee, DD1 4HN, United Kingdom (“**the UoD**”)

Each referred to as a Party and collectively, **the Parties**.

## BACKGROUND

- A. The following Agreement between **HWU** and **the UoD** reflects the arrangements that they have agreed to put in place to facilitate the sharing of Personal Data collected and/or created through *Accelerating Impact of Community HealthCare In Tayside (AICCET)*. AICCET is funded by the Engineering and Physical Sciences Research Council (“**EPSRC**”)- grant reference EP/Y023978/1 (“**the Project**”).
- B. Personal Data are being collected and/or created by **the Parties** for the purposes of **the Project** i.e. to support activities and/or events delivered via **the Project**, which may include:
  - a. Event and workshop, planning, delivery and post event evaluations;
  - b. Dissemination of analysis and/or results between **the Parties**;
  - c. Analysis of planned outcomes/project deliverables between **the Parties** and/or by each **Party** for the internal review;
  - d. Dissemination of analysis and/or results with the **EPSRC** i.e. the funder and all other information as necessary to meet the conditions of grant;
  - e. Anonymisation of Personal Data to allow for the wider dissemination of outcomes/deliverables from **the Project**; and
  - f. Academic research
- C. **The Parties** may share Personal Data with third party Processors, as necessary for the delivery of **the Project**. All Personal Data sharing between a **Party** and a third party Processor shall be under contract, following the requirements laid down in UK-GDPR, Article 28. This may include the sharing of Personal Data between **the Parties** when one Party is a Controller and the recipient Party is providing services to the other Party as a Processor.
- D. This is a free-standing Agreement that does not incorporate terms established by **the Parties** under separate arrangements.

## AGREED TERMS

### 1. INTERPRETATION

1.1. The following definitions and rules of interpretation apply in this Agreement.

1.2. Definitions:

**Agreed Purpose:** has the meaning given to it in Clause 2 of this Agreement.

**Agreement:** this Agreement, which is a free-standing document that does not incorporate any other terms established by

**the Parties** under separate arrangements.

**Data Protection Legislation:** The General Data Protection Regulation as enacted into United Kingdom law (UK-GDPR) as revised and superseded from time to time; (ii) Directive 2002/58/EC as updated by Directive 2009/136/EC and (iii) the Data Protection Act 2018; and (iv) any other laws and regulations relating to the processing of Personal Data and privacy which apply to **the Parties** and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority.

**Personal Data:** the Personal Data to be collected and/or created by **the Parties** and then shared between **the Parties** as per this Agreement.

**Data Subject Rights:** the exercise by a data subject of his or her rights under Articles 15 through 22 of the UK-GDPR, to the extent that those apply.

**Supervisory Authority:** the relevant supervisory authority in the territories where **the Parties** to this Agreement are established.

- 1.3. The terms: **Controller, Joint Controllers, Processor, Data Subject, Personal Data, Personal Data Breach, Special Categories of Personal Data, Processing, Supervisory Authority** and “**appropriate technical and organisational measures**” shall have the meanings given to them in the Data Protection Legislation.
- 1.4. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.5. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.6. Unless the context otherwise, requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.7. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9. Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10. In the case of any ambiguity between any provision contained in the body of this Agreement and any provision contained in the Schedules or appendices, the provision in the body of this Agreement shall take precedence.

## 2. **AGREED PURPOSE**

- 2.1. This Agreement sets out the framework for the sharing of Personal Data collected and/or created through **the Project** when one Party discloses Personal Data to the other – unless otherwise established, each **Party** being a Controller in its own right, as defined by **Data Protection Legislation**. It defines the principles and procedures that **the Parties** shall adhere to and the responsibilities **the Parties** owe to each other.
- 2.2. **The Parties** consider this data sharing initiative necessary to allow **HWU** to meet its condition of grant with the EPSRC for **the Project**, and for each to participate in **the Project**, undertaking the activities summarised in **BACKGROUND**, point **B**, above, and to undertake academic research work as per the Statutes and Ordinances that apply to each Party. Without the ability to collect and share the Personal Data **the Parties** could not achieve their shared and their

own research objectives, which is the foundation for this relationship that exists between **the Parties**. The aim of the data sharing initiative is to provide a framework for **the Parties** to share Personal Data without undue privacy risk to individuals or legislative and/or regulatory risk to **the Parties**.

2.3. **The Parties** agree to only process Shared Personal Data, as described in Clause 4.1 of this Agreement, for the following purposes:

2.3.1. The furtherance of **the Project** and the delivery of its planned outcomes.

2.4. **The Parties** shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause 2 (**Agreed Purpose**).

2.5. The Personal Data provided by (or on behalf of) a Party to the other must not be irrelevant or excessive with regard to the Agreed Purpose.

2.6. Each Party shall appoint a single point of contact ("**SPoC**") who will work together to reach an Agreement with regards to any issues arising from the data collection and sharing. The points of contact for each of **the Parties** are:

2.6.1. Marc Desmulliez, Principal Investigator, Heriot-Watt University, [m.desmulliez@hw.ac.uk](mailto:m.desmulliez@hw.ac.uk)

2.6.2. Michael MacDonald, Co-Investigator, University of Dundee, [m.p.macdonald@dundee.ac.uk](mailto:m.p.macdonald@dundee.ac.uk)

### 3. **COMPLIANCE WITH NATIONAL DATA PROTECTION LEGISLATION**

3.1. Each Party must ensure compliance with applicable **Data Protection Legislation** during the Term of this Agreement, for the purposes of fulfilling their obligations under this Agreement.

### 4. **SHARED PERSONAL DATA COLLECTION**

4.1. The types of Personal Data that will be created and/or collected and shared between **the Parties** during the Term of this Agreement, are those, which are reasonably envisioned, as necessary to meet **the Project's** conditions of grant. The data elements which are known to be required to be shared are as follows, but may not be exhaustive:

#### **Event participant feedback**

Age bracket

Postcode

Gender

Sexuality

Ethnicity

Disability

Organisation affiliation

Level of education

Yes/No responses to questions

Ranked answers to questions (i.e rank satisfaction between 1 and 5)

Open text responses to questions

#### **Researcher feedback**

Institutional affiliation

Discipline

Gender

Sexuality

Ethnicity

Disability

Yes/No responses to questions

Ranked answers to questions

Open text responses to questions

4.2. Each **Party** will provide reasonable assistance, information, and co-operation where requested by the other **Party** in respect of data protection matters, including assisting the other **Party** in complying with its obligations as a Controller. Such assistance may include providing information to Data Subjects on the other Party's behalf as required by the Data Protection Legislation and communicating the other Party's privacy notices and/or policies to the relevant Data Subjects.

#### 5. **LAWFUL, FAIR AND TRANSPARENT PROCESSING**

5.1. When acting as a Controller, each **Party** will identify and document the lawful bases for processing the Personal Data, for which they are responsible.

5.2. Each **Party**, in respect of collection of the Personal Data, will ensure that it provides clear and sufficient information to the relevant Data Subjects in accordance with the Data Protection Legislation, and where use of Personal Data is for academic research purposes, any agreed research ethical standards, as to the purposes for which a **Party** will process their Personal Data.

#### 6. **DATA QUALITY**

6.1. Each **Party** shall take reasonable efforts to ensure that before transfer, Shared Personal Data are accurate and complete and that the transferring Party will provide the receiving Party with a named person(s) to whom questions about data quality can be put. Where either Party becomes aware that the Personal Data provided under this Agreement is no longer accurate or up-to-date, it shall promptly notify the other Party of such inaccuracy and provide the relevant accurate or updated Personal Data to the other Party.

6.2. Where required **the Parties** will develop a reliable means of converting Shared Personal Data to ensure compatibility with each Party's respective data assets and/or record keeping requirements.

#### 7. **DATA SUBJECTS RIGHTS**

7.1. Each **Party**, where a Controller, as custodian of the Personal Data, will service and provide Data Subjects with their rights as provided for under Data Protection Legislation.

7.2. Each Party is responsible for maintaining a record in accordance with Data Protection Legislation of individual requests from Data Subjects, including the decisions made and any information that was provided.

#### 8. **DATA RETENTION AND DELETION**

8.1. Each **Party** shall continue to retain Personal Data in accordance with the requirements agreed, when ethical approval for any academic research was given. Both **Parties** will also retain Personal Data for the periods necessary to meet **the Project's** conditions of grant. In no event shall a Party retain or otherwise process Personal Data provided by the other Party for longer than is necessary to carry out the Agreed Purpose.

8.2. Personal Data processed for the purposes of academic research shall be retained for the period communicated to the research participants; thereafter it may be anonymised or pseudonymised (if possible).

8.3. Each Party shall ensure that Personal Data provided by the other Party are either returned to the disclosing Party or securely deleted or destroyed in accordance with **Data Protection Legislation**, as the disclosing Party may instruct, in the following circumstances:

8.3.1. on termination or expiry of this Agreement (unless there is an obligation to Process such Personal Data under applicable laws); or

8.3.2. once Processing of the Personal Data is no longer necessary for the Agreed Purposes.

#### 9. **TRANSFERS**

9.1. For the purposes of this clause, transfers of Personal Data shall mean any sharing of Personal Data by a **Party** with a third party (other than **the Parties to this Agreement**) where the transfer takes place where the transferring Party and the receiving Party are both Controllers, and shall include, but is not limited to, the following:

9.1.1. subcontracting the processing of Shared Personal Data.

9.2. Notably, **the Parties** will share Personal Data with the Microsoft Corporation, who are a third party contractor

supplying email and corporate cloud data hosting services.

- 9.3. If a **Party** appoints a third party processor to process the Shared Personal Data it shall comply with Article 28 and Article 30 of the UK-GDPR and shall remain liable for the acts and/or omissions of the processor, as provided for in **Data Protection Legislation**.

## 10. SECURITY AND TRAINING

- 10.1. **The Parties** shall only provide the Shared Personal Data to each other by using secure methods as agreed and set out in Schedule 1 of this Agreement.

- 10.2. **The Parties** for the purposes of this Agreement undertake to have in place throughout the Term appropriate technical and organisational security measures to:

10.2.1. prevent:

- 10.2.1.1. unauthorised or unlawful processing of the Shared Personal Data; and
- 10.2.1.2. the accidental loss or destruction of, or damage to, the Shared Personal Data

10.2.2. ensure a level of security appropriate to:

- 10.2.2.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- 10.2.2.2. the nature of the Shared Personal Data to be protected.

- 10.3. The level of technical and organisational measures agreed by **the Parties** as appropriate at the Effective Date having regard to the state of technological development and the cost of implementing such measures is set out in *Schedule 1*. **The Parties** shall keep such security measures under review and shall carry out such updates as they agree are appropriate throughout the Term.

- 10.4. It is the responsibility of each Party to ensure that its staff members/officers are appropriately trained to handle and process the Shared Personal Data in accordance with the terms of this Agreement together with any other applicable **Data Protection Legislation** and guidance and are subject to obligations of confidentiality relating to the processing of Personal Data.

- 10.5. The level, content and regularity of training referred to Clause 10.4 shall be proportionate to the staff members' officers' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.

## 11. PERSONAL DATA BREACHES AND REPORTING PROCEDURES

11.1. **The Parties** shall each:

- 11.1.1. comply with its obligation to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) Data Subjects and shall, unless prohibited for good reason, inform the other Party of any Personal Data Breach irrespective of whether there is a requirement to notify any Supervisory Authority or Data Subject(s). A Personal Data breach must be reported at the earliest opportunity, either to the SPOC and/or the Heriot-Watt University Data Protection Officer: email [dataprotection@hw.ac.uk](mailto:dataprotection@hw.ac.uk);
- 11.1.2. provide reasonable assistance as is necessary to the other Party to facilitate the handling of any Personal Data breach in an expeditious and compliant manner; and
- 11.1.3. take reasonable and prompt steps to mitigate the impact of the Personal Data breach.

## 12. REVIEW OF AGREEMENT

- 12.1. **The Parties** may review the effectiveness of this data sharing initiative 12 months after the Effective Date of the Agreement, having consideration to the aims and purposes set out in herein. **The Parties** shall continue, or amend the Agreement, depending on the outcome of this review.

## 13. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE SUPERVISORY AUTHORITY

- 13.1. In the event of a dispute or claim brought by a Data Subject or the Supervisory Authority concerning the processing of Shared Personal Data against a **Party**, **the Parties** will inform each other about any such disputes or claims and

will cooperate with a view to settling them amicably in a timely fashion.

13.2. Each **Party** shall abide by a decision of a competent court of the country of establishment or of the Supervisory Authority.

#### 14. **WARRANTIES**

14.1. Each Party undertakes that it will:

- 14.1.1. Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its Personal Data processing operations.
- 14.1.2. Make available on request to the Data Subjects who are third Party beneficiaries a copy of this Agreement, unless the clause contains confidential information.
- 14.1.3. Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Supervisory Authority in relation to the Shared Personal Data.
- 14.1.4. Where applicable, maintain registration with all relevant Supervisory Authorities to process all Shared Personal Data for the Agreed Purpose.
- 14.1.5. Take all appropriate steps to ensure compliance with the security measures set out in Schedule 1 of this Agreement.

14.2. Each Party warrants that it is entitled to provide the Shared Personal Data to the other Party and undertakes that it will take reasonable steps to ensure that the Shared Personal Data are accurate.

14.3. Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

#### 15. **ALLOCATION OF COST**

15.1. Each Party shall perform its obligations under this Agreement at its own cost.

#### 16. **LIABILITY**

16.1. In relation to potential liabilities which may arise from misuse or breach of this Agreement by the receiving Party's staff, agents or contractors in respect of the use of Personal Data provided to it by the other Party, each Party will be responsible for the liability, or its share of the liability, arising from its own acts or negligence, and will not be responsible for the other Party's liabilities. Any limits to the liabilities and responsibilities set out in this Agreement or any related agreements are without prejudice to each Party's own liabilities as Data Controller under the Data Protection Laws.

16.2. No Party excludes or limits liability to the other Party for:

- 16.2.1. fraud or fraudulent misrepresentation;
- 16.2.2. death or personal injury caused by negligence; or
- 16.2.3. any matter for which it would be unlawful for **the Parties** to exclude liability.

16.3. Subject to **Clause** 16.2 of this Agreement, no Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- 16.3.1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- 16.3.2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- 16.3.3. any loss or liability (whether direct or indirect) under or in relation to any other contract.

16.4. Clause 16.2 of this Agreement shall not prevent claims, for:

- 16.4.1. direct financial loss that are not excluded under any of the categories set out in Clause 16.2 of this

Agreement; or  
16.4.2. tangible property or physical damage.

#### 17. **THIRD PARTY RIGHTS**

17.1. No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

#### 18. **VARIATION**

18.1. No variation of this Agreement shall be effective unless it is in writing and signed by **the Parties** (or their authorised representatives).

#### 19. **WAIVER**

19.1. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### 20. **SEVERANCE**

20.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

20.2. If any provision or part-provision of this Agreement is deemed deleted under Clause 20.1, **the Parties** shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 21. **CHANGES TO THE APPLICABLE LAW**

21.1. If during the Term the Data Protection Legislation change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, **the Parties** agree that the **SPOCs** will negotiate in good faith to review the Agreement in the light of the new legislation.

#### 22. **NO PARTNERSHIP OR AGENCY**

22.1. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

#### 23. **ENTIRE AGREEMENT**

23.1. This Agreement together with the Collaboration Agreement dated 15 May 2024 constitutes the entire agreement between **the Parties** and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter i.e. the sharing of Personal Data for the purposes described herein.

23.2. Each Party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

23.3. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

#### 24. **FORCE MAJEURE**

24.1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

#### 25. **RIGHTS AND REMEDIES**

25.1. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 26. NOTICE

26.1. Any notice given to a Party under or in connection with this agreement shall be in writing, addressed to the **SPoCs** and shall be:

- 26.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 26.1.2. Sent by email to the **SPoC**;
- 26.1.3. and in the case of UoD, with a copy sent to: Director of Research and Innovation Services, University of Dundee, The Tower, Nethergate, Dundee, DD1 4HN, email: [RIS-Notices@dundee.ac.uk](mailto:RIS-Notices@dundee.ac.uk).

26.2. Any notice or communication shall be deemed to have been received if:

- 26.2.1. delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 26.2.2. sent by pre-paid first-class post next working day delivery service, on the second Business Day after posting or at the time recorded by the delivery service;
- 26.2.3. sent by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 26.2.3, business hours means 09:00 to 17:00 pm (all times GMT or BST) Monday to Friday on a day that is not a public holiday in the place of receipt.

26.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 27. GOVERNING LAW AND JURISDICTION

27.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Scottish Law and the parties agree to the exclusive jurisdiction of the Scottish Courts to determine any such dispute or claim

## 28. TERM AND TERMINATION

28.1. This Agreement will be deemed to come into effect on the Effective Date and will remain in full force and effect for so long as at least one Party retains any of the shared Personal Data in its possession or control, unless terminated earlier in accordance with its terms (the "Term").

28.2. Each Party may terminate this Agreement immediately by giving the other Party written notice to that effect in the following circumstances:

- 28.2.1. the other Party has breached Data Protection Legislation in connection with this Agreement and/or the Personal Data provided by (or on behalf of) the terminating Party and such breach is either not capable of remedy or is not remedied within 10 days of written notice from the terminating Party requesting the same to be remedied;
- 28.2.2. the terminating Party considers that the other Party is not Processing the Personal Data provided by (or on behalf of) such terminating Party in accordance with this Agreement; or
- 28.2.3. the other Party acts in any manner which brings or is likely to bring the terminating Party into disrepute or is materially adverse to the interests of the terminating Party.

28.3. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement will remain in full force and effect.

28.4. The termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 29. Counterparts

29.1 This Agreement may be executed in any number of counterparts.

29.2 Where executed in counterparts:



- 29.2.1 this Agreement will not take effect until each of the counterparts has been delivered;
- 29.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- 29.2.3 the date of delivery may be inserted in the testing clause in the blank provided for the effective date.

**IN WITNESS WHEREOF** these present consisting of this and the preceding 8 pages are executed in counterpart by the parties as undernoted, with an effective date of 20 June 2024

For and on behalf of

**HERIOT-WATT UNIVERSITY**

Derek G Brown ..... (Name)  ..... (Signature)


duly authorised to sign on its behalf

at Edinburgh ..... (Place)

on 20 June 2024 ..... (Date)

Signed for and on behalf of:

**THE UNIVERSITY OF DUNDEE**

Dr Rachel Simpson (Name)  (Signature)

duly authorised to sign on its behalf

at Dundee (Place)

on 20 June 2024 (Date)

## **SCHEDULE 1 – Information Security**

- 1.1. Where information is to be shared between **the Parties** via electronic means that may include depositing the Shared Personal Data in a secure Cloud service for each **Party** to access. The **Parties may** also share information via email and/or secure file transfer; when doing so **the Parties** shall with each other confirm the email addresses and/or file transfer services to be used for any transfer.
- 1.2. Personal Data transferred electronically must be encrypted or use a service which is encrypted.
- 1.3. The encryption standard to be used by **the Parties** is AES 256.
- 1.4. The password used to encrypt document(s) shall be unique, and follow the standards for strong password creation issued by the National Cyber Security Centre ‘three random words’. The password must be transferred under separate cover from the encrypted file(s).
- 1.5. Where information is to be shared between **the Parties** in hardcopy (paper) form then materials are to be sent by either (a) hand/in person or (b) by recorded/special mail delivery.