

DATA SHARING AGREEMENT  
BETWEEN  
UNIVERSITY OF PLYMOUTH (UoP)  
AND  
UNIVERSITY OF PLYMOUTH STUDENTS' UNION (UPSU)

**BACKGROUND**

The University of Plymouth (UoP) is a Higher Education Corporation established under the Education Reform Act 1988 and the Further and Higher Education Act 1992 and University of Plymouth Students' Union (UPSU ) is a union of students that is operated as a separate legal entity with its own constitution and Board of Trustees.

Although UoP and UPSU are separate legal entities, UoP has a legal obligation to ensure that UPSU operates in a fair and democratic manner and is accountable for its finances. UoP and UPSU therefore work together in ensuring that the affairs of UPSU are properly conducted and to support the efficient delivery of services to UoP students to meet their educational and welfare needs. The relationship between UoP and UPSU necessarily involves the sharing of Personal Data.

The power that UoP engages to share Personal Data with UPSU is as follows:

Data is shared by virtue of the UoP's duty under section 22(1) of the Education Act 1998 which states: The governing body of every establishment to which this Part applies shall take such steps as are reasonably practicable to secure that any students' union for students at the establishment operates in a fair and democratic manner and is accountable for its finances (Article 6 (1) (e) GDPR).

Data is shared in line with UoP's legitimate interests to support the efficient delivery of services by UPSU to support the educational and welfare needs of students (Article 6 (1) (f) GDPR).

**1. DEFINITIONS**

In this Data Sharing Agreement the following definitions shall apply:

**"Controller", "Processor"** shall have the meaning given to those terms in the applicable Data  
**"Data Subject" and "Data Protection Laws;**  
**Protection Officer"**

**"Data Protection Laws"** means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to

time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the Data Protection Act 1998 ("**DPA**") and EC Directive 95/46/EC (the "**DP Directive**") (up to and including 24 May 2018) and on and from 25 May 2018, the GDPR and all legislation enacted in the UK in respect of the protection of personal data; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time;

**"Data Processing Particulars"** means, in relation to any Processing under this Agreement:

- (a) the subject matter and duration of the Processing;
  - (b) the nature and purpose of the Processing;
  - (c) the type of Personal Data being Processed; and
  - (d) the categories of Data Subjects;
- as set out in Appendix 1.

**"Data Subject Request"** means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object;

**"GDPR"** 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 repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

**"ICO"** means the UK Information Commissioner's Office, or any successor or replacement body from time to time;

**"ICO Correspondence"** means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data;

**"Losses"** means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal

fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

**Permitted Recipients"** means the third parties to whom each Party is permitted to disclose the Personal Data, as set out in Clause 6;

**"Personal Data"** means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data (as such Personal Data is more particularly described in Appendix 1 (*Data Processing Particulars*));

**"Personal Data Breach"** has the meaning set out in the Data Protection Laws and for the avoidance of doubt , includes a breach of Paragraph **Error!**  
**Reference source not found.**;

**"Processing"** has the meaning set out in the Data Protection Laws (and **"Process"** and **"Processed"** shall be construed accordingly);

**"Restricted Country"** means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Article 25(6) of the DP Directive and/ or Article 45(1) of the GDPR (as applicable);

**"Security Requirements"** means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws (including, in particular, the seventh data protection principle of the DPA and/ or the measures

set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable;

**"Sensitive Personal Data"** means Personal Data that reveals such special categories of data as are listed in Article 9(1) of the GDPR;

**"Third Party Request"** means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation.

## 2 OWNERSHIP AND RESPONSIBILITIES

2.1 As UoP and UPSU are separate legal entities, both are individually registered as Data Controllers with the ICO as follows:

UoP Registration Number Z7546246

UPSU Registration Number Z1253305

2.2 This Agreement governs the sharing of UoP registered students' personal data between UoP and UPSU for the purposes set out in Appendix 1 Section 3 and all sharing of students' personal data between the organisations must comply with such.

2.3 UoP and UPSU are Data Controllers in common of any Personal Data shared with each other. Each organisation is separately responsible for the processing of shared Personal Data and for informing students about this processing via a Student Privacy Notice. This Agreement will be published on both UoP and UPSU websites.

## 3 DATA PROTECTION

3.1 Both Parties agree that the nature of the Processing under this Agreement is as set out in Appendix 1 and that UPSU shall be acting as a Controller when processing for this purpose.

3.2 Notwithstanding Paragraph 3.1, if either Party is deemed to be a joint Controller with the other in relation to the Personal Data, the Parties agree that they shall be jointly responsible for the compliance obligations imposed on a Controller by the Data Protection Laws, and the Parties shall cooperate to do all necessary things to enable performance of such compliance obligations, except

that each Party shall be responsible, without limitation, for compliance with its data security obligations set out in Clause 7 where Personal Data has been transmitted by it, or while Personal Data is in its possession or control;

3.3 Both Parties acknowledge and agree that Appendix I ("Data Processing Particulars") to this Agreement is an accurate description of the Data Processing Particulars.

3.4 The Parties have jointly agreed that sharing Personal Data in accordance with this Agreement for the purposes outlined above is fair and lawful and meets the conditions of processing under Article 6 (1) (e) and 6 (1) (f) of GDPR;

3.5 The Parties acknowledge that;

(a) the Data Protection Officer for UoP is;  
Academic Registrar, Fourth Floor, Nancy Astor Building  
Email: [dpo@plymouth.ac.uk](mailto:dpo@plymouth.ac.uk)

(b) the Data Protection Officer for UPSU is  
Director of Marketing and Communications  
Email: [dataprotection@upsu.com](mailto:dataprotection@upsu.com)

3.6 Each Party shall in relation to the Processing of the Personal Data comply with its respective obligations under the Data Protection Laws.

3.7 Without limiting the generality of the obligation set out in Paragraph 3.6 in particular, each Party shall:

3.7.1 where required to do so make due notification to the ICO;

3.7.2 ensure it is not subject to any prohibition or restriction which would:

(a) prevent or restrict it from disclosing or transferring the Personal Data to the other Party as required under this Agreement;

(b) prevent or restrict it from granting the other Party access to the Personal Data as required under this Agreement; or

(c) prevent or restrict either Party from Processing the Personal Data, as envisaged under this Agreement;

3.7.3 ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable each Party to Process the Personal Data as

required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Laws.

3.7.4 ensure that appropriate technical and organisational security measures are in place sufficient to comply with at least the obligations imposed on the Controller by the Security Requirements; and where requested provide to the other Party evidence of its compliance with such requirements promptly, and in any event within forty-eight (48) hours of the request;

3.7.5 notify the other Party promptly, and in any event within forty-eight (48) hours of receipt of any Data Subject Request or ICO Correspondence which relates directly or indirectly to the Processing of Personal Data under, or in connection with, this Agreement and together with such notice, provide a copy of such Data Subject Request or ICO Correspondence to the other Party and reasonable details of the circumstances giving rise to it. In addition to providing the notice referred to in this Clause 3.7.8, each Party shall provide the other Party with all reasonable cooperation and assistance required by the other Party in relation to any such Data Subject Request or ICO Correspondence;

3.7.6 use reasonable endeavours to notify the other Party if it is obliged to make a disclosure of any of the Personal Data under any statutory requirement, such notification to be made in advance of such disclosure or immediately thereafter unless prohibited by law;

3.7.8 notify the other Party in writing without undue delay and, in any event, within twenty-four (24) hours of it becoming aware of any actual or suspected Personal Data Breach in relation to the Personal Data received from the other Party and shall, within such timescale to be agreed by the Parties (acting reasonably and in good faith):

- (a) implement any measures necessary to restore the security of compromised Personal Data; and
- (b) support the other Party to make any required notifications to the ICO and/or other equivalent relevant Regulator and affected Data Subjects;

3.7.9 take reasonable steps to ensure the reliability of any of its personnel who have access to the Personal Data;

3.7.10 not do anything which shall damage the reputation of the other Party or that Party's relationship with the Data Subjects;

3.7.11 not transfer any Personal Data it is processing to a Restricted Country;

- 3.7.12 hold the information contained in the Personal Data confidentially and under at least the conditions of confidence as such Party holds Personal Data Processed by it other than the Personal Data;
- 3.7.13 not disclose the Personal Data to a third party (including a sub. contractor) in any circumstances without the other Party's prior written consent, save in relation to: (i) disclosures to Permitted Recipients; and (ii) Third Party Requests. For Third Party Requests, the Party seeking to disclose the Personal Data shall use reasonable endeavours to advise the other Party in advance of such disclosure, unless that Party is prohibited by law or regulation from notifying the other Party of that disclosure, in which case it shall do so as soon as practicable thereafter (where permitted by law or regulation); and
- 3.7.14 at the other Party's option or direction, arrange for the prompt and safe return and/or secure permanent destruction of all Personal Data, together with all copies in its possession or control within 5 days and, where requested by the other Party certify that such destruction has taken place.

#### **4 INFORMATION TO BE SHARED**

- 4.1 UoP will provide UPSU with the Personal Data of enrolled students as contained in Appendix 1. In order for UPSU to fulfil its statutory obligations, Personal Data for students changing enrolment status part way during an academic year will continue to be shared with UPSU until conclusion of the academic year, such sharing excludes any students who have opted out in accordance with Clause 10 of this Agreement.

#### **5 INSURANCE**

- 5.1 Both Parties agree:

5.1.1 to obtain and keep in full force and effect at all times, in respect of the Processing of the Personal Data, a policy or policies of insurance covering liability for damage arising to persons as a result of the Party's breach of this Agreement and/or failure to comply with the Data Protection Laws and which meet the following conditions:

- (a) it must cover liability for damage arising to any person;
- (b) it must apply in relation to the Processing of Personal Data;
- (c) it must have policy limits and provisions conforming to such requirements as the other Party may from time to time reasonably prescribe;

- 5.1.2 to deliver to the other Party upon request

- (a) copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement;
- (b) evidence of premiums paid in relation to such insurance; and
- (c) ensure that the other Party shall be entitled to the benefit of such insurance.

## **6 DATA PROCESSOR**

6.1 UoP agrees and acknowledges that UPSU may use Membership Solutions Ltd ('UKMSL') as a Data Processor on behalf of UPSU. UPSU warrants that at all times it will have in force a valid written contract with UKMSL containing provisions equivalent to those set out in this data sharing Agreement and particularly provisions that comply with the requirements set out in Art 32 GDPR. UoP reserves the right to withhold transfers of data where it reasonably considers that arrangements do not satisfy this requirement.

6.2 UoP will electronically transfer Personal Data set out in Appendix 1 to UKMSL as UPSU's Data Processor using a secure file sharing system. This transfer will ensure that UPSU holds up to date Personal Data at any given time and enable UPSU to immediately cease processing where a student opts out as per Clause 10 of this Agreement.

6.3 UPSU is responsible for Personal Data transferred from UoP to UKMSL as if the data were directly transferred to UPSU as Data Controller. Any data breach that occurs as a result of any action/omission by UPSU, UKMSL or any third party acting on UPSU's behalf shall result in UPSU being liable in total for any consequences.

6.4 In the event, UPSU changes its Data Processor from UKMSL to a new supplier, UPSU and UoP agree that the obligations in Clause 6.1 to 6.5 shall apply to the incoming supplier.

6.5 In addition, in such an event, UPSU agrees to notify UoP's DPO as specified in clause 3.1 (5) (a), immediately in writing the following:

- (a) Details of the new supplier, and
- (b) Confirmation that clause 6.1 has been met with the new supplier

## **7 DATA SECURITY**

7.1 Both UoP and UPSU warrant that all Personal Data shared under this Agreement will be kept secure and protected against unauthorised access, use or disclosure. In particular, information about



identifiable students will only be made accessible to individuals who require access for the purposes as specified in Clause 3.1.

7.2 If either party becomes aware of any potential data breach which involves data shared by the other, each party agrees to notify the other immediately to the contact details set out in Clause 3.5.

## 8. **CONDITIONS**

8.1 With regard to the use of shared Personal Data, UPSU warrants that it will ensure:

8.1.1 Compliance with the Data Protection Laws.

8.1.2 Any employee of UPSU or its Data Processor is fully aware of the Data Protection Laws and its principles before any processing of UoP student data is undertaken.

8.1.3 Any Data Processor used by UPSU has security policies and procedures that ensure compliance with Article 32 and Clause 7 of this Agreement.

## 9. **RESTRICTIONS**

9.1 Any Personal Data provided by UoP to UPSU shall not be disclosed to any third party without the express written approval of UoP except for the Permitted Recipients.

9.2 Should the data need to be released to a Data Processor to host the UPSU website, UPSU warrants that at all times it will have in force a valid written contract with the Data Processor that complies with the requirements of Art 32 GDPR and expressly prohibits the use of the data for any purpose other than that in Clause 3.1 and obliging the Data Processor to comply with the conditions of Clause 7 of this Agreement.

9.3 Any data provided by UoP to UPSU shall not be used by organisations and individuals other than UPSU for the purposes of providing marketing services.

9.4 Information sent to students relates directly to the operational activities of UPSU or to products and services provided to UPSU, which are of genuine benefit to students.

9.5 Students are given an option in each mailing to opt out of future mailings.

## 10 OPT OUT RIGHTS

10.1 UoP will ensure that all enrolling/re-enrolling students are given appropriate information about data sharing including a right to opt out of the sharing for the purposes set out in this Data Sharing Agreement. This will be communicated by way of UoP's Enrolment Process and Student Privacy Notice.

10.2 UPSU are required to maintain a readily accessible and easy to use mechanism for students to opt out of having their Personal Data processed by UPSU at any time.

10.3 If a student notifies UoP that they wish to opt out of their Personal Data being shared with UPSU, UoP will notify UPSU and their Personal Data will no longer be included in the transfer.

10.4 Where a student exercises their right to opt out of UPSU membership, after their personal data has been shared with UPSU, UPSU will ensure that it or any Data Processors working on its behalf, destroy and cease processing any Personal Data already received without delay.

## 11 RETENTION

11.1 As Data Controller, UPSU is responsible for ensuring that it operates an appropriate data retention policy and shall ensure that any Personal Data transferred under this Agreement is not kept for longer than is necessary to perform the processing for which it was collected under Clause 3 of this Agreement.

## 12. REVIEW

12.1 This Agreement is to be reviewed annually to ensure that it continues to reflect the requirements of Data Protection Laws the purposes remain valid and ensure fairness to students. If no changes are required, it may be re-confirmed by e-mail. In exceptional circumstances where urgent and necessary changes are required, an additional review may occur.

12.2 UPSU acknowledge that UoP may suspend and/or terminate the provision of data at any time, with or without notice, where UoP acting reasonably considers that the safeguards for Personal Data are not adequate or adequately implemented to protect the individual rights of its students.

12.3 Nothing in this Agreement will limit or restrict either UoP or UPSU's obligation to ensure compliance with the Data Protection Laws in relation to data where they are the Data Controller.

**13 VARIATION**

13.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

*Gina Connelly*

Signed

Gina Connelly

Chief Executive

University of Plymouth Students' Union

Date: 13/12/18

Signed

Anna Sendall

Academic Registrar

University of Plymouth

Date 18.12.18

*Anna Sendall*

**APPENDIX 1 Data Protection Particulars**

<p><b>The Subject Matter and Duration of the Processing</b></p>	<p>The parties work closely together to fulfil UOP's duty under <u>S22 (1) Education Act 1998</u> and to assist the efficient delivery of services in order to support the educational and welfare needs of students. They consider this data sharing initiative necessary in order to fulfil the following:</p> <p>For UPSU to meet its charitable objectives which are as follows:</p> <ul style="list-style-type: none"> <li>(a) Promoting the interests and welfare of students at the UoP during their course of study and representing, supporting and advising members;</li> <li>(b) Being the recognised representative channel between students and UoP and any other external bodies, and</li> </ul> <p>For UoP to meet its duties and obligations towards enrolled students</p>
<p><b>The purpose of the Processing</b></p>	<p>The parties work closely together to fulfil UOP's duty under <u>S22 (1) Education Act 1998</u> and to assist the efficient delivery of services in order to support the educational and welfare needs of students. They consider this data sharing initiative necessary in order to fulfil the following:</p> <p>For UPSU to meet its charitable objectives which are as follows:</p> <ul style="list-style-type: none"> <li>(a) Promoting the interests and welfare of students at the UoP during their course of study and representing, supporting and advising members;</li> <li>(b) Being the recognised representative channel between students and UoP and any other external bodies, and</li> </ul> <p>For UoP to meet its duties and obligations towards enrolled students</p> <p>UPSU agrees only to process Shared Personal Data shared by UoP, for the following purposes:</p> <ul style="list-style-type: none"> <li>(a) Administration of democratic processes</li> <li>(b) Administration of clubs, societies, volunteering, representative roles and other student opportunities</li> <li>(c) Generation of demographic reports</li> </ul>

	<p>(d) Verification and administration of tickets and product sales</p> <p>(e) Administration of door entry systems</p> <p>(f) To allow email communication between UPSU and its members</p> <p>(g) To allow email communication between clubs and societies members where no emails are visible to the sender</p> <p>UoP agrees only to process Shared Personal Data shared by UPSU for the following purposes:</p> <p>(a) The preparation of the Higher Education Achievement Report (HEAR)</p>
<p><b>The Nature of the Processing</b></p>	<p>Under this Agreement UOP will provide UPSU with the following Personal Data:</p> <ul style="list-style-type: none"> <li>a) Student name</li> <li>b) Card / student number</li> <li>c) UOP email address</li> <li>d) Home address</li> <li>e) Nationality</li> <li>f) Sex</li> <li>g) Age</li> <li>h) Student type (Full-time, part-time)</li> <li>i) Study Location</li> <li>j) Year of study</li> <li>k) Course name</li> <li>l) Department</li> <li>m) Faculty</li> <li>n) Mode of Study</li> </ul> <p>Under this Agreement UPSU will provide UOP with the following Personal Data:</p>

	<ul style="list-style-type: none"><li>a) Student name</li><li>b) Card / student number</li><li>c) UPSU Awards recognition</li><li>d) Committee positions held within a club or society</li><li>e) Volunteering hours</li><li>f) Student representative positions held</li></ul>
<b>The categories of Data Subject</b>	Students and former students of the University of Plymouth