



## DATA SHARING AGREEMENT

This Agreement dated 6th day of September 2024 is made

### **BETWEEN:**

1. **UNIVERSITY OF DURHAM**, a body incorporated in England and Wales by Royal Charter with registration number RC000650 whose principal offices are at the Palatine Centre, Stockton Road, Durham, DH1 3LE ("Durham"); and
2. **DURHAM STUDENTS' UNION**, a private company limited by guarantee with Company No 07689815 whose registered office is at Dunelm House, New Elvet, Durham, DH1 3AN "Students' Union".

The aforesaid organisations are hereinafter referred to individually as "Party" and collectively as "the Parties"

### **WHEREAS**

- A. The Data Discloser agrees to share the Personal Data with the Data Receiver on terms set out in the Agreement.
- B. The Data Receiver agrees to use the Personal Data on the terms set out in this Agreement.
- C. This is a free-standing Agreement that does not incorporate commercial business terms established by the Parties under separate commercial arrangements.

### **1. INTERPRETATION**

1.1. The following definitions and rules of interpretation shall apply to this Agreement:

<b>"Agreed Purposes"</b>	shall have the meaning given to it in Clause 2 of this Agreement;
<b>"Agreement"</b>	means this Agreement and its Schedules, which is a free-standing document that does not incorporate commercial business terms established by the Parties under separate commercial arrangements;
<b>"Business Day"</b>	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>"Commencement Date"</b>	means the date of signature of this agreement;
<b>"Data Discloser"</b>	means a Party disclosing Shared Personal Data under the terms of this Agreement;

<b>“Data Receiver”</b>	means a Party receiving Shared Personal Data under the terms of this Agreement;
<b>“Data Protection Legislation”</b>	means (i) the UK Data Protection Act 2018; (ii) the UK General Data Protection Regulation iii) any other laws and regulations relating to the processing of personal data and privacy which apply to a Party and, if applicable, the guidance and codes of practice issued by the relevant data protection or Commissioner;
<b>“Personal Data Breach”</b>	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;
<b>“Shared Personal Data”</b>	means the Personal Data and special category personal data to be shared between the Parties under Clause 3 of this Agreement;
<b>“Subject Access Request”</b>	means the exercise by a Data Subject of his or her rights under Article 15 of the GDPR;
<b>“Commissioner”</b>	means the relevant Commissioner in the territories where the Parties to this Agreement are established.

- 1.2. Controller, Processor, Data Subject and Personal Data, Special Categories of Personal Data, Processing and “appropriate technical and organisational measures” shall have the meanings given to them in the Data Protection Legislation.
- 1.3. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.4. 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.
- 1.5. Unless the context otherwise, requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 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, the provision in the body of this Agreement shall take precedence.

- 1.11. A reference to writing or written includes fax and email.
- 1.12. Unless the context otherwise requires the reference to one gender shall include a reference to the other genders.

## **2. PURPOSE**

- 2.1. This Agreement sets out the framework for the sharing of Personal Data between the Parties as Controllers. It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other in respect of that Data.
- 2.2. The Parties consider this data sharing activity necessary to enable:
  - 2.2.1. Creation and administration of Student Union membership records
  - 2.2.2. Provision of ICT facilities to Students' Union staff members
  - 2.2.3. The facilitation of volunteering and training activities
  - 2.2.4. Health and Safety, risk management and safeguarding
  - 2.2.5. Participation in the University's disciplinary processes
  - 2.2.6. Participation in the University's recruitment and promotion processes
  - 2.2.7. Marketing and promotion of the Students' Union
  - 2.2.8. Research into member needs and service accessibility
  - 2.2.9. Participation in the complaints process and the provision of advocacy services to students by the Students' Union
  - 2.2.10. Democratic processes of the Students' Union, including appointment to major union offices, in line with the Education Act 1994 and the responsibilities of University Council
  - 2.2.11. Bringing to the attention of students, via communications, Durham Students' Union's duties and students rights under the Higher Education (Freedom of Speech) Act 2023, in compliance with the Act.
- 2.3. The Parties agree to only process Shared Personal Data, as described in Clause 3 below, for the following purposes:
  - 2.3.1. The activities at 2.2.1-2.2.7 "Agreed Purposes")
- 2.4. The Parties shall not process Shared Personal Data in a way that is incompatible with the Agreed Purposes described in this Clause.
- 2.5. Each Party shall appoint a single point of contact (SPoC) who will work together to reach agreement with regards to any issues arising from the sharing of data under this Agreement and to actively improve the effectiveness of the data sharing in respect of the Agreed Purposes. The points of contact for each of the Parties are:

2.5.1. Andrew Ladd, Head of Information Governance and Data Protection Officer, on behalf of Durham; and

2.5.2. Georgina Lambert, Director of Communications and Strategy on behalf of Durham Students' Union

2.6. This Agreement shall be deemed to have commenced as of the Commencement Date, and shall continue in full force and effect until terminated in accordance with the terms of this Agreement (the "Term").

### **3. SHARED PERSONAL DATA**

3.1. The following types of Personal Data will be shared between the Parties during the Term of this Agreement (the "Shared Personal Data"). Depending on the activity, this may relate to staff or student personal data:

- 3.1.1. Name
- 3.1.2. Date of birth
- 3.1.3. University email address
- 3.1.4. Year of study
- 3.1.5. Expected leave date
- 3.1.6. College
- 3.1.7. Undergraduate/Postgraduate status
- 3.1.8. Department/Programme
- 3.1.9. Fee status
- 3.1.10. Student ID (CIS user name or email address)
- 3.1.11. Images from the University's image bank including staff and student images

3.2. The following types of Special Categories of Personal Data will be shared between the Parties during the Term of this Agreement:

- 3.2.1. Health data (may be disclosed in safeguarding situations)
- 3.2.2. Gender

3.3. The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.

3.4. Durham will provide Student Data for current students only and will exclude any students who have opted out of the data sharing with the Students' Union.

3.4.1. Data Subjects will be given information about the transfer at the time of enrolment in the University and informed how to opt out before the transfer takes place. Data Subjects may opt out at any point during the academic year.

3.4.2. The Students' Union will maintain a readily accessible and easy-to-use mechanism to enable Data Subjects to opt out of processing carried out by the Students' Union involving their Student Data.

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

4.1. The Parties acknowledge and agree that in processing the Shared Personal Data for the Agreed Purposes they shall each be a separate Data Controller, and do not intend to process the Data jointly or in common with each other.

- 4.2. If one Party acts as the other Party's Data Processor for the Agreed Purposes the Data Processor Party agrees that it shall:
  - 4.2.1. act only on the instructions of the Data Controller Party in relation to that Party's Personal Data; and
  - 4.2.2. comply with obligations equivalent to those imposed on the Data Controller Party by principle (f) of Article 5(1) GDPR.
- 4.3. Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with this Clause 4 and Clause 12 during the Term of this Agreement.
- 4.4. Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data.
- 4.5. The Data Discloser shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 13 of the GDPR including:
  - 4.5.1. if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer; and
  - 4.5.2. where applicable if Shared Personal Data will be transferred outside the European Economic Area (EEA) pursuant to Clause 7.3 of this Agreement, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Controller to enable the Data Subject to understand the purpose and risks of such transfer.

## **5. DATA SUBJECTS' RIGHTS**

- 5.1. The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with Subject Access Requests from Data Subjects within the time limits imposed by the Data Protection Legislation.
- 5.2. The SPoC for each Party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

## **6. DATA RETENTION AND DELETION**

- 6.1. The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 6.2. Notwithstanding the provisions of Clause 6.1 above, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.

- 6.3. The Data Receiver shall ensure that any Shared Personal Data are returned to the Data Discloser or destroyed in the following circumstances:
- 6.3.1. on expiry or termination of this Agreement;
  - 6.3.2. once processing of the Shared Personal Data is no longer necessary for the Agreed Purposes for which it were originally shared.
- 6.4. Following deletion of Shared Personal Data in accordance with this Clause 6, the Data Receiver shall notify the Data Discloser that the Shared Personal Data in question has been deleted.

## **7. TRANSFERS**

- 7.1. For the purposes of this Clause, transfers of Personal Data shall mean any sharing of Personal Data by the Data Receiver with a third party, and shall include, but is not limited to, the following:
- 7.1.1. subcontracting the processing of Shared Personal Data;
  - 7.1.2. granting a third party controller access to the Shared Personal Data.
- 7.2. If the Data Receiver appoints a third party processor to process the Shared Personal Data it shall comply with Article 28 and Article 30 of the GDPR and shall remain liable to the Data Discloser for the acts and/or omissions of the processor.
- 7.3. The Data Receiver may not transfer Shared Personal Data to a third party located outside the EEA unless it:
- 7.3.1. first obtains the express written permission of the Data Discloser;
  - 7.3.2. complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
  - 7.3.3. ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.

## **8. SECURITY AND TRAINING**

- 8.1. The Data Discloser shall only provide the Shared Personal Data to the Data Receiver by using secure methods as agreed in writing with the Data Receiver.
- 8.2. The Parties undertake to have in place throughout the Term appropriate technical and organisational security measures to:
- 8.2.1. prevent:
    - 8.2.1.1. unauthorised or unlawful processing of the Shared Personal Data; and
    - 8.2.1.2. the accidental loss or destruction of, or damage to, the Shared Personal Data

8.2.2. ensure a level of security appropriate to:

8.2.2.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

8.2.2.2. the nature of the Shared Personal Data to be protected.

8.3. The level of technical and organisational measures agreed by the Parties as appropriate as at the Commencement Date having regard to the state of technological development and the cost of implementing such measures shall be as mutually agreed by the Parties in writing prior to sharing any Data. The Parties shall keep such security measures under review and shall carry out such updates as they agree are appropriate throughout the Term.

8.4. It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures agreed by the Parties together with the Data Protection Legislation.

8.5. The level, content and regularity of training referred to in Clause 8.4 above, shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.

## **9. PERSONAL DATA BREACHES AND REPORTING PROCEDURES**

9.1. Each Party shall comply with its obligation to report a Personal Data Breach to the Commissioner and the Data Subjects in accordance with Article 33 of the GDPR and shall inform the other Party of any Personal Data Breach within one (1) working day, irrespective of whether there is a requirement to notify any Commissioner or Data Subject(s).

9.2. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

## **10. REVIEW AND TERMINATION**

10.1. The Parties will keep the arrangements in this Agreement under review and revise them if necessary to take into account changes of law or circumstance.

10.2. Either Party may terminate the Agreement immediately if the other Party is in material breach of its obligations under this Agreement or of applicable law.

10.3. On termination of the Agreement, the Parties will cease to process the other Party's Data, but may retain the Data for tax or audit purposes or as otherwise permitted or required by applicable law, regulatory requirement or a relevant agreement in respect of educational provision or funding.

10.4. Any provision that expressly or by implication is intended to continue in force after termination shall remain in full force and effect.

## **11. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE COMMISSIONER**

- 11.1. In the event of a dispute or claim brought by a Data Subject or the Commissioner concerning the processing of Shared Personal Data against either or both Parties, 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.
- 11.2. The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Commissioner. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 11.3. Each Party shall abide by a decision of a competent court of the Data Discloser's country of establishment or of the Commissioner.

## **12. WARRANTIES**

- 12.1. Each Party warrants and undertakes that it will:
  - 12.1.1. 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;
  - 12.1.2. respond within a reasonable time and as far as reasonably possible to enquiries from the Commissioner in relation to the Shared Personal Data;
  - 12.1.3. respond to Subject Access Requests in accordance with the Data Protection Legislation;
  - 12.1.4. maintain registration with all relevant Supervisory Authorities to process all Shared Personal Data for the Agreed Purposes; and
  - 12.1.5. take all appropriate steps to ensure compliance with the security measures set out in Clause 8 above.
- 12.2. The Data Discloser warrants and undertakes that it is entitled to provide the Shared Personal Data to the Data Receiver and it will ensure that the Shared Personal Data is accurate.
- 12.3. The Data Receiver warrants and undertakes that it will not disclose or transfer the Shared Personal Data to a third party controller located outside the EEA unless it complies with the obligations set out in Clause 7.3 above.
- 12.4. 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.

## **13. INDEMNITY**

- 13.1. The Parties undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Agreement, except to the extent that



any such liability is excluded under the provisions of Clause 14 below.

13.2. Indemnification hereunder is contingent upon:

13.2.1. the Party to be indemnified (the "Indemnified Party") promptly notifying the other Party (the "Indemnifying Party") of a claim,

13.2.2. the Indemnifying Party having sole control of the defence and settlement of any such claim, and

13.2.3. the Indemnified Party providing reasonable co-operation and assistance to the Indemnifying Party in defence of such claim.

#### **14. LIMITATION OF LIABILITY**

14.1. Neither Party excludes or limits liability to the other Party for:

14.1.1. fraud or fraudulent misrepresentation;

14.1.2. death or personal injury caused by negligence;

14.1.3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

14.1.4. any matter for which it would be unlawful for the Parties to exclude liability.

14.2. Neither 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:

14.2.1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

14.2.2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

14.2.3. any loss or liability (whether direct or indirect) under or in relation to any other contract.

14.3. Clause 14.2 shall not prevent claims, for:

14.3.1. direct financial loss that are not excluded under any of the categories set out in Clause 14.2; or

14.3.2. tangible property or physical damage.

#### **15. NOTICES**

15.1. Any notice required to be given by either Party under this Agreement shall be made in writing quoting the date of the Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the following:

**Durham:**

Legal Services, University of Durham, The Palatine Centre, Stockton Road,  
Durham, DH1 3LE

with a copy to the SPoC

**Durham Students' Union:**

Chief Executive, Durham Students' Union, Dunelm House, New Elvet, Durham,  
DH1 3AN

with a copy to the SPoC

- 15.2. A notice shall be treated as having been received:
- 15.2.1. if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
  - 15.2.2. if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
  - 15.2.3. if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

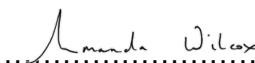
## **16. GENERAL**

- 16.1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 16.2. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 16.3. 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.
- 16.4. In the event that 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.
- 16.5. In the event that any provision or part-provision of this Agreement is deemed to be invalid or unenforceable in any jurisdiction, 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.
- 16.6. In the event that 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.

- 16.7. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party
- 16.8. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 16.9. This Agreement 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.
- 16.10. 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.
- 16.11. Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 16.12. 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 the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with this Agreement or its subject matter or formation.

Agreed by the Parties through their authorised signatories on the date set out at the head of this Agreement:

Signed on behalf of the **UNIVERSITY OF DURHAM**:

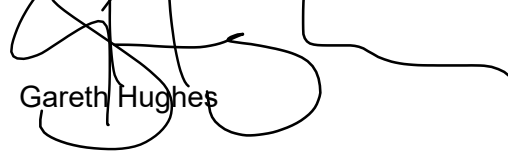
Signed  .....

Name Dr Amanda Wilcox .....

Position University Secretary .....

Date: 6.9.2024 .....

Signed on behalf of **Durham Students' Union**:

Signed  .....

Name Gareth Hughes .....

Position Chief Executive .....

Date: 28 August 2024