Data Processing Agreement

BETWEEN

(1) SCHOLZ SWERDLOW AND CROSS ANALYTICS LTD

AND

(2) CLIENT NAME

This Agreement is made on …………………………………..

**PARTIES**

1. **SCHOLZ SWERDLOW AND CROSS ANALYTICS LTD** incorporated by Royal Charter in the United Kingdom, whose address is Flat 2 Muscal House, Field Road, W6 8HR United Kingdom (the “**Supplier**” or “**SSC Analytics**”); and
2. **[CUSTOMER COMPANY NAME]** incorporated and registered in [INSERT] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Customer**”).

**BACKGROUND**

1. The Customer and the Supplier are about to enter into an agreement for the **Services Agreement**, which will require processing Data for the purposes of the Supplier performing its obligations under the Services Agreement.
2. Because the provision of the services under the Services Agreement requires the Supplier to process Data, the Data Protection Legislation is engaged. This establishes the Supplier as the Data Processor who is processing Data on behalf of the Customer who is the Data Controller. Under the Data Protection Legislation the Data Processor and Data Controller are jointly and severally legally responsible for the Data processing.
3. The Supplier has agreed to process the Data in compliance with the terms set out in this Agreement.
4. This Agreement neither overrides nor replaces the Services Agreement, but instead is supplementary to it. It is issued in accordance with Article 28 of the General Data Protection Regulation which requires the Customer (as the Data Controller) to set out the terms and conditions for the provision of the Services provided by the Supplier (as the Data Processor).
5. The Customer owns the copyright and any database rights in the Data.
6. Subject to and without prejudice to the terms of the Services Agreement, the Customer has agreed to license to the Supplier the use of all copyright and database rights in the Data to enable the Supplier to provide the services under the Services Agreement.

**TERMS OF THIS AGREEMENT**

This Agreement shall commence on the start date noted in the table below and shall continue unless terminated earlier in accordance with Clause 10, until the end date noted in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Start date:** | [(dd/mm/YYYY )] | **End date:** | [(dd/mm/YYYY)] |

IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTREPRETATION**
   1. In this Agreement unless the context otherwise requires the following words and expressions shall have the following meaning:

**Anonymised Data** shall have the meaning given to it under the applicable Data Protection Legislation;

**Authorised Person** any person specified in Part 1 of the Schedule or as may otherwise be designated from time to time by the Customer giving written notice to the Supplier;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Confidential Information** is defined as all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services who need to know the confidential information in question (Representatives) to the other Party and that Party's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure;

**Data Controller (‘Controller’)** shall have the meaning given to it under the applicable Data Protection Legislation;

**Data Processor (‘Processor’)** shall have the meaning given to it under the applicable Data Protection Legislation;

**Data Protection Legislation** shall mean the Data Protection Act 2018 (as amended from time to time), the General Data Protection Regulation (as amended from time to time) and any other applicable replacement or re-enacted legislation of the foregoing;

**Normal Business Hours**: 9.30am to 5.30pm GMT on a Business Day;

**Parties** refers to the Customer/ the Data Controller and the Supplier/ the Data Processor and **Party** refers to any of them as the context may require;

**Personal Data** shall have the meaning given to it under the applicable Data Protection Legislation;

**Process and Processing** have the meaning given under the applicable Data Protection Legislation;

**Pseudonymised Data** shall have the meaning given to it under the applicable Data Protection Legislation;

**Services:** the services to be supplied by the Supplier under the Services Agreement a summary of which is set out in Part 2 of the Schedule.

* 1. References to “data” or “Data” shall be construed as references to Personal Data and Special Categories of Personal Data (within the meaning of Article 9 of the General Data Protection Regulations) unless the context requires otherwise.
  2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
  3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  4. The Schedule forms 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 Schedule.
  5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  8. A reference to a statute or statutory provision is a reference to it as amended, extended, superseded or re-enacted from time to time.
  9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  10. A reference to writing or written includes faxes but not e-mail.
  11. References to Clauses and Schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the Schedule.
  12. 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.
  13. In the case of conflict or ambiguity between:

1. any provision contained in the body of this Agreement and any provision contained in the Schedule or appendices, the provision in the body of this Agreement shall take precedence;
2. the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the Schedule or appendices, the provision contained in the Schedule or appendices shall take precedence; and
3. any of the provisions of this Agreement and the provisions of the Services Agreement in relation to the compliance of any Data processing with the Data Protection Legislation, the provisions of this Agreement shall prevail.
4. **OBLIGATIONS OF THE PROCESSOR**
   1. The Processor shall process the Data only to the extent, and in such a manner, as is necessary for the provision of the Services and in accordance with the Controller’s documented instructions from time to time and shall not process the Data for any other purpose. Controller instructions will be given to the Processor via an Authorised Person. As at the date of this Agreement the Parties agree that the nature and purpose of the processing and the type of personal data and categories of data subjects whose Data will be processed are as set out in Parts 3 and 4 of the Schedule.
   2. Without prejudice to the specificity of the other terms of this Agreement, the Processor warrants that it will process the Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
   3. To the extent that the Processor cannot comply with a change to the Controller’s instructions in so far as they are incompatible with the Data Protection Legislation the Processor shall:
5. immediately inform the Controller, giving full details of the problem; and
6. cease all processing of the affected data (other than securely storing those data) until revised instructions are received.
   1. The Processor shall not transfer the Data outside the European Economic Area without the prior written consent of the Controller.
   2. The Processor shall not share the Data with any third party without the prior written permission of the Controller or process Data in any way or for any purpose that has not been instructed and authorised by the Controller.
   3. The Processor will keep at Flat 2 Muscal House, Field Road, W6 8HR detailed, accurate and up-to-date written records relating to the processing of Data it carries out on behalf of the Controller which should include:
7. the full name of the Processor, any representatives and Data Protection Officer (where relevant);
8. the nature of the processing carried out on behalf of the Controller;
9. the details of any transfer of Data to a third country and where relevant all documentation evidencing safeguarding adequacy.
   1. The Processor shall permit the Controller and its third-party representatives, on reasonable notice during Normal Business Hours, but without notice in case of any reasonably suspected breach of this Clause 2, to:
10. gain access to, and take copies of, the records and any other information held at the Processor’s premises or on the Processor’s System; and
11. inspect all records, documents and electronic data and the Processor’s system, facilities and equipment,

for the purpose of auditing the Controller’s compliance with its obligations under this Agreement.

* 1. At the Controller’s request, the Processor shall provide a copy of all Data held by it in the format and on the media reasonably specified by the Controller.
  2. The Processor shall promptly comply with any request from the Controller requiring the Processor to amend, transfer or delete the Data and provide all necessary assistance to the conduct of any audits.
  3. The Processor shall only collect any Data on behalf of the Controller if specifically instructed to do so in writing by the Controller and subject to agreeing with the Controller an information gathering/request form that will contain a data protection notice informing the data subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Data will be processed and any other information which is necessary having regard to the specific circumstances in which the Data is, or is to be, processed to enable processing in respect of the data subject to be fair. The Processor shall not modify or alter any information gathering/request form agreed pursuant to this Clause in any way without the prior written consent of the Controller.
  4. The Processor, shall have in place appropriate technical and organisational security measures that protect the Data it is contracted to process on behalf of the Controller from unauthorised or unlawful processing, accidental loss, destruction or damage such technical and organisation security measures being as a minimum as described in Part 5 of the Schedule.
  5. The Processor shall provide reasonable assurances and guarantees to the Controller (as required) that those technical and organisational security measures in place are both appropriate and effective in protecting the processing of Data.
  6. If the Processor receives any complaint, notice or communication which relates directly or indirectly to the processing of the Data or to either Party's compliance with the Data Protection Legislation and the data protection principles set out therein, it shall immediately notify the Controller and it shall provide the Controller with full co-operation and assistance in relation to any such complaint, notice or communication.
  7. The Processor shall promptly without undue delay and in any case within 24 hours inform the Controller if any Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Processor will restore such Data at its own expense.
  8. The Processor shall make available any records of processing to the supervisory authority on request.
  9. The Processor shall cooperate with the supervisory authority in the performance of its tasks.

1. **PROCESSOR'S EMPLOYEES**
   1. The Processor shall ensure that access to the Data is limited to:
2. those employees who need access to the Data to meet the Processor's obligations under this Agreement; and
3. in the case of any access by any employee, such part or parts of the Data as is strictly necessary for performance of that employee's duties.
   1. The Processor shall take reasonable steps to ensure the reliability of their personnel who have access to the Data, which shall include ensuring that all staff engaged by the Processor:
4. understand the confidential nature of the Data;
5. have received appropriate training in data protection prior to their use of the data; and
6. have signed a written undertaking that they understand and will act in accordance with their responsibilities for confidentiality under contract.
   1. The Processor shall ensure that is has properly configured access rights for its staff, including a well-defined starters and leavers process to ensure appropriate access control.
7. **DATA SECURITY REQUIREMENTS**
   1. The Processor shall have in place appropriate technical and organisational security measures that protect the Data it is contracted to process on behalf of the Controller from unauthorised or unlawful processing, accidental loss, destruction or damage.
   2. The Processor shall provide reasonable assurances and guarantees to the Controller (as required) that the technical and organisational security measures in place as referred to in Clause 4.1 are both appropriate and effective in protecting the processing of Data.
   3. The Processor agrees to maintain good information governance standards and practices, by meeting or exceeding the information governance requirements relevant for their service.
   4. The Processor shall ensure that suitable and effective authentication processes are established and used to protect Data.
   5. The Processor shall ensure that the Data is backed up on a regular basis and that any back up data is subject to vigorous security measures as necessary to protect the availability, integrity and confidentiality of the data.
   6. The Processor shall ensure that robust and tested business continuity measures are in place to protect the confidentiality, integrity and availability of the data.
   7. The Processor agrees that data transferred electronically is encrypted in accordance with UK national standards as a minimum.
   8. The Processor shall ensure that employees are not able to access the data remotely e.g. from home or via their own electronic device or internet portal other than through a secure electronic network and in accordance with organisational remote working policy. No data shall be stored in such devices.
   9. The Processor warrants that data that requires disposal is disposed of securely and confidentially in accordance with the secure destruction requirements specified in Clause 9.
   10. The Processor shall:
8. only make copies of the Data to the extent reasonably necessary for the specified purposes in accordance with this Agreement (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Customer Data);
9. not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Customer Data other than for the purpose of providing the Services; and
10. not do anything that is reasonably likely to damage the reputation of the Customer.
    1. The Processor undertakes to fully cooperate with the Controller’s incident investigation requirements.
11. **RIGHTS OF THE DATA SUBJECT**
    1. The Processor shall notify the Controller within 24 hours if it receives a request from a Data Subject for access to that person's Data.
    2. The Processor shall provide the Controller with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Data.
    3. The Processor shall not disclose the Data to any Data Subject or to a third party other than at the request of the Controller or as provided for in this Agreement.
12. **RIGHTS OF THE CONTROLLER**
    1. The Controller is entitled, on giving at least 3 working days' notice to the Processor, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Data by the Processor.
    2. The requirement under Clause 6.1 to give notice will not apply if the Controller believes that the Processor is in breach of any of its obligations under this Agreement.
13. **INDEMNITY**
    1. The Processor agrees to indemnify and keep indemnified and defend at its own expense the Controller against all costs, claims, damages or reasonable expenses incurred by the Controller or for which the Controller may become liable due to any failure by the Processor or its employees or agents to comply with any of its obligations under this Agreement.
14. **APPOINTMENT OF SUBCONTRACTORS**

The Processor may not authorise any third party or sub-contractor to process the Data without (i) the prior written consent of the Controller and (2) such third party or sub-contractor entering into a contract with the Processor on terms which are substantially the same as the terms of this Agreement and such contract being expressed to terminate automatically on the termination or expiry of this Agreement.

1. **SECURE DESTRUCTION**
   1. The Processor shall ensure that Data held in paper form (regardless of whether originally provided by the Controller or printed from the Processor’s IT systems) is destroyed using a cross cut shredder or subcontracted to a confidential waste Controller that complies with European Standard EN15713.
   2. The Processor shall ensure that electronic storage media used to hold or process NHS Information is destroyed or overwritten by following the UK government best practice guidance located here: <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>.
   3. In the event of any bad or unusable sectors that cannot be overwritten, the Processor shall ensure complete and irretrievable destruction of the media itself.
   4. The Processor shall provide the Controller with copies of all relevant overwriting verification reports and/or certificates of secure destruction of Data at the conclusion of the contract.
2. **EXIT FROM AGREEMENT**
   1. The Controller may terminate this Agreement with immediate effect by written notice to the Processor on or at any time after the occurrence of an event that gives rise to an information security incident or otherwise poses a risk of non-compliance with the data protection principles.
   2. Without prejudice to Clause 10.1, this Agreement shall terminate upon the termination of the Services Agreement save for any provisions that are intended to survive its termination including for the avoidance of doubt and without limitation Clauses 7.1, 9, 10.3, 11 and 12.
   3. In order to protect the Data, the Processor agrees:
3. to store and process Data securely, and destroy it confidentially when it is no longer necessary and instructed by the Controller;
4. to return to the Controller any Data held at the end of the Agreement, ensuring secure transfer, or to makes arrangements for its secure disposal upon the instruction of the Controller.
5. **CONFIDENTIALITY**
   1. The Processor acknowledges that the Controller’s Confidential Information includes non-personal and personal data.
   2. The term Confidential Information does not include any information that:
6. is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Clause 11);
7. was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
8. was, is, or becomes, available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
9. was known to the receiving Party before the information was disclosed to it by the disclosing Party;
10. the Parties agree in writing is not confidential or may be disclosed; or
11. is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
    1. Without prejudice to any obligations of the Processor in relation to Personal Data, each Party shall keep the other Party's Confidential Information confidential and shall not:
12. use any Confidential Information except for the purposes of providing the Services; or
13. disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 11.
    1. A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know that Confidential Information for the purposes of providing the Services, provided that:
14. it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
15. at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this Clause 11.
    1. A Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as it is legally permitted to do so, it gives the other Party as much notice of the disclosure as possible.
    2. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information, other than those expressly stated in this Agreement, are granted to the other Party, or are to be implied from this Agreement.
    3. The provisions of this Clause 11 shall continue to apply after termination of this Agreement.
16. **INTELLECTUAL PROPERTY RIGHTS**
    1. The Processor acknowledges that:
17. all Intellectual Property Rights in the Data are and will remain the property of the Controller or its licensors, as the case may be; and
18. it shall have no rights in or to the Data other than the right to use it for the purposes in accordance with this Agreement.
    1. The Processor assigns to the Controller, and shall assign to it, its Intellectual Property Rights in any Data it may create, by way of future assignment. The Processor shall execute such confirmatory assignments as the Controller may require.
    2. The Intellectual Property Rights assigned to the Controller under Clause 12.2 shall be deemed to be included in the right to use referred to in Clause 12.1(b) from the date when such rights arise.
19. **GENERAL**
    1. Assignment: No Party may assign any of its rights under this Agreement, in whole or in part, without the other's prior written consent.
    2. Succession: This Agreement shall be binding upon, and enure to the benefit of, each of the Parties, their respective personal representatives and their respective successors in title.
    3. Variation: No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each Party.
    4. Entire Agreement: The Parties agree that this Agreement, the Services Agreement and any documents entered into pursuant to it constitute the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
    5. Notices: Notices under this Agreement shall be in writing and sent to a Party's address as set out in the Parties section of this Agreement or to the email address set out below. Notices may be given, and shall be deemed received:
20. by first-class post: two Business Days after posting;
21. by airmail: five Business Days after posting;
22. by hand: on delivery; and
23. by email to [CUSTOMER EMAIL] in the case of the Customer and info@ssc-analytics.com in the case of the Supplier: 24 hours from transmission if sent to the correct email address and no notice of delivery failure is received.
    1. Clause 13.5 does not apply to notices given in legal proceedings or arbitration.
    2. No Partnership or Agency: Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties nor make any Party the agent of another party.
    3. Severance: If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
    4. Waiver: No failure, delay or omission by either Party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
    5. Third Party Rights: No one other than a party to this Agreement, their successors and permitted assignees shall have any right to enforce any of its provisions.
    6. Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed will constitute an original of this Agreement, but all counterparts will together constitute the same agreement. No counterpart will be effective until each Party has executed at least one counterpart.
    7. Governing Law: This Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.
    8. Jurisdiction: The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

AGREED by the Parties on the date set out at the head of this Agreement

On behalf of the Data Controller/Customer:

Signed……………………………………...........................................Date……………

Name…………………………......................................................

Position………………………………..

(Print name & position of authorised signatory)

On behalf of the Data Processor/Supplier:

...............................................................................................................................

Signed……………..…………………............................................. Date…………

Name……………………………….................................................

Position……………………………………

(Print name & position of authorised signatory)

**Schedule**

**Authorised Persons, Services, Personal Data and Purpose of Processing**

Part 1. Authorised Persons

[insert]

Part 2. Services

The analytics of student data, which includes timetables and grades over time. The services provided include:

1. Prediction of future student performance based on previous performance and other students with similar past developments.
2. A clustering based approach to splitting year groups of students into sets.
3. An “early warning” system that tries to spot students for which a decline in performance is imminent.
4. A tool that allows teachers to view their classes performance over time, which gives an overview of the different modules covered over the time period and how well each module was received.
5. Any future tools that are developed and distributed in the period of time in which this agreement is valid.

Part 3. The type of personal data and categories of data subjects whose personal data will be processed

For our analysis, we require

1. Student timetables, detailing what classes they attended at what times with which teachers.
2. Student grades over time, detailing the grade achieved in every recorded assessment and in which subject.

Part 4. The nature and purpose of the processing

The purpose of the processing is providing a service that gives the customer information that allows them to improve student performance and satisfaction.

The nature of the processing can be distinguished into:

1. Traditional analytics:

Traditional analytics includes manual editing (“cleaning”) of data files, algorithmic analysis of cleaned data files and visualization thereof.

2. AI-based analytics:

AI-based analytics includes the manipulation of the data into a form which a neural net has been trained on. The neural net then makes prediction about different parameters such as student performance based on the data it receives.

Part 5. Minimum organisational and technical security measures

All sensitive data is encrypted and stored locally in Flat 2 Muscal House, Field Road, W6 8HR.

Employees undergo data protection training (as detailed in the above agreement) before they are granted access to sensitive student data.

The process is reviewed annually.