

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE CONTRACTS ACT 2010
AND
IN THE MATTER OF THE DATA PROTECTION AND PRIVACY 2019
AND
IN THE MATTER OF A DATA PROCESSING AGREEMENT

This Data Processing Agreement is executed this 4th Day of November 2020.

BETWEEN

VODAN-AFRICA (hereinafter referred to as the “Company”) hosted in Uganda by KAMPALA INTERNATIONAL UNIVERSITY of P.O.BOX 20000, Kansanga, Kampala (hereinafter referred to as “the Company”) which expression may where the context so admits include its successors and assigns) on the one part,

AND

Kenya (hereinafter referred to as “*The Data Processor*”) which expression may where the context so admits include its successors and assigns) on the one part,

Both Parties together are hereinafter referred to as the “Parties”)

WHEREAS:

- (i) The Parties are cognizant of the fact that this *Agreement* forms part of the Contract for Services (“*Principal Agreement*”) executed between them and is specifically intended to provide for terms and conditions relating to data processing between them,
- (ii) The Company represented by the Company in the context of this agreement will act as the Data Controller in respect of all the data processed under this agreement, while the Sub Contracted entity will be the Data Processor.
- (iii) The Company wishes to Sub-Contract certain Services, which imply the processing of personal data, to the Data Processor, in accordance with the provisions of the applicable laws relating to Data Protection and Privacy in Uganda, Zimbabwe and Ethiopia, on the strict understanding that it shall be the duty of the Data Processor to ensure compliance with the said applicable.
- (iv) The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in Kenya to data processing to

with the Data Protection and Protection Privacy Act for Uganda or other applicable laws or equivalent provisions in the relevant laws of Kenya and to ensure that the terms herein are in tandem with the said law, especially in terms of the protection of natural persons with regard to the processing of personal data.

- (v) The Company acts as a Data Controller wishes to sub-contract certain Services, which imply the processing of personal data, to the Data Processor.
- (vi) The Parties seek to implement a data processing agreement that complies with the GDPR requirements; the current legal framework in relation to data processing in Kenya, and the GO FAIR Foundation Rules of Engagement.

The Parties are now desirous of laying down their rights and obligations in the terms set out hereinafter,

IT IS AGREED AS FOLLOWS:

1. Definitions and interpretations;

1.1. Unless otherwise defined herein, capitalized terms and expressions used in this Agreement shall have the following meaning:

1.1.1. "Agreement" means this Data Processing Agreement and all Schedules;

1.1.2. "Company Personal Data" means any Personal Data Processed by a Contracted Processor on behalf of the Company pursuant to or in connection with the Principal Agreement.

1.1.3. "Contracted Processor" means a Sub-Processor.

1.1.4. "Data Protection Laws" means the *GDPR, Data Protection and Privacy Act* and other equivalent or applicable data protection or privacy legislation in *Kenya* to which this agreement or the Principal Agreement applies to the extent applicable.

1.1.5. "Services" means the _____ services that the Company provides.

1.1.6. "GDPR" means the General Data Protection Regulation (EU GDPR) - see (EU) 2016/679

- 1.1.7. “GFF” means The Go FAIR Foundation Rules of engagement available at <https://www.go-fair.org/resources/rules-of-engagement/>
- 1.1.8. “Sub-processor” means any person appointed by or on behalf of Processor to process Personal Data on behalf of the Company in connection with the Agreement.
- 1.1.9. Member Countries. This refers to the countries to which the principal agreement or this agreement relates. In terms of applicable laws, the equivalent provisions of the laws of such member countries shall apply with necessary modifications and qualifications.
- 1.1.10. Applicable Laws or Data Protection Laws; means the legislation relating to data protection and privacy in Uganda and the equivalent provisions in the legislation of the Member Countries.

2. Processing of the Company Personal Data

2.1. Processor shall:

- 2.1.1. Comply with all applicable Data Protection Laws in countries to which this or the principal agreement relates in Processing of the Company Personal Data and in particular the legal requirements set out in Kenya or the equivalent provisions of the applicable laws in the other members states to which this agreement applies.
- 2.1.2. Not Process Company Personal Data other than on the relevant Company documented instructions.
- 2.1.3. Not process any personal data save with the prior consent of the data subject, or in accordance with the terms of contract to which the data subject is privy
- 2.1.4. Not collect, hold or process personal data in a manner that infringes on the privacy of data subject, save where the data is contained in a public record, the data subject has made it public or consented to its collection.
- 2.1.5. Ensure that the data collected is complete, accurate, up-to-date, and not misleading having regard to the purpose of collection or processing.
- 2.1.6. Secure the integrity of the data in its possession or control by adopting appropriate, reasonable, technical and organizational measures to prevent

loss, damage, unauthorized destruction and unlawful access to unauthorized processing of the personal data.

2.2. The Company instructs Processor to process the Company Personal Data, on condition that the same shall be used in connection with the purposes of this agreement or the principal agreement.

2.3. The Data Processor shall hold the Company free from any third-Party claims in respect of any collected and or processed data the subject of this agreement

3. Processor Personnel

3.1. Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

4.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor shall in relation to the Company Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures to safeguard the information in the manner prescribed by the Data Protection and Privacy Act 2019 of Uganda or the equivalent provisions in the applicable legislations in the other member countries.

4.2. In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

5. Sub-Processing

5.1. Processor shall not appoint (or disclose any Company Personal Data to) any Subprocessor unless required or authorized by the Company.

6. Data Subject Rights

6.1. Taking into account the nature of the Processing, Processor shall assist the Company by implementing appropriate technical and organizational measures,

insofar as this is possible, for the fulfilment of the Company obligations, as reasonably understood by Company, to respond to requests to exercise Data Subject rights under the Data Protection Laws or under the applicable laws in the Member states.

6.2. Processor shall;

6.2.1. promptly notify the Company if it receives a request from a Data Subject under any Data Protection Law of any of the member countries in respect of the Company Personal Data; and

6.2.2. ensure that it does not respond to that request except on the documented instructions of the Company or as required by Applicable Laws to which the Processor is subject, in which case Processor shall to the extent permitted by Applicable Laws inform the Company of that legal requirement before the Contracted Processor responds to the request.

7. Personal Data Breach

7.1. Processor shall notify the Company without undue delay upon Processor becoming aware of a Personal Data Breach affecting the Company Personal Data, providing the Company with sufficient information to allow the Company to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2. Processor shall co-operate with the Company and take reasonable commercial steps as are directed by the Company to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation

8.1. Processor shall provide reasonable assistance to the Company with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Company reasonably considers to be required by Sections Section 5 of the Data Protection and Privacy Act 2019 or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of the Company Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9. Deletion or return of Company Personal Data

9.1. Subject to this clause, Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of the Company Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Company Personal Data.

9.2. Processor shall provide written certification to the Company that it has fully complied with this clause 9 within 10 business days of the Cessation Date.

10. Audit rights

10.1. Subject to this clause 10, Processor shall make available to the Company on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Company or an auditor mandated by the Company in relation to the Processing of the Company Personal Data by the Contracted Processors.

10.2. Information and audit rights of the Company only arise under clause 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of applicable Data Protection Law.

11. Data Transfer

11.1. The Processor may not transfer or authorize the transfer of Data to countries outside the East African Community or the Party States to the Principal Agreement, or those countries envisaged under the Principal Agreement without the prior written consent of the Company. If personal data processed under this Agreement is transferred from a country within the East African Community or the Party States to the principal agreement or envisaged under the said agreement, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on approved standard contractual clauses for the transfer of personal data, in accordance with the applicable Data Protection laws.

12. General Terms

12.1. Confidentiality. Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement ("Confidential Information") confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

i) disclosure is required by law;

ii) the relevant information is already in the public domain.

12.2. Notices. All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement at such other address as notified from time to time by the Parties changing address.

13. Governing Law and Jurisdiction

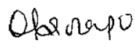
This Agreement is governed by the applicable laws as herein above defined, relating to Data protection and privacy for each of the Member Countries to which the agreement applies.

14. Dispute Resolution

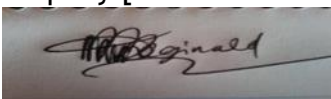
In the event of any dispute arising out of interpretation or enforceability of any of the terms herein, such dispute shall be resolved through arbitration in accordance with the Arbitration and Conciliation Act Cap 4 of any other replacement legislation, in Uganda or the equivalent legislation relating to Arbitration in the Member Countries to which the agreement applies without prejudice to the right of any Party to seek interim reliefs from a court of competent jurisdiction in Uganda.

IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.

SIGNED FOR AND ON BEHALF OF
VODAN Africa Foundation

Signature 
Name: Francisca O Oladipo
Title: Executive Coordinator
Date Signed: November 4 2020

Processor Company [this will be the partners in the member country]

Signature : 
Name: Dr. Reginald Nalugala
Title : Kenya Country Lead
Date Signed : 4th November 2020