

DATA PROCESSING AGREEMENT

Between

<<NAME>>

and

TP Transcription Limited

For

Provision of transcription services by TP Transcription Limited for <<NAME>>.

DATA PROCESSING AGREEMENT

This Agreement is between

- (1) <<Name>> incorporated and registered in England & Wales with company number whose registered office is at (‘‘the Data Controller’’); and
- (2) **TP Transcription Limited** incorporated and registered in England and Wales with company number 4946815 whose registered office is at TP Transcription Limited, Ty Brith, Llandegla Road, Mold CH7 4QX. (‘‘the Data Processor’’)

BACKGROUND

- A. The Data Processor has agreed to provide the Services (defined in the Schedule) to the Data Controller and in doing so shall process the Shared Personal Data (defined in the Schedule) for or on behalf of the Data Controller; and
- B. The Data Controller has agreed to provide the Data Processor with access to the Shared Personal Data and the Data Processor has agreed to process the Shared Personal Data in accordance with the terms and conditions set out in this Agreement.

AGREED TERMS

1. The following definitions apply in this Agreement. Any capitalised terms not defined below shall have the meaning ascribed to them in the Schedule.

Agreed Purpose	means the purpose(s) for which Shared Personal Data can be processed by the Data Processor under this Agreement and which are to transcribe audio recordings sent from <<Name>>
Commencement Date	Thursday, 11 April 2019, notwithstanding the last date of signature of this Agreement;
<<Name>> Single Point of Contact (SPoC)	
TP Transcription Limited Single Point of Contact SPoC	Anna Gresty, Managing Director T: 01745 813306 E: anna@tptranscription.co.uk

2. The Data Processor agrees to process the Shared Personal Data on behalf of the Data Controller for the Term and on the terms and conditions of this Agreement.

3. Where it is necessary to transfer the Shared Personal Data outwith the European Economic Area (in whole or in part) to deliver the Services, the provisions of Annex C shall apply.
4. In the event of a conflict between the terms of the Annexes, the remainder of the Agreement and the Services Agreement (as defined in the Schedule), the order of precedence shall be as follows:
 1. Annex (if applicable)
 2. The remainder of the Agreement
 3. The Services Agreement.

In witness whereof, this page together with the page preceding it and the Schedule and Annexes are executed as follows:

Part 1. SIGNED FOR AND ON BEHALF OF <<NAME>>

Signed for and on behalf of the	Witness Signature.....
at.....	Name (print).....
on..... 20.....	Address
by (print name).....
Position.....
Signature.....	

Signed for and on behalf of Other Organisation	Witness Signature.....
at.....	Name (print).....
on..... 20.....	Address
By (print name).....
Position.....
Signature.....	

**THIS IS THE SCHEDULE REFERRED TO IN THE DATA PROCESSING AGREEMENT BETWEEN
<<Name>> AND TP Transcription Limited**

1. GENERAL TERMS AND CONDITIONS

1.1 In addition to those defined terms set out elsewhere in the Agreement, the following definitions and rules of interpretation apply in this Agreement.

Agreement: means the front section together with the terms set out in this Schedule and any annexes, all of which are attached and signed as relative hereto;

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

Data Subject: has the meaning set out in the GDPR and includes those categories of data subjects set out in Annex B, Part (i);

Data Protection Legislation: while they remain in force the General Data Protection Regulation (GDPR), Data Protection Act 2018, the European Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and 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 supervisory authority;

GDPR: means the General Data Protection Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016.

Personal Data: has the meaning set out in the GDPR;

Services: means the provision of the services to be provided by the Data Processor to the Data Controller under the Services Agreement and as detailed in Annex A (Part i) of the Schedule;

Services Agreement: means the agreement between the Data Controller and the Data Processor for the provision of Services and if in written form as attached as Annex A (Part ii).

Shared Personal Data: means the Personal Data, Special Categories of Personal Data to be shared by the Data Controller with the Data Processor and processed by the Data

Processor for the Agreed Purpose as part of the Services and which are described within Annex B, Part (ii) to the Schedule.

Special Categories of Personal Data: means the type of Personal Data referred to in Article 9(1) of GDPR.

Term: has the meaning set out in Clause 2 of this Schedule.

- 1.2 The Schedule and the Annexes forms part of this Agreement and shall have the same force and effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedule and Annexes.
- 1.3 The headings in this Agreement are included for convenience only and shall be ignored in construing this Agreement.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 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 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written includes fax and e-mail.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 References to Clauses, Schedule and Annexes are to the clauses, schedules and annexes of this Agreement.
- 1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **COMMENCEMENT AND DURATION**

2.1 This Agreement shall commence on the Commencement Date and subject to earlier termination continue in force until expiry or termination of the Services Agreement.

3. **THE DATA PROCESSOR'S RESPONSIBILITIES**

3.1 The Data Processor undertakes and warrants to the Data Controller to process the Shared Personal Data during the Term and (i) only for the Agreed Purpose and (ii) unless otherwise obliged by applicable law, act only in accordance with the lawful written instructions reasonably given by the Data Controller to the Data Processor under this Agreement. In the event the Data Processor is obliged by applicable law to act outwith the scope of, or contrary to, the instructions of the Data Controller, it hereby agrees to inform the Data Controller as soon as reasonably practicable and prior to the processing activity, of such legal requirement unless such law prohibits such information being notified to the Data Controller on important grounds of public interest.

3.2 In addition to the provision of Clause 3.1, the Data Processor shall:

- (a) comply with the requirements set out in Annex D;
- (b) take any appropriate technical and organisational measures (in addition to those specified in Annex D) against unauthorised or unlawful processing of Shared Personal Data and against accidental loss or destruction of, or damage to, Shared Personal Data (including, but not limited to, adequate back-up procedures and disaster recovery systems) to ensure a level of security appropriate to the risk and which, from implementation of GDPR satisfies the requirements of Article 32 of the GDPR as a minimum;
- (c) ensure that each of its employees, agents and subcontractors are made aware of its obligations under this Agreement, are reliable and suitably trained with regard to the security and protection of the Shared Personal Data and have either committed themselves to keeping the Shared Personal Data confidential under their written terms of employment (or otherwise) or are under an appropriate statutory obligation of confidentiality;
- (d) (i) make available to the Data Controller all information necessary and allow its data processing facilities, procedures and documentation to be inspected by the Data Controller or its representatives in order to ascertain compliance with the terms of this Agreement; and (ii) inform the Data Controller if, in its opinion, a request under this Clause 3.2(d) infringes GDPR or other applicable Data Protection Legislation;
- (e) (i) promptly, and within **24 hours** of becoming aware of a breach, inform the Data Controller of a Data Security Breach and/or if any Shared Personal Data is lost or

destroyed or becomes damaged, corrupted or unusable or is processed in a manner not expressly authorised by the Data Controller; and (ii) in the event any of the occurrences referred to in Clause 3.2(e)(i) arise, the Data Processor shall promptly provide such assistance to the Data Controller as is reasonably required, and requested by the Data Controller, to allow the Data Controller to manage any such event and meet its obligations under the Data Protection Legislation which could include, but not limited to, taking steps to minimise loss or damage arising from such event e.g. notifying breach to supervisory authority and/or communicating breach to Data Subject;

- (f) Notification of security breaches, as per clause 3.2(e), should be made to each party's relevant Information Security/Information Governance team.

For Other Organisation, breach notifications should be sent to anna@tptranscription.co.uk:

For <<NAME>> breach notifications should be sent to: <<Email Address>>;

- (g) not process or transfer the Shared Personal Data outside the European Economic Area except with the express prior written consent of the Data Controller;
- (h) notify the Data Controller of any request or complaint that may be received from Data Subjects and provide relevant copies within 48 hours of receipt to the appropriate address, as specified in 3.2(f) and shall not respond to such requests unless it has been authorised to do so by the Data Controller;
- (i) promptly provide such assistance to the Data Controller as is reasonably required to allow the Data Controller to fulfil its obligations under the Data Protection Legislation with regard to all requests and complaints which may be received from Data Subjects in the exercise of their rights under the Data Protection Legislation including, without limitation, right of access to their Shared Personal Data held by, or on behalf of, the Data Controller;
- (j) from implementation of GDPR, provide assistance as is reasonably required to the Data Controller to ensure the Data Controller meets its obligations pursuant to Articles 32 to 36 of the GDPR (where applicable);
- (k) subject to any obligation to comply with applicable law, court or regulatory body, not divulge any Shared Personal Data, whether directly or indirectly, to any other Data Processor applications or systems, or to any third party without the express, explicit and informed consent of the Data Controller with regard to all categories of Shared Personal Data to be so transferred;

- (l) keep a record of any processing of personal data it carries out on behalf of the Data Controller in accordance with Article 30(2) of GDPR; and
 - (m) not engage a sub-processor without the prior specific or general written authorisation of the Data Controller and where consent has been provided, ensure that such sub-processor is engaged on terms no less onerous than those set out in this Agreement. In the event the Data Controller has given its general written authorisation, the Data Processor shall inform the Data Controller in good time of any change to approved processors and allow the Data Controller the opportunity to object (acting reasonably and without undue delay) to such change.
- 3.3 During the Term, the Data Processor warrants and undertakes to comply with the Data Protection Legislation in so far as it is applicable to the Data Processor when processing the Shared Personal Data.

4. **DATA CONTROLLER'S RESPONSIBILITIES**

- 4.1 The Data Controller acknowledges that the Data Processor is reliant on the Data Controller for direction as to the extent to which the Data Processor is entitled to use and process the Shared Personal Data. The Data Controller warrants that the processing of the Shared Personal Data by the Data Processor under, or in relation to, this Agreement will not breach the Data Protection Legislation. The Data Controller further warrants and undertakes that it shall comply with all Data Protection Legislation for so long as the Data Controller is in receipt of the Services.
- 4.2 The Data Controller shall promptly provide such assistance to the Data Processor as is reasonably required to allow the Data Processor to fulfil its obligations under the Data Protection Legislation.
- 4.3 The Data Controller shall provide the Data Processor with details of the Data Controller's data retention requirements for Shared Personal Data processed under, or in relation to, this Agreement and the Data Processor shall take reasonable steps to hold all Shared Personal Data processed on the Data Controller's behalf for the time periods specified.

5. **TERMINATION**

- 5.1 Either party ("the First Party") may terminate this Agreement with immediate effect by serving written notice on the other party ("the Second Party") in the event:
- (a) the Second Party is in breach of a material term of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within twenty one (21) days from the date of receipt by the Second Party of a notice from the First Party identifying the breach and requiring its remedy; or

- (b) the Second Party become insolvent, has a receiver, administrator, or administrative receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for solvent amalgamation or reconstruction).

6. CONSEQUENCES OF TERMINATION

- 6.1 On termination or expiry of this Agreement for any reason, the Data Processor shall on the instructions of the Data Controller immediately delete or deliver to the Data Controller all Shared Personal Data and all copies of information and data provided by the Data Controller to the Data Processor in connection with the Services and certify to the Data Controller that it has not retained any copies of Shared Personal Data or other information or data (unless Union or Member State law requires storage of the personal data).
- 6.2 On termination or expiry of this Agreement, the following clauses shall continue in force: Clauses 6, 7, 8 and 13.
- 6.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

7. LIABILITY

- 7.1 Neither party excludes or limits liability to the other party for death or personal injury caused by negligence, fraud or breach of statutory duty and/or any matter for which it would be unlawful for the parties to exclude liability.
- 7.2 Subject to Clause 7.1, neither party shall in any circumstances be liable whether in contract, delict (including for negligence and/or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; or
 - (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time).
- 7.3 Clause 7.2 shall not prevent claims, for:
 - (a) direct financial loss that are not excluded under any of the categories set out in Clause 7.2(a), which shall include any penalties or fines issued by a Data Protection Authority; or
 - (b) tangible property or physical damage.

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

7.5 Subject to Clause 7.1 each party's aggregate liability for loss arising (whether directly or indirectly) from its acts or omissions under or in relation to this Agreement shall in no event exceed twice the value of sums actually received by the Data Processor under the Services Agreement. Notwithstanding the foregoing, the parties agree and acknowledge that the cap of liability expressed in this Clause 7.5 shall not apply to any regulatory fine imposed by a Supervisory Authority (as defined in GDPR).

7.6 For the avoidance of doubt, the provisions of this Clause 7 shall only apply to matters arising under this Agreement. Any liability arising from or in relation to the Services generally shall be in accordance with the terms of the Services Agreement.

8. **FORCE MAJEURE**

Neither party shall be deemed to be in breach of this Agreement if it is unable to carry out any provision of it for any reason beyond its control including (without limiting the generality of the foregoing) acts of God, legislation, fuel shortages, war, fire, flood, drought, failure of power supply embargo, civil commotion and employee action.

9. **ASSIGNATION**

9.1 Except as expressly provided for in this Agreement, the Data Processor shall not be entitled to:-

(a) assign or transfer any or all of its rights and/or obligations under this Agreement (or purport to do so); or

(b) sub-license or sub-contract any or all of its obligations under this Agreement (or purport to do so);

save, in either case, with the prior written consent of Data Controller.

10. **GENERAL**

10.1 Except as otherwise expressly provided in this Agreement none of the terms and conditions of this Agreement shall be enforceable by any person who is not a party to it.

10.2 Each provision of this Agreement shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and the remaining provisions of this Agreement shall continue in full force and effect.

10.3 No waiver by either party of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed by or on behalf of that party and no forbearance,

delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver by either party of any of the requirements hereof or any of its rights hereunder release the other from full performance of its obligations stated herein.

- 10.4 This Agreement and any documents referred to herein constitutes the entire understanding between the parties and supersedes and extinguishes all (if any) prior drafts, agreements, understandings, undertakings, representations, warranties and/or arrangements of any nature whatsoever (whether or not in writing) between the parties in connection therewith.
- 10.5 Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Agreement shall be deemed to constitute one of the parties as the agent of the other.
- 10.6 Subject to Clause 6, the Parties shall be entitled to amend any details of this Agreement at any time provided that any such amendment is recorded in writing by both Parties.
- 10.7 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 10.8 The Data Processor shall provide all other reasonable assistance at all times during the term of this Agreement for the purposes of carrying out an audit of all confidentiality, activities, performance, security and integrity in connection with this Agreement.

11. **COUNTERPARTS**

This Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either Party may enter into this Agreement by signing either of such counterparts.

12. **NOTICES**

A notice given to a party under or in connection with this Agreement, other than a request in relation to security breaches (Clause 3.2(e)-(f)) and data subjects' rights (Clause 3.2(h)) or shall be in writing and signed by or on behalf of the party giving it and addressed to the registered office of a party or to the email address of <<NAME>> SPoC or the Other Organisation's SPoC (as appropriate).

Delivery methods and deemed delivery times are as set out below:

Delivery method	Deemed delivery date and time
Delivery by hand.	At time of delivery

Pre-paid first class recorded delivery post	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Email.	From receipt of delivery confirmation.

13. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed and construed in all respects in accordance with the laws of England and Wales and the Courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement, or its subject matter or formation.

THESE ARE THE ANNEXES REFERRED TO IN THE FOREGOING DATA PROCESSING AGREEMENT BETWEEN <<NAME>> AND TP TRANSCRIPTION LIMITED

Annex A

Part (i) Description of the Services

[Description of the work]. TP Transcription Limited are to transcribe these audio recordings into a written format.

Part (ii) Services Agreement (if available)

Services are to be provided by TP Transcription Limited under the <<Name>>'s Conditions of Contract For the Purchase of Goods and Services

Annex B**Part (i) Categories of Data Subjects**

The Data Subjects are [describe who the interviewees are].

Part (ii) Shared Personal Data

The content of the interviews recorded is dependent on the Data Subject who is answering the questions. Although information such as surname, address, date of birth, religion, and ethnicity will not be directly requested in audio format the Data Subject may include such information in their responses. Audio recordings of interviews conducted by <<Name>> will be sent to TP Transcription Limited for transcription. The name of the files will not include any personal information. However, personal information may be mentioned throughout an interview and therefore be present on the audio files. Audio recordings may therefore contain personal information such as: names, names of relatives and details of hospital admissions & medical treatments.

ANNEX C
Transfers outwith European Economic Area (EEA)

Not applicable

ANNEX D

Technical and Organisational Security Measures

This is Annex D referred to in the foregoing data sharing agreement between the <<Name>> and TP Transcription Limited

1. **Digital audio files will be uploaded using the SSL secure server at <https://www.universitytranscriptions.co.uk>**
2. **Data is stored on the TP Transcription Limited secure servers.**
3. **Servers are protected by firewalls**
4. **TP Transcription Limited will send the anonymised transcribed documents to researchers at <<Name>> via email.**
5. **Audio recordings will be destroyed one month after transcription services completed.**
6. **According to TP Transcription Limited policy, all data is deleted one month after transcription.**

The Data Processor should provide any copies of relevant Information Management/Security Policies and Procedures that are relevant to this section. These may already form part of the paperwork for procurement exercises.

Please see attached:

TP Transcription Limited Cyber essential certificate.