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**Template for agreement on joint processing responsibility**

Agreement on joint processing responsibility pursuant Regulation (EU) 2016/679 of 27 April 2016 Article 26, the following agreement is entered into

between

MF Norwegian School of Theology, Religion and Society

Org. no: 917 387 079

 P.O. Box 5144, Majorstuen

NO-0363 Oslo

Norway

and

Name of institution

……………………………………………

Org. no: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Postal address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Postal code:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Country:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Month/Year

*Yellow=guidelines/comments that must be deleted. Green= indicates that information must be inserted. Red=indicates that the name of the project managers institution/institution with main responsibility must be inserted. Information about this must also be inserted in cases where the project managers institution/institution with main responsibility is an external party. The colour, and any unused alternatives must be deleted.*

1. **Joint processing responsibility**
	1. This agreement lays down the distribution of responsibilities among MF Norwegian School of Theology, Religion and Society (MF) and [*name of external party*] in connection with the specific project as stated on the first page of the Agreement (the “Main Agreement”), [*name of processing/project*].

The joint processing responsibility concerns:

* Guidelines: Provide a brief [preferably point-by-point] overview of what type of personal data will be processed (e.g. documents, data files, interview data, de-identified data, sensitive data etc.)
* Guidelines: Provide a brief overview of whom the data concerns, e.g. students and staff at the institution or patients at a health institution, the lawfulness of processing and the approvals granted.
	1. Article 26 of the General Data Protection Regulation (GDPR) states that where two or more data controllers jointly determine the purposes and means of processing, they shall have joint processing responsibility.

MF and [*name of external party*] agree that joint processing responsibility exists for [*name of processing/project*]. When considering whether to have joint responsibility, emphasis has among other things been placed on the fact that both institutions contribute [*type of expertise etc.*] and jointly determine the purposes and means of the processing/project.

The joint controllers shall in a transparent manner determine their respective responsibilities for compliance with the obligations under the General Data Protection Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject.

Pursuant to the General Data Protection Regulation Article 26 (2), the arrangement under this agreement shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement, as set out in this agreement, shall be made available to the data subject.

Irrespective of the terms of the arrangement, as set out in this agreement, the data subject may exercise his or her rights under the General Data Protection Regulation in respect of and against each of the controllers.

The “internal” distribution of responsibility set out in this agreement on joint processing responsibility shall not prevent the supervisory authority from pursuing both MF and [*name of external party*].

1. **General distribution of responsibilities**
	1. MF’s responsibility:

Guidelines: Describe MF’s responsibility in relation to storage and, if relevant, collecting and coding data (e.g. storage of scrambling keys, data files, analyses and documents), how data are stored and any security measures, as well as access to data.

[*Name of external party*]'s responsibility:

Describe the external party’s responsibility in relation to storage and, if relevant, collecting and coding data (e.g. storage of scrambling keys, data files, analyses and documents), how data are stored and any security measures, as well as access to data.

1. **Principles and authority to process data**
	1. Both MF and [*name of external party*] are responsible for ensuring that there is a valid legal ground for processing and that it can be documented.

Choose one or both of the alternatives:

Alternative 1: The research project must be assessed by Sikt (the Norwegian Centre for Research Data, formerly NSD) and, if relevant, the Regional Committees for Medical and Health Research Ethics (REC).

Alternative 2: The processing shall be assessed by and approved at each party`s institutions and be included in the institution’s overview of its processing of personal data.

* 1. MF and [*name of external party*] are both responsible for complying with the principles relating to the processing of personal data set out in Article 5, to the extent that the provisions are applicable to the areas of responsibility described in this agreement.
1. **The rights of the data subjects**
	1. Both parties are responsible for securing the rights of the data subjects described in the General Data Protection Regulation by complying with the following:
* the obligation to provide information when personal data are collected from the data subject,
* the obligation to provide information if the personal data are collected from a party other than the data subject,
* the right of access by the data subject,
* the right to rectification,
* the right to erasure,
* the right to restriction of processing,
* the notification obligation regarding rectification or erasure of personal data or restriction of processing,
* the right to data portability and
* the right to object against a processing activity.

the requirement for obtaining new authorisation from (patient, employee, student, research participant etc.) in connection with new, changed or extended use of data, samples etc.

the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her, unless this is permitted pursuant to Article 22.

* 1. The project manager at MF or the project manager at [*name of external party*] is the contact person for the participants in the study/processing and has main responsibility for ensuring that the rights of the project participants/data subjects are safeguarded. [*Name of external party*] or MFnevertheless has an independent responsibility for ensuring that the rights of the participants/data subjects are safeguarded. This also means that both parties are obliged to ensure that the data are handled as described in Clause 1.1 and that both controllers erase all data if a participant/data subject wishes to withdraw from the study/processing.
	2. If MF receives a request or enquiry from a data subject regarding matters that fall under [*name of external party*]’s responsibility (where the personal data are processed), cf. above, it shall be forwarded to [*name of external party*] for response as soon as possible.
	3. If [*name of external party*] receives a request or enquiry from a data subject regarding matters that fall under MF's responsibility (where the personal data are processed), cf. above, it shall be forwarded to MF for response as soon as possible.
	4. The parties are responsible for assisting each other to the extent this is relevant and necessary to ensure that both parties are able to comply with their obligations vis-à-vis the data subjects. Each controller is individually liable in damages in relation to the data subjects if errors or neglect on the part of the individual controller causes the data subject financial or non-financial losses as a result of violation of their rights or privacy.
1. **Security of processing and documentation of compliance with the General Data Protection Regulation**
	1. Both parties are responsible for implementing appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with the General Data Protection Regulation. The measures shall take into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons. The measures shall be reviewed and updated where necessary, cf. the General Data Protection Regulation Article 24. Examples of such measures include both parties implementing appropriate guidelines for handling security breaches, requests for access or for meeting the obligation to provide information in accordance with the applicable legislation.
	2. Both parties’ measures shall, if proportionate to the processing activities, include implementation of appropriate protection measures.
	3. Both parties are responsible for complying with the provision on data protection by design and by default in Article 25.
	4. Both parties are responsible for complying with the requirement set out in the General Data Protection Regulation Article 32 regarding security of processing. This means that both parties, 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, shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks.

Both parties shall therefore carry out and document a risk assessment, and carry out and document measures to limit identified risks.

1. **Data protection impact assessment**
	1. Both parties are responsible for complying with the requirement set out in the General Data Protection Regulation Article 35 regarding a data protection impact assessment (DPIA). This means that, where a type of processing taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, both parties shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.
	2. Both parties are similarly obliged to meet the requirement set out in the General Data Protection Regulation Article 36 on prior consultation with the supervisory authority when relevant.
	3. If required in connection with joint processing, both parties shall assist each other in the implementation of a DPIA and a prior consultation with the supervisory authority. Both parties are obliged to inform each other about the content and conclusion of a prior consultation, if relevant.
2. **Use of processors/sub-processors**
	1. [*Name of external party*] or MF are not entitled to use processors and/or sub-processors, if relevant, in connection with the joint processing, unless directly agreed with MF's project manager or [*name of external party’s project manager.*
	2. If processors and/or sub-processors are used, both parties are responsible for complying with the requirements set out in the General Data Protection Regulation Article 28. Among other things, both parties are obliged to:
* use processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of the General Data Protection Regulation and ensure the protection of the rights of the data subject.
* ensure that a data processor agreement has been entered into with the processor and/or sub-processor.

Example:

* TSD at UiO (University of Oslo) is deemed to meet all these criteria.
	1. On request, both parties shall be informed about whether personal data are processed by the processors and, if relevant, sub-processors, used by the other party.
	2. If personal data are processed by processors and, if relevant, sub-processors, both parties shall, on request, be informed about the content of the agreements between the party in question and the processor/sub-processor.
1. **Records – overview of processing activities**
	1. Both parties are responsible for complying with the requirement set out in the General Data Protection Regulation Article 30 regarding records of processing activities. This means that both parties shall maintain a record of processing activities for which the parties are joint controllers.
	2. Both parties shall inform each other about the content of their above-mentioned records.
	3. On the basis of the content of each other’s records, both parties shall prepare special records of the processing activities regulated through the agreement.
2. **Notification of a personal data breach to the supervisory authority**
	1. MF or [*name of external party*] is responsible for complying with the General Data Protection Regulation Article 33 regarding notification of a personal data breach to the supervisory authority.
	2. In the case of a personal data breach, [*Name of external party*] or MF shall without undue delay notify MF or [*name of external party*]. The notification to MF or [*name of external party*] shall at least describe the security breach, which data subjects were affected by the security breach, what personal data were affected by the security breach, what immediate measures have been implemented to handle the security breach and, if relevant, what preventive measure have been implemented to avoid similar incidents in future.

MF or [*name of external party*] are responsible for notifying the Norwegian Data Protection Authority when required.

1. **Communication of a personal data breach to the data subject**
	1. Both parties are responsible for complying with the General Data Protection Regulation Article 34 regarding communication of a personal data breach to the data subject.
	2. In the case of a personal data breach, [*Name of external party*] or MF shall without undue delay notify MF or [*name of external party*] as described in Clause 9.2. MF or [*name of external party*] are responsible for notifying the data subject when required.
2. **Transfers of personal data to third countries or international organisations**
* Comments: Personal data managed by one or both parties can be transferred to countries outside the EU/EEA area (third countries). Such transfer may take place on certain conditions, and the rules for transfer to third countries are found in Articles 45-47 and 49 of the EU data protection regulation. These rules imply, among other things, that the transfer will be lawful if it takes place to EU-approved third countries or on the basis of the EU Commission's standard contractual clauses for transfer of personal data to data processors in third countries. Please not that an assessment must be made of the third country`s level of data protection and, if necessary, further measures must be implemented in order to legally transfer personal data on the basis of the EU`s standard contractual clauses. The rules also apply to, among other things, the storing of personal data in third countries and access to personal data from third countries, backup and other transfer of personal data that is carried out in connection with the administration of the service in question, such as support.

Select one of the alternatives:

* 1. Alternative 1: Personal data shall not be transferred to third countries or international organisations.

Alternative 2: Personal data managed by the processor in accordance with this agreement will be transferred to the following recipient countries outside the EU/EEA area:

……………………………………………………………………………………………………………………………………………

[*name of recipient country].*

The legal grounds for transferring personal data to the above-mentioned recipient countries outside the EU/EEA area are:

……………………………………………………………………………………………………………………………………………

[brief account of the basis for transfer].

1. **Complaints**
	1. The parties have independent responsibility for considering any complaints from data subjects, concerning breaches of provisions of the General Data Protection Regulation, in connection with the processing of personal data that the party in question is responsible for under this agreement.
	2. The party that receives a complaint shall inform the other party without undue delay if the complaint concerns the project/joint processing as such. Information must also be provided about whether the party that received the complaint will consider the complaint itself and to what extent.

* 1. If one of the parties receives a complaint that should be considered by the other party, it shall forward the complaint to this controller without undue delay.
	2. If one of the parties receives a complaint where part of the complaint should be considered by the other party, this part shall be forwarded to the other party for response without undue delay.
	3. The data subject shall be informed about the essence of this agreement in connection with the party's forwarding of a complaint or part of a complaint to the other party.
1. **Confidentiality**
2. 1 Only employees of one of the parties who need to access personal data in connection with their work, may be granted such access. Each party is required to document guidelines and routines for control of access. The documentation will be made available to the other parties on request.
3. 2 Employees of one of the parties have a duty of confidentiality in respect of documentation and personal data to which they gain access in accordance with this agreement. This provision also applies after termination of the agreement. The duty of confidentiality includes employees of third parties who perform maintenance (or similar tasks) on systems, equipment, networks or buildings that the party uses to provide the service.
4. **Breach**

In the event of a material breach of the terms of this Agreement due to errors or negligence by one party, the other party may terminate the Agreement and the Main Agreement with immediate effect.

1. **Compensation**

Art. 82 of the GDPR about compensation and liability applies to any person who has suffered damage as a result of an infringement of the GDPR.

The Parties shall be individually liable for administrative fines imposed in accordance with Article 83 of the GDPR.

Furthermore, either party may claim compensation for any direct financial loss that can reasonably be attributed to breach of the other party's obligations under the Agreement. Compensation cannot be claimed for indirect losses. Indirect losses include, but are not limited to, lost profits, lost savings and third party claims. Loss of data shall be considered indirect loss, unless due to data management for which the Contractor is responsible under the Agreement.

Each controller is liable for any respective infringements of the obligations under the Agreement.

Total compensation per calendar year is limited to:

Note: Choose the appropriate option depending on the project/agreement:

Option 1:

an amount corresponding to total annual remuneration from [*name of financing body*] excl. value added tax under the Main Agreement.

Option 2:

an amount set at one million Norwegian kroner (NOK 1 million).

The aforementioned limitations on compensation do not apply in the event of gross negligence or intent.

1. **Entry into force and termination**
	1. This agreement was approved by line manager [*title*] at MF or [*title + name of external party*] and [*title + name of external party*]or line manager [*title*]at MF. The approval must be available before the work can commence. Both parties must comply with all guidelines from Sikt (formerly NSD), REC, other approval agencies and the line manager [*title*] at MF or [*title + name of external party]*. Any matters that may entail a breach of such guidelines shall be reported to the persons responsible for the project without undue delay and be considered in accordance with the non-conformity procedures in force at all times at MF or [*name of external party*].
	2. This agreement enters into force when signed by both parties.
	3. The agreement is valid for as long as the data concerned are processed, or until the agreement is replaced by a new agreement that stipulates the division of responsibility in connection with the processing of personal data.
2. **Informing the other party**
	1. The parties shall inform each other of matters of importance to the joint processing and to this agreement.
3. **Contact persons**

MF’s contact persons for questions relating to this agreement are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*Name of external party*]’s contact person for questions relating to this agreement is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Choice of law, legal venue and resolution of disputes**

Comments: Cross out the alternative below – A or B – that does not apply.

1. **Choice of law and legal venue.**

The agreement is subject to Norwegian law, and the parties have agreed that [*fill in the name of the district court*] shall be the legal venue. This also applies after termination of the agreement.

* Comments: This point applies when the external party is a private or foreign player.
1. **Choice of law and resolution of disputes**

The parties’ rights and obligations pursuant to the contract are governed in their entirety by Norwegian law. Endeavours shall be made to solve any dispute arising from this agreement through negotiations.

If the parties fail to solve the dispute through negotiations, the dispute shall be resolved by the Ministry of Education and Research, whose decision shall be binding. Each of the parties can demand that the dispute shall be forwarded to the Ministry.

* Comments: This point applies when the external party is another state-owned university or university college in Norway.

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 This agreement is drawn up in 2 – two – originals, one to be retained by each of the parties.

Place and date

On behalf of On behalf of

MF –Norwegian School of Theology, Religion and Society [*name of external party*]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Position: Position: