MONTCLAIR STATE UNIVERSITY

This Data Protection Addendum ("Addendum") is effective May 25, 2018 and forms part of any agreement with Montclair State University ("University") that requires the transfer of personal data to a data importer, as defined below, who is not a member of the U.S. Data Privacy Shield ("Principal Agreement"). By signing this Addendum or the University's Standard Terms and Conditions, or by acceptance of a Purchase Order issued by the University, the data importer agrees to the terms of this Addendum to ensure adequate safeguards for the protection of the privacy of personal data and the fundamental rights and freedoms of individuals. Nothing in the Addendum relieves the processor or data importer of their direct responsibilities and liabilities under the General Data Protection Regulation 2016/679 ("GDPR").

Clause 1 - Definitions:

(a)   'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in the GDPR;

(b)   'the data exporter' means Montclair State University who is a controller under the GDPR and who transfers personal data to the data importer;

(c)   'the data importer' means the party who agrees to receive from the data exporter personal data intended for processing on the data exporter's behalf after the transfer in accordance with the data exporter's instructions and the terms of the Addendum and who is not subject to a third country's system ensuring adequate protection within the meaning of the EUGDPR;

(d)   'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with the data exporter's instructions, the terms of the Addendum and any written subcontract;

(e)   'the applicable data protection law' means the European Union and Member State legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller   or data importer;

(f)   'technical and organizational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2 - Details of the transfer:

The details of the transfer and in particular the special categories of personal data, where applicable, are specified either in Appendix 1 attached to the Addendum, or in the Principal Agreement, which form an integral part of this Addendum.

Clause 3 - Third-party beneficiary clause:

1.   The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 11, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

2.   The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 11, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Addendum.

3.   The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4 - Obligations of the data exporter:

Data exporter agrees and warrants:

(a)   that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law and does not violate the relevant provisions of the applicable Member State;

(b)   that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Addendum;

(c)   that the data importer will provide sufficient guarantees in respect of the technical and organizational security measures specified in Appendix 2 to this Addendum;

(d)   that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of the implementation;

 (e)   that it will ensure compliance with the security measures;

(f)   that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after the transfer, that its data could be transmitted to a third country not providing adequate protection within the meaning of the GDPR;

(g)   to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or lift the suspension, or is otherwise is required under the GDPR;

(h)   to make available to the data subjects upon request a copy of the Addendum, with exception of Appendix 2, and a summary description of technical and organizational security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Addendum, unless the Addendum or the contract contain commercial information, in which case it may remove such commercial information;

(i)   that, in the event of sub-processing, it requires the processing activity to be carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Addendum; and

(j)   that it will ensure compliance with Clause 4(a) to (i).

Clause 5 - Obligations of the data importer:

Data importer warrants and agrees:

(a)   that the processing, including the transfer itself, of personal data has been and will continue to be carried out in accordance with the relevant provisions of the GDPR, and to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Addendum and that the persons authorized to process any personal data shall commit themselves to confidentiality or are under the appropriate statutory obligation thereof; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b)   that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the GDPR and the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Addendum, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c)   that it has implemented the technical and organizational security measures in Appendix 2 before processing the personal data transferred including, as appropriate, the measures referred to in Article 32(1) of the GDPR, and has implemented appropriate technical and organizational measures to enable the data exporter to respond to requests from individuals who exercise their rights under the data protection laws.

(d)   that it will promptly notify the data exporter about:

(i)   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited by law;

(ii)   any accidental or unauthorized access; and

(iii)   any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so by the data exporter;

(e)   to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the appropriate supervisory authority within the EU with regard to the processing of the data transferred;

(f)   at the request of the data exporter to submit its data-processing facilities for audit of the processing activities which shall be carried out by an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g)   to make available to the data subject upon request a copy of the Addendum or any contract for sub-processing, unless the Addendum or subcontract contain commercial information, which may remove such commercial information, with the exception of a summary description of the security measures in Appendix 2 in those cases where the data subject is unable to obtain a copy from the data exporter;

(h)   that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

(i)   that the processing services by the sub-processor will be carried out in accordance with Clause 11;

(j)   to send promptly a copy of any sub-processor agreement it concludes under the Addendum to the data exporter.

(k)   To notify data exporter without undue delay upon becoming aware of a personal data breach, providing data exporter with sufficient information to allow data exporter to meet any obligations to report or inform data subjects of the breach as required by the data protection laws. Such notification shall include as a minimum:

        (i) the nature of the breach, the categories and numbers of data subjects concerned, and the categories and numbers of personal data records concerned;

        (ii) the name and contact details of processor's data protection officer or other relevant contact from whom more information may be obtained;

        (iii)   describe the likely consequences of the breach; and

        (iv) the measures taken or proposed to be taken to address the breach.

        (v) co-operate with University and take such reasonable commercial steps as are directed by data exporter to assist in the investigation, mitigation and remediation of each such a breach.

Clause 6 - Liability

1.   The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 is entitled to receive compensation from the data exporter for the damage suffered.

2.   If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer, processor or the data importer's sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data subject

may assert a claim against the data importer as if it was the data exporter under all applicable laws, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject shall enforce its rights against such entity. The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3.   If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the data subject may issue a claim against the sub-processor with regard to its own processing operations under the Addendum as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Addendum.

Clause 7 - Mediation and jurisdiction:

1.   The data importer agrees that if the data subject invokes against it third party beneficiary rights and/or claims of compensation for damages under the Addendum, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation by an independent person, or where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established;

The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of U.S., national or international law.

Any action brought by the data exporter or the data importer against each other concerning a dispute arising out of this Addendum must be brought in a court of competent jurisdiction in New Jersey, USA, under the laws of the United States and the State of New Jersey, as applicable, to the extent that those laws are not in conflict with the GDPR.

Clause 8 - Cooperation with supervisory authorities:

1.   The data exporter agrees to provide a copy of this Addendum with the appropriate supervisory authority if it so requests or required by the GDPR.

2.   The parties agree the supervisory authority has the right to conduct an audit of the data importer and processor, and any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the GDPR.

3.   The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

4.   The data importer shall promptly inform the data exporter about any communications between the data importer and the supervisory authority concerning the personal data-processing services being performed on behalf of the data exporter.

5.   If requested by data exporter, the data importer shall act as representative of data exporter in the European Union pursuant to Article 27 of the GDPR.

Clause 9 – Governing Law

The Addendum shall be governed by the law of the Member State in which the data exporter is established, if applicable.

Clause 10 - Variation of the contract

Because the Clauses contained in this Addendum are generally mandated by the GDPR, the parties agree that they will not revise nor modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Addendum.

Clause 11 - Sub-processing

1.   The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter without the prior written consent of the data exporter unless a written agreement with the sub-processor imposes the same obligations on the sub-processor as are imposed on the data importer under Clause 3 of the Addendum. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2.   Any written contract between the data importer and the sub-processor shall also provide the same third-party beneficiary rights in Clause 3 for the data subject to bring a claim for compensation referred to in paragraph 1 of Clause 6 against the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the laws of the Member State applicable to data exporter.

3.   The data importer shall keep a list of sub-processing agreements and copies of agreements provided by the data importer pursuant to Clause 5(j), which shall be updated at least once a year and a copy sent to the data exporter. The list shall be made available to the data exporter's supervisory authority when required by the GDPR or requested.

Clause 12 - Obligation after the termination of personal data-processing services:

1.   The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the election of the data exporter, return all the personal data transferred and the copies thereof to the data exporter in a format reasonably satisfactory to data exporter, or destroy all personal data and certify to the data exporter that it has done so unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the

personal data transferred. If not destroyed, the data importer warrants and guarantees the confidentiality of the personal data and will not process the personal data in the future

Clause 13 - Indemnification

Data importer, data processor, and subprocessor shall indemnify, defend and hold harmless Montclair State University and the State of New Jersey for any violation of this Addendum and the GDPR, including but not limited to, claims filed by any data subject or supervisory authority arising out of the personal data, and, any and all costs, charges, damages, expenses, penalties, fines or other losses incurred.

Agreed and accepted by:

_____
Signature of Data Importer:
Name of Data Importer:
Title of Signatory:
Date:

 Agreed and accepted by Montclair State University:

_____
Name:
Title of Signatory:
Date:

<u>Appendix 1 to the Addendum</u>

1. The date exporter is (please specify briefly the activities relevant to the transfer):

2. The data importer brief description of activities relevant to the transfer of personal data:

3. The personal data transferred concerns the following categories of data subjects (please specify):

4. The personal data transferred concern the following categories of data (please specify):

5. The personal data transferred concerns the following special categories of data (race, ethnic origin, political opinions, religion, philosophical beliefs, trade union membership, genetic data, biometric data, health, sex life, or sexual orientation):

6. The personal data transferred will be subject to the following basic processing activities (please specify):

Agreed and accepted by:

_____
Signature of Data Importer:
Name of Data Importer:
Title of Signatory:
Date:

Agreed and accepted by Montclair State University:

_____
Name:
Title of Signatory:
Date:

Appendix 2 to the Addendum

This Appendix forms part of the Clauses and must be signed by data importer.

The following is a description of the technical and organizational security measures implemented by the data importer in accordance with Clause 4(d) and 5(c):

Agreed and accepted by:

_____
Signature of Data Importer:
Name of Data Importer:
Title of Signatory:
Date: