

# Data Processing Agreement

This Data Processing Agreement (“**Agreement**”) forms part of the Contract for Services (“**Principal Agreement**”) between

**University Hospitals of North Midlands, Newcastle Road, Stoke-on-Trent, Staffordshire. ST4 6QG**

(the “**Trust**”) and

(the “**Data Processor**”)

(together referred to as the “**Parties**”)

## **WHEREAS**

(A) The Trust acts as the Data Controller.

(B) The Trust wishes to subcontract certain Services, which imply the processing of personal data, to the Data Processor.

(C) The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing under UK GDPR on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing “UK Data Protection Laws”.

(D) The Parties wish to lay down their rights and obligations.

## **IT IS AGREED AS FOLLOWS:**

### 1. Definitions and Interpretation

1.1 Unless otherwise defined herein, capitalised 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 “**Trust Personal Data**” means any Personal and Special Category Data Processed by a Contracted Processor on behalf of Trust pursuant to or in connection with the Principal Agreement;

1.1.3 “**Contracted Processor**” means the Data Processor and any Sub-processors;

1.1.4 “**Data Protection Laws**” means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all

other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)

- 1.1.5 “EEA” means the European Economic Area;
- 1.1.6 “EU Data Protection Laws” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
- 1.1.7 “UK GDPR” means UK General Data Protection Regulation;
- 1.1.8 “Data Transfer” means:
  - 1.1.8.1 a transfer of Trust Personal Data from the Trust to a Contracted Processor; or
  - 1.1.8.2 an onward transfer of Trust Personal Data from a Contracted Processor to a Subcontracted Processor, or between two establishments of a Contracted Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);
- 1.1.9 “Services” means the healthcare services the Trust provides under the NHS Act (2006); Health & Social Care Act (2012).
- 1.1.10 “Sub-processor” means any person appointed by or on behalf of Processor to process Personal Data on behalf of the Trust in connection with the Agreement.
- 1.2 The terms, “Commission”, “Controller”, “Data Subject”, “Member State”, “Personal Data”, “Personal Data Breach”, “Processing” and “Supervisory Authority” shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

## 2. Processing of Trust Personal Data

### 2.1 Processor shall:

- 2.1.1 comply with all applicable Data Protection Laws in the Processing of Trust Personal Data; and
- 2.1.2 not Process Trust Personal Data other than on the relevant Trust’s documented instructions, unless the Processor is required by applicable laws to otherwise process that Personal Data. Where the Processor is relying on laws of the UK or of a part of the UK as the basis for processing Personal Data, the Processor shall promptly notify the Controller of this before performing the processing required by the applicable laws unless those applicable laws prohibit the Processor from so notifying the Controller.

### 2.2 The Trust instructs Processor to process Trust Personal Data.

## 3. Processor Personnel

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 Trust Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Trust 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 Trust Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the UK GDPR.
- 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 Trust Personal Data to) any Sub-processor unless authorised by the Trust.

#### 6. Data Subject Rights

- 6.1 Taking into account the nature of the Processing, Processor shall assist the Trust by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Trust obligations, as reasonably understood by the Trust, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
- 6.2 Processor shall:
- 6.2.1 promptly notify the Trust if it receives a request from a Data Subject under any Data Protection Law in respect of Trust Personal Data; and
- 6.2.2 ensure that it does not respond to that request except on the documented instructions of the Trust or as required by Applicable Laws to which the Processor is subject, in which case the Processor shall to the extent permitted by Applicable Laws inform Trust of that legal requirement before the Contracted Processor responds to the request.

#### 7. Personal Data Breach

- 7.1 The Processor shall notify Trust without undue delay upon the Processor becoming aware of a Personal Data Breach affecting the Trust Personal Data, providing the Trust with sufficient information to allow the Trust 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 Trust and take reasonable commercial steps as are directed by the Trust to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation

Processor shall provide reasonable assistance to the Trust with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Trust reasonably considers to be required by article 35 or 36 of the UK GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Trust Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9. Deletion or return of Trust Personal Data

9.1 Subject to this section 9 Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of Trust Personal Data (the “Cessation Date”), delete and procure the deletion of all copies of those Trust Personal Data.

10. Audit rights

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

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

11. Data Transfer

11.1 The Processor may not transfer or authorise the transfer of Personal Data outside of the UK or to any International Organisation unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

11.2 The Processor has, prior to such transfer, established, or procured the establishment of, appropriate safeguards in relation to the transfer of the Data;

11.3 Each Data Subject whose Personal Data is transferred has enforceable rights and effective legal remedies which are enforceable against the Processor, and the Processor has ensured prior to any such transfer that such rights and remedies are available; and

11.4 The Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection for all Personal Data that is transferred (or procures that such protection is provided); and

11.5 The Processor complies with all reasonable instructions notified to it in advance of such transfer by the Data Controller.

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:

- (a) disclosure is required by law;
- (b) 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

13.1 This Agreement is governed by the laws of England & Wales.

13.2 Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of England & Wales, subject to possible appeal to the documented appeal court process.

14. General Data Protection Regulation

14.1 It is a requirement that all data sets are noted and the conditions of the UK GDPR/DPA 2018 are taken into account in this agreement.

Below, is the UK GDPR requirement in simplified/table form:

Description	Details
Identity of the Controller and Processor	
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete unless requirement	

under union or member state  
law to preserve that type of  
data.

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

15 Authorisation

**IN WITNESS WHEREOF**, this Agreement is entered into with effect from the date the Trust signs the document.

In signing this agreement you are agreeing to the Trust sharing conditions outlined in this document.

Sharing is not authorised until this is signed on behalf of the Trust, agreements can only be signed by UHNM SIRO or Caldicott Guardian.

Processor Signature	
Processor Signature	
Processor Name	
Role	
Date	
Trust Signature	
Trust Signature	
Name	
Role	
Date	