**PCN DATA CONTROLLERS AGREEMENT**

## ***[Guidance Note:*** *The Agreement is a template only, and will need to be amended to reflect the specific Controller-to-Controller sharing of Personal Data that is contemplated by the Parties. Gaps, including those marked in square brackets, must all be completed, and all guidance notes must be removed, before the Agreement is signed by the Parties.*

## *The main body of the Agreement sets out the general terms that will apply and can be amended to include any specific terms that are agreed between the Parties. Schedule 1 will contain the details of the data sharing that is contemplated, and will need to be completed by the Parties before the Agreement is entered into.****]***

**[*Guidance Note:*** *No liability or indemnity provisions have been included in this template Agreement.*

***[Guidance Note:*** *No specific dispute resolution provisions have been included in this Agreement. This Agreement has been drafted on the basis that the dispute resolution provisions of the Primary Care Network Agreement shall apply (see clause 10).****]***

**THIS DEED** is made the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20[ ]

**BETWEEN:**

1. **[PARTY 1]** of [ADDRESS];
2. **[PARTY 2]** of [ADDRESS];
3. **[PARTY 3]** of [ADDRESS]; and
4. **[PARTY 4]** of [ADDRESS],

(each a "**Party**"and together the "**Parties**").

***[Guidance Note:*** *This template is drafted on the basis that all of the parties to the Primary Care Network Agreement will also be party to this Agreement. If there are more (or fewer) than four parties to the Primary Care Network Agreement, adapt the descriptions of the Parties, above, accordingly.****]***

**BACKGROUND:**

1. The Parties are party to the Primary Care Network Agreement and are required by that agreement to share Personal Data with one another in connection with the performance of their obligations under the Primary Care Network Agreement.
2. This Agreement sets out the terms and conditions that shall apply to the sharing of Personal Data between the Parties in connection with the performance of their obligations under the Primary Care Network Agreement where each party acts as a Controller in relation to the Shared Personal Data (that is, the Personal Data that it Processes).

**NOW IT IS HEREBY AGREED** as follows:

# **DEFINITIONS AND INTERPRETATION**

## In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

|  |  |
| --- | --- |
| “Agreed Sharing Mechanisms” | means the technical measures described in Schedule 2, being the means by which the Parties shall transmit Shared Personal Data between each other; |
| “Article 30 Register” | means the records that each Party is required, in its capacity as a Controller (and, if applicable, in its capacity as a Processor) by Article 30 of GDPR to establish and maintain; |
| “Authorised User” | means, in relation to each Party, each member of its Staff who (a) falls within any one of the categories specified in (as applicable) the Patient Privacy Notice or Staff Privacy Notice, and (b) is authorised by that Party to Process the relevant Shared Personal Data for the purposes stated in such Privacy Notices; |
| “Caldicott Principles” | means the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997) as updated and supplemented by the Information Governance Review (March 2013) known as Caldicott 2 and available at <https://www.gov.uk/government/publications/the-information-governance-review> and the Review of Data Security, Consent and Opt-Outs (July 2016) known as Caldicott 3 (when it comes into effect) and available at <https://www.gov.uk/government/publications/review-of-data-security-consent-and-opt-outs>; |
| “Commencement Date” | [the date of this Agreement]; |
| "Controller" | has the meaning given to it in the GDPR; |
| “Current Parties” | means all of the persons who are at the relevant time the current Party or Parties to this Agreement, and a “**Current Party**” means any of such persons; |
| “Cybersecurity Legislation” | means the Network and Information Systems Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151) and the Network and Information Systems Regulations 2018 (SI 506/2018); |
| “Data Protection Contact” | means the person appointed by each Party in accordance with clause 3.5 and identified in paragraph 9 of Schedule 1; |
| "Data Protection Legislation" | means all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any guidance or codes of practice issued by any Supervisory Authority from time to time; |
| “Data Security and Protection Toolkit” | means the Data Security and Protection Toolkit (consisting of standards, requirements and assessment resources) as defined and published annually by NHS Digital during the Term; |
| "Data Subject" | has the meaning given to it in the GDPR; |
| “Deed of Accession” | means the template Deed set out in Schedule 5; |
| “Disclosing Party” | means a Party who makes available to any of the other Parties any Shared Personal Data to another Party; |
| “Electronic Information Processing Systems” | means the electronic data processing systems operated by a Party (either directly, or via its Processor), being the means by which that Party shall Process the Shared Personal Data for use within its own organisation; |
| “Exiting Party” | means a person who is an Expelled Party or a Voluntary Exit Party; |
| “GDPR” | means General Data Protection Regulation (Regulation (EU) 2016/679); |
| “Governing Body” | means the decision-making body established under the Primary Care Network Agreement, as more particularly specified in Schedule 1 of the Primary Care Network Agreement; |
| “Information Governance Assessment” | means, for each Party, its completed assessment as prepared by it using the Data Security and Protection Toolkit in accordance with clause 4.7 of this Agreement; |
| “Patient” | means, in relation to a Party, any living individual that presents to such Party as a patient or service user; |
| “Patient Personal Data” | means any Personal Data of any Patient(s) that fall(s) within any of the categories of Personal Data specified in paragraph 5.1 (*Categories of Personal Data - Patients*) of Schedule 1 (*Shared Personal Data*) and means in particular such data as any Disclosing Party makes available under this Agreement and that a Receiving Party receives under this Agreement; |
| “Patient Privacy Notice” | means the fair processing notice(s) (as varied from time to time) that each Party shall prepare and publish to and for Patients in accordance with this Agreement and the Data Protection Legislation, to inform Patients, amongst other matters, about the Processing of their Personal Data by the Party and the Processing of their Shared Personal Data by the Parties under this Agreement; |
| “Permitted Purposes” | means the purposes for which Shared Personal Data may be used by the Receiving Party, being the permitted purposes described in paragraph 1 of Schedule 1 (Permitted Purposes); |
| “Permitted Third Party Controller” | means any third party Controller permitted by a Party to Process any of the Shared Personal Data; |
| “Personal Data” | has the meaning given to it in the GDPR; |
| “Personal Data Breach” | has the meaning given to it in the GDPR and includes also any breach of Article 5(1)(f) (the integrity and confidentiality principle) of GDPR; |
| “Policies” | means the enforceable policies, measures and procedures of each Party, to ensure that it, its Staff and Processors meet, observe, perform and comply with:   1. the then-applicable security standards, security requirements and security guidance defined by the Data Security and Protection Toolkit; and 2. the requirements of Data Protection Legislation, applicable duties of confidence and this Agreement relating to the security of Shared Personal Data; |
| “Primary Care Network Agreement” | means the Primary Care Network Agreement dated [DATE] and made between the Parties; |
| "Processing" | has the meaning given to it in the GDPR, and the terms “**Process**” and “**Processed**” shall be construed accordingly; |
| “Receiving Party” | means Party who receives Shared Personal Data from a Disclosing Party; |
| “Registered Healthcare Professional” | means a fully qualified healthcare professional whose employer (being a Party to this Agreement) has confirmed is registered as a medical practitioner who holds the qualifications necessary for the person to provide healthcare of the type that the person is employed to provide and to do so lawfully under the laws of England; |
| “Remaining Parties” | means, in circumstances where the Primary Care Network Agreement and this Agreement shall terminate pursuant to clause 9 (*Voluntary Exit*) or clause 10 (*Expulsion*) in relation to any particular Current Party or Current Parties, the other Current Parties in relation to whom the Primary Care Network Agreement and this Agreement shall continue; |
| “Security Breach” | means any Personal Data Breach and any incident that constitutes a breach of the security-related requirements of, or is notifiable or subject to sanctions under, the Cybersecurity Legislation; |
| “Shared Personal Data” | means the Staff Personal Data and Patient Personal Data; |
| “Shared Processor” | means each Current Party that shall, and each third party (including sub-contractors and sub-Processors) that shall, in any way Process any Shared Personal Data as a Processor of any Party, including (as at the Commencement Date) the persons identified in Schedule 4 (*Shared Processors*); |
| “Shared Processor Purposes” | means, for each Shared Processor, the purposes specified in the column headed “Shared Processor Purposes” in Schedule 4 (*Shared Processors*); |
| **“Special Category Personal Data”** | means Personal Data that falls within the scope of the special categories of Personal Data specified in Article 9 of GDPR; |
| **“Staff”** | means [employees of a Party (and its partners if the Party is an unincorporated partnership, members if it is a Limited Liability Partnership, and directors and officers if it is a company)], and workers who are retained by a Party under contract and who are line managed by that Party; |
| **“Staff Personal Data”** | means any Personal Data of any Staff that fall(s) within any of the categories of Personal Data specified in paragraph 5.2 (*Categories of Personal Data - Staff*) of Schedule 1 (*Shared Personal Data*) and means in particular such data as any Disclosing Party makes available under this Agreement and that a Receiving Party receives under this Agreement; |
| **“Staff Privacy Notice”** | means the fair processing notice(s) (as varied from time to time) that each Party shall prepare and publish to and for Staff in accordance with this Agreement and the Data Protection Legislation, to inform Staff, amongst other matters, about the Processing of their Personal Data by the Party and the Processing of their Shared Personal Data by the Parties under this Agreement; |
| **“Supervisory Authority”** | has the meaning given to it in the Data Protection Legislation; and |
| **“Term”** | means the period during which this Agreement is in force, starting on the Commencement Date. |

## The terms “**Actual Leaving Date**” and “**Voluntary Exit Party**” have the meanings given in clause 9 (*Voluntary Exit*), and the terms “**Expelled Party**” and “**Expulsion Date**” have the meanings given in clause 10 (*Expulsion*).

## Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

## The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.

## Unless the context otherwise, requires, words in the singular shall include the plural and in the plural shall include the singular.

## A reference to a person shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## A reference to a statue or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision, and such statute, statutory provision and subordinate legislation as amended, updated or re-enacted from time to time during the Term.

## References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## Any words following the terms “including”, “include”, “in particular”, “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## In the case of any ambiguity between any provision contained in the body of this Agreement and any provision contained in the Schedules or appendices, the provision in the body of this Agreement shall take precedence.

## A reference to writing or written [excludes fax but includes email].

## Unless the context otherwise requires the reference to one gender shall include a reference to the other genders.

# **COMMENCEMENT AND DURATION**

***[Guidance Note:***  *This Agreement is drafted on the basis that it is coterminous with the Primary Care Network Agreement. It also takes account of provisions in the Primary Care Network Agreement that allow for a party to leave voluntarily, or to be expelled.****]***

## This Agreement shall commence on the Commencement Date and shall, unless terminated in relation to any Current Party in accordance with clause 9 (*Voluntary Exit*) or clause 10 (*Expulsion*) continue in force until the termination or expiry of the Primary Care Network Agreement at which point this Agreement shall terminate with immediate effect.

# **DATA SHARING**

***[Guidance Note:*** *This clause sets out the key data sharing obligations of the Parties, including their obligations under Data Protection Legislation. The details of the data to be shared are to be included in Schedule 1 of this Agreement.****]***

## In this clause 3, reference to a “Party” means, unless stated otherwise, a Current Party.

## The Parties agree that Article 26 (Joint controllers) of GDPR applies to their sharing of Shared Personal Data under this Agreement. In order to comply with the requirements of Article 26, each Party shall Process the Shared Personal Data, in accordance with this Agreement (subject always to clause 18.2), and each Party shall comply with the exercise by Data Subjects of their rights under Data Protection Legislation in accordance with this Agreement. Each Party shall be responsible and liable for its own acts and there shall be no joint and several liability between the Parties.

## Each Party shall comply with its obligations as a Controller under the Data Protection Legislation in relation to Processing by it or on its behalf of Shared Personal Data, and each Party’s obligations under this Agreement are in addition to, and do not relieve, remove or replace, its obligations under the Data Protection Legislation.

## Schedule 1 of this Agreement describes (or refers to) the limited purposes of the Processing of Shared Personal Data, the duration of such Processing, the types of Personal Data that may be Processed, and the categories of Data Subjects to whom the Shared Personal Data relate. For the avoidance of doubt, the limitations imposed by this Agreement on the Processing of Staff Personal Data apply to each Party’s Processing of Personal Data of the Staff of the other Parties, and nothing in this Agreement shall limit a Party’s permission to Process Personal Data of its own Staff.

## Each Party will (if it has not already done so, and if it is required by Data Protection Legislation to do so) appoint its Data Protection Officer and will nominate such person(or an appropriate alternative member of Staff of such Party) as a lead contact for the purposes of this Agreement (**“Data Protection Contact”**). Each Party’s Data Protection Contact as at the Commencement Date is identified in paragraph 9 of Schedule 1 and each Party shall notify the other Parties, as soon as reasonably possible, of any changes in the Data Protection Contact or his or her details.

## Each Party shall only Process the Shared Personal Data that it receives (in its capacity as a Receiving Party) from another Party (in its capacity as a Disclosing Party) in accordance with this Agreement, the Caldicott Principles, its legal and applicable professional duties of confidence and Data Protection Legislation. Each Party shall comply with Cybersecurity Legislation to the extent that Cybersecurity Legislation applies to it.

## Without limitation to Clause 3.5, each Party shall:

### ensure that, within its own organisation, Patient Personal Data [and Staff Personal Data] is not Processed or used by any Staff or other person other than:

#### an Authorised User for the Permitted Purposes; and

#### Processors appointed by any Party in accordance with clause 5 ;

### ensure that its Article 30 Register fully takes account of this Agreement and the Processing of Shared Personal Data that is contemplated by this Agreement and that is in fact carried on;

### provide each of the other Parties, on request by such other Party, with a copy of the records referred to in clause 3.7.2; and

### make the records referred to in clause 3.7.2 available to any Supervisory Authority on request and will, as soon as reasonably possible, notify the other Parties that it has done so;

### ensure that its officers, employees, agents, consultants and contractors who have access to Personal Data have undergone training in the Data Protection Legislation and in the care and handling of Personal Data; and

### notify any other affected Parties promptly of any Security Breach which affects or could have affected any Shared Personal Data.

## Without prejudice to clause 3.6, each Party will take (and procure that its Processors and Permitted Third Party Controllers take) appropriate technical and organisational measures, and will support and co-operate with each other Party’s appropriate technical and organisational measures:

### in such a way that its Processing of the Shared Personal Data will meet the requirements of the Data Protection Legislation and (to the extent applicable) Cybersecurity Legislation and will ensure the protection of the rights of Data Subjects and allow it and the other Parties to fulfil its obligations to Data Subjects and its obligations under the Cybersecurity Legislation;

### to ensure a level of security appropriate to the risks associated with Processing the Shared Personal Data, including amongst other things, as appropriate:

#### the encryption of the Shared Personal Data;

#### the ability to ensure the on-going confidentiality, integrity, availability and resilience of systems and services Processing the Shared Personal Data, insofar as such systems and services are in the control of the respective Parties;

#### the ability to restore the availability of and access to the Shared Personal Data in a timely manner in the event of a physical or technical incident; and

#### having and implementing a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of the Shared Personal Data; and

### to ensure the security of the Shared Personal Data and the reliability of its and its Processors’ personnel who may have access to, or be involved in, the Processing of the Shared Personal Data, including by carrying out appropriate pre-Processing verification checks, maintaining logs of Processing carried out by such personnel, and carrying out appropriate post-Processing checks and audits.

## Without prejudice to the provisions of clause 3.6, each Party will keep all of the Shared Personal Data protected from any Security Breach.

## Each Party shall ensure, within its own organisation, that there is no disclosure of Patient Personal Data to any person (including the Party’s own Staff who are not Authorised Users, and including other Parties as well as third parties) where such disclosure would be in breach of any duty of confidence. Each Party shall comply with the requirements specified in paragraph 7 (Confidentiality compliance) of Schedule 1

## Nothing in the foregoing provisions of this clause 3 shall prevent a Receiving Party from:

### obtaining from the relevant Patient or any lawful source (including a source other than a Party) and Processing; or

### recording on its own Electronic Information Processing Systems, and retaining and Processing,

### any Patient Personal Data, provided that such Patient Personal Data is obtained, recorded, retained and Processed in accordance with Data Protection Legislation and applicable legal and professional duties of confidence that the Receiving Party (or its Staff are) is subject to.

## Each Party will, on the request of any other Party:

### comply with (and ensure that its Processors and Permitted Third Party Controllers comply with) any request from that other Party to amend, rectify, transfer, block or destroy the Staff Personal Data (or any of it) or Patient Personal Data (or any of it) that falls outside the scope of clause 3.11.2, in each case in order to comply with the relevant Data Subject’s lawful exercise of his or her rights under the Data Protection Legislation;

### comply with (and ensure that its Processors and Permitted Third Party Controllers comply with) any request from that other Party to rectify or transfer the Patient Personal Data that forms part of the GP medical record (or any of it) in order to comply with the relevant Data Subject’s lawful exercise of her rights under the Data Protection Legislation;

### provide each other Party with such information about its Processing of the Shared Personal Data (and the Processing of Shared Personal Data by its Processors and by Permitted Third Party Controllers) and such assistance as such other Party may reasonably request from time to time to allow such other Party to meet its obligations under the Data Protection Legislation and particularly Article 15 (to the extent that such compliance is dependent upon the Party), including each such other Party’s obligations to Data Subjects and in relation to data security and Data Protection Impact Assessments, and to allow each such other Party to be able to demonstrate compliance with the Data Protection Legislation;

### take such other action or refrain from taking any action necessary to comply with, or to allow each such other Party to comply with, the Data Protection Legislation or the instruction of any Supervisory Authority or the order of court of competent jurisdiction; and

### co-operate with any Supervisory Authority.

## Each Party will notify the other Parties who are or foreseeably may be affected or implicated as soon as reasonably possible if it becomes aware of any of the following: any breach of this Agreement, any breach of any of the Data Protection Legislation regarding the Shared Personal Data, and any Security Breach affecting any Shared Personal Data. That notice must (at least):

### describe the nature and facts of the breach including, where possible, the categories and approximate number of Data Subjects (if any) concerned and the categories and approximate number of data records concerned;

### communicate the name and contact details of the Data Protection Contact (or deputy for the purposes of dealing with the breach) from whom more information can be obtained;

### describe the likely consequences of the breach; and

### describe the measures taken or proposed to be taken by the Parties to address and remedy the breach, including (where appropriate) to mitigate its possible adverse effects, and including (in all cases) measures that may be need to be implemented to prevent a recurrence.

## Each Party (in this clause 3.14, the “**Originating Party**”) will give written notice to the other Parties who are or foreseeably may be affected or implicated (in this clause 3.14, the “**Relevant Parties**”), as soon as reasonably possible, if the Originating Party or any of its Processors or Permitted Third Party Controllers receive(s) any request, complaint, notice, order or communication which relates directly or indirectly to the Processing of any Shared Personal Data or to compliance with the Data Protection Legislation or Cybersecurity Legislation and, at the same time, will forward a copy of that request, complaint, notice, order or communication to all Relevant Parties. The Originating Party and each of the Relevant Parties will co-operate with each other and give each other such information and assistance as any other such Party may reasonably require in relation to that request, complaint, notice or communication to enable the other such Parties to respond to the same in accordance with any deadline and any requirement to provide information. None of the Relevant Parties will act on any such request, complaint, notice, order or communication without first consulting the Originating Party and the other Relevant Parties.

## Each Party will allow any other Party (or its representatives) at reasonable times and from time to time, to inspect, review and/or audit its compliance (and the compliance of its Processors and Permitted Third Party Controllers) with this Agreement and/or the Data Protection Legislation and/or the Cybersecurity Legislation, and will give each other Party any assistance which it may reasonably require in connection with each such inspection, review and/or audit. Each Party will, and will ensure that its Processors (and Permitted Third Party Controllers) will, give each other Party any assistance the other Party reasonably requires to carry out such inspection, review and/or audit.

## Each Party will, as quickly as possible, rectify any and all security weaknesses and vulnerabilities reported to it by any other Party and will confirm to the other Parties in writing when this has been done.

## If any event occurs that materially affects or materially interrupts any Party’s ability to Process the Shared Personal Data in accordance with Agreement, including any storm, fire, flood, telecommunications failures and IT system failures, that Party will immediately notify the other Parties of such event and its impact, will invoke and implement a recovery plan so that it resumes being able to provide and does Process the Shared Personal Data in accordance with this Agreement, and shall notify the other Parties once it is again able to provide and Process the Shared Personal Data in accordance with this Agreement. For the purpose of this Clauses 3.17, “materially interrupts” includes any interruption to the availability of Shared Personal Data from any Disclosing Party

## The Parties will bear their own costs incurred in providing the assistance set out in Clauses 3.12 to 3.18 (inclusive).

## Subject to the second sentence of this clause 3.19, and without prejudice to clause 3.12, each Receiving Party shall not transfer Personal Data transferred under this Agreement outside of the European Union without the Disclosing Party’s prior written consent. If during the Term the United Kingdom ceases to be a member of the European Union, then (without prejudice to clause 3.12) with effect from and including the date on which the United Kingdom so ceases, the Receiving Party shall not transfer the Shared Personal Data outside of the United Kingdom without the Disclosing Party’s prior written consent.

# **SECURITY**

## In this clause 4, reference to a “Party” means, unless stated otherwise, a Current Party.

## For the purposes of this Agreement each Disclosing Party shall disclose the Shared Personal Data to each Receiving Party solely via the Agreed Sharing Mechanisms, and each Receiving Party shall receive such disclosures solely via the Agreed Sharing Mechanisms.

## Without prejudice to clause 4.6, each Party shall implement the security measures specified in Schedule 3 (Security) and such other security measures as are at any time approved and mandated by the Governing Body during the Term. ***[Guidance note:*** *the required headline security measures are to be documented in Schedule 3. Security is a constant challenge, and a constantly moving challenge, so this clause gives the Governing Body established under the Primary Care Network Agreement the ability to imposed additional security requirements. Note that peer review of security measures also applies, as part of the annual Data Security and Protection Toolkit self-assessment, under clause 4.6.****]***

## Each Party shall ensure that the Processing of the Shared Personal Data is only performed by that Party’s Authorised Users and that such Authorised Users have received appropriate training.

## Each Party shall ensure that it, and its Staff and its Processors (including Shared Processors) shall not by any act or omission compromise any of the security or continuity measures that is:

### implemented by or on behalf of such Party or any other Party and is required by this Agreement or Data Protection Legislation or Cybersecurity Legislation; or

### specified in the written specifications of and/or instructions and/or guidance provided by the third party provider of the Electronic Information Processing System used by such Party.

## Each Party shall, as a condition of this Agreement, ensure that its Policies, Patient Privacy Notice(s), Staff Privacy Notice(s) and Information Governance Assessment each:

### fully takes account of Shared Personal Data and the Processing of it by each Party as contemplated in this Agreement, including Processing by its Processors (including Shared Processors), and transmission of Shared Personal Data, as well as Processing by Authorised Users in the Party’s capacity as a Disclosing Party and as a Receiving Party; and

### is made available to the Governing Body and each other Party, before being submitted for internal approval and (where applicable) for any external approval, with sufficient time for the Governing Body and each such other Party to review and provide comment and for the Party to address each such comment.

## Each Party shall, as a condition of this Agreement, ensure that its Information Governance Assessment is completed annually and is (if and to the extent required by law or any instruction or guidance from any Government department during the Term) submitted for review and/or approval to any person (such as to the Department of Health and Social Care, or NHS Digital).

## Each Party shall comply with its obligations in this Agreement in relation to Information Governance Assessment, whether or not the Party is required by law or any instruction or guidance from any Government department to complete any Information Governance Assessment.

## Each Party will comply with its Policies and its Patient Privacy Notice(s) and its Staff Privacy Notice(s), and will ensure that its Staff and Processors (including Shared Processors) so comply.

# **PROCESSORS**

***[Guidance Note:*** *A Shared Processor under this Agreement is a Processor who Processes the Shared Personal Data on behalf of all of the Parties (not just for one of the Parties), for example because it hosts an Electronic Data Interchange or Processes some or all Shared Personal Data as part of performing a shared service for all Parties.****]***

## In this clause 5, reference to a “Party” means, unless stated otherwise, a Current Party.

## Each Party shall ensure that each of its Processors (including its Shared Processors) is appointed by the Party as a Processor under an enforceable contract, in compliance with Data Protection Legislation and this Agreement, and so as to ensure compliance with Cybersecurity Legislation (to the extent it is applicable to the Party).

## Each Party shall ensure that each of its Processors is appointed on terms and conditions that provide:

### no less obligations and requirements (and no less onerous obligations and requirements) for the Processor in relation to Shared Personal Data, the Electronic Information Processing System, the security of the foregoing, compliance with and co-operation under and in connection with the Data Protection Legislation, and the Policies, and the Cybersecurity Legislation;

### no less rights, remedies and assurance for the relevant Party;

### no less rights, remedies and assurance for Data Subjects,

## than the terms and conditions set out in this Agreement.

## At the written request of any Party, each Party shall within 10 working days of such request provide the requesting Party in writing with a list of the Party’s then-current Processors of Shared Personal Data.

## At the written request of any Party, each Party shall within 10 working days days of such request permit the requesting Party (or an auditor mandated by the requesting Party) to inspect and audit the facilities, equipment, staff, documents and electronic data relating to data Processing activities carried out under or in connection with this Agreement by each Processor of Shared Personal Data appointed by the Party to whom such request is made.

# **PRIVACY NOTICES**

***[Guidance Note:*** *This Agreement assumes that all of the Parties will use a Patient Privacy Notice and a Staff Privacy Notice that is set by the decision-making arrangements set up under the Primary Care Network Agreement, and detailed in Schedule 1 of that agreement. It is imperative that each Party provides all of its Patients and all of its Staff with the approved form of Privacy Notice. To ensure the Privacy Notices are compliant and effective the Parties will need to ensure they are regularly reviewed by the decision-making body. See also the Guidance note in paragraph 6 (Legal bases for Processing) of Schedule 1.****]***

## In this clause 6, reference to a “Party” means, unless stated otherwise, a Current Party.

## Each Party shall ensure that each Patient is informed, in accordance with Data Protection Legislation, that the Party (and the other Parties) shall create and use Shared Personal Data about such person and including:

### that each Disclosing Party shall disclose such Shared Personal Data to the other Parties for the Authorised Users of the Receiving Parties to use for the Permitted Purposes;

### that each Receiving Party shall receive such Shared Personal Data from the other Parties for the Authorised Users of the Disclosing Parties to use for the Permitted Purposes; and

### names or indicates the type(s) of Processors (including Shared Processors) that are or may be appointed by that Party and/or by other Parties to process Shared Personal Data.

## Each Party shall ensure that each relevant member of its Staff, including each Authorised User, is informed that the Party (and the other Parties) shall (a) create and use Shared Personal Data about such person [and (b) disclose such Shared Personal Data to the other Parties for them to use,] for the purposes of:

### controlling user access to the Patient Personal Data;

### authenticating users who seek access to the Patient Personal Data;

### logging each user’s activity within the Electronic Information Processing System, including the user’s Processing of Patient Personal Data;

### carrying out spot-checks, reviews and audits on such user activities; and

### disclosing any of the foregoing to any third party (such as any court, regulator or Data Subject whose Personal Data is referred to) to the extent permitted by law.

## Each Party shall review and (as necessary to comply with Data Protection Legislation and this Agreement), update and re-issue its Patient Privacy Notices and its Staff Privacy Notices during the Term, as necessary to ensure that the information requirements stated in clause 6.2 are met, changes (including changes in the Current Parties and their Processors) are promptly communicated to Patients, and that all instructions given by (including templates of Patient Privacy Notices and Staff Privacy Notices approved by) the Governing Body are complied with within the time-frames set by the Governing Body.

# **ACCESSION OF NEW PARTY**

***[Guidance Note:*** *This clause allows for a new Party to join into this Agreement. The decision to admit a new Party will be made under the Primary Care Network Agreement (see the section headed “Joining the Network”). A new Party who is admitted under the Primary Care Network Agreement must accede also to this Agreement. The clause requires the Current Parties to ensure that this happens. Accession of the new Party will be achieved by the new Party entering into a Deed of Accession with the Current Parties. The template Deed is set out in Schedule 5.****]***

## Any person who is not one of the original Parties to this Agreement and is approved in accordance with clauses [54 to 58 (inclusive)] (*Joining the Network*) of the Primary Care Network Agreement (in this clause 7, the “**New Party**”) shall become a Party to this Agreement in accordance with clause 7.2.

## The Current Parties shall (and shall procure that the New Party shall) execute and deliver a Deed of Accession to effect the accession of the New Party to this Agreement, and shall procure that such Deed of Accession shall take effect from and including the date upon which the accession of the New Party to the Primary Care Network Agreement takes effect or (if later) the date on which the New Party starts to be a Disclosing Party and/or a Receiving Party in relation to Shared Personal Data.

# **VOLUNTARY EXIT**

***[Guidance Note:*** *This clause provides for removing a party from the Agreement where it is permitted, under the Primary Care Network Agreement, to leave voluntarily.****]***

## Any person who is a Current Party to this Agreement and whose voluntary exit from the Primary Care Agreement is approved in accordance with clauses [59 to 70 (inclusive)] (*Leaving the Network – Voluntary departure*) of the Primary Care Network Agreement (the “**Voluntary Exit Party**”) shall cease to be a Party to this Agreement in accordance with clause 8.2.

## Subject always to the Remaining Parties and each Voluntary Exit Party complying with clause 10 below, this Agreement shall be terminated in relation to each Voluntary Exit Party (but shall continue in relation to the Remaining Parties) with effect on the date that is the actual leaving date referred to in clause [62(c)] of the Primary Care Network Agreement for the relevant Voluntary Exit Party (the “**Actual Leaving Date**”).

## [If there is only one Party to this Agreement, that one remaining Party may terminate this Agreement at any time.]

# **EXPULSION**

***[Guidance Note:*** *This clause provides for removing a party from the Agreement where it is expelled under the Primary Care Network Agreement.****]***

## Any person who is a Current Party to this Agreement and who is expelled from this Agreement in accordance with clauses [59 and 71 to 79 (inclusive)] (*Leaving the Network – Expulsion*) of the Primary Care Network Agreement (the “**Expelled Party**”) shall cease to be a Party to this Agreement in accordance with clause 9.2.

## Subject always to the Remaining Parties and each Expelled Party complying with clause 10 below, this Agreement shall be terminated in relation to each Expelled Party (but shall continue in relation to the Remaining Parties) with effect on the date on which the termination of the Primary Care Network Agreement in relation to the relevant Expelled Party takes effect (the “**Expulsion Date**”).

# **CONSEQUENCES OF TERMINATION**

## Prior to the Actual Leaving Date (in the case of each Voluntary Exit Party), and prior to or (at the latest) on the Expulsion Date (in the case of each Expelled Party), the Remaining Parties and the relevant Exiting Party shall determine a detailed plan of prerequisites and actions or omissions that must be effected by the Remaining Parties and such Exiting Party. Such plan shall, amongst other matters, address:

### the communication of such changes to Data Subjects;

### the amendment or replacement of the Patient Privacy Notices and the Staff Privacy Notices of each Party and the publication of the amended or replaced notices to Data Subjects;

### the cessation of (a) the relevant Exiting Party’s disclosure in its capacity as a Disclosing Party and its Shared Data Processors of its Shared Personal Data under this Agreement, and (b) the cessation of the access to and Processing of such Shared Personal Data, in its capacity as a Receiving Party, by each of the Remaining Parties (including their permitted Staff) and their Processors;

### the removal of the interfaces and other means by which the relevant Exiting Party’s Electronic Information Processing Systems are connected with the Remaining Parties’ Electronic Information Processing Systems (and each of them); and

### the timescales within which such actions or omissions will be effected,

### but shall not require any Exiting Party to delete any Personal Data (including Shared Personal Data that the Exiting Party has acquired by virtue of being a Receiving Party under this Agreement) in relation to which it is a Controller.

## The obligations of each Remaining Party’s and of each Exiting Party under the plan formulated pursuant to clause 10.1 above shall survive the termination of this Agreement in relation to the Exiting Party. Each Remaining Party and each Exiting Party shall perform its obligations under the plan formulated pursuant to clause 10.1 above, whether such obligations are required to be performed before or after the date on which this Agreement terminates in relation to the relevant Exiting Party.

## No plan formulated pursuant to clause 10.1 shall take effect unless and until it is formally agreed by all of the Remaining Parties and the Exiting Party. In the event of a plan formulated pursuant to clause 10.1 being formally approved by the Remaining Parties and the Exiting Party, it will take effect on the date specified in the plan.

## Each Disclosing Party shall, on the termination of this Agreement in relation to such person, cease to disclose Shared Personal Data under or in connection with the Primary Care Network Agreement or this Agreement (and shall procure that its Shared Data Processors shall cease to so disclose Shared Personal Data).

## Each Receiving Party shall, on the termination of this Agreement in relation to such person, cease to store, access and otherwise Process the Shared Personal Data that was made available to it by any Disclosing Party under or in connection with the Primary Care Network Agreement or this Agreement (and shall procure that its Shared Data Processors shall cease to so disclose Shared Personal Data).

# **ADDITIONAL TERMS**

## Each Party agrees that the additional terms set out in paragraph 8 of Schedule 1 shall be incorporated into this Agreement, and, insofar as they apply to a particular Party, that Party shall comply with those obligations.

# **REVIEW OF CONTRACT**

## The Parties shall review this Agreement (and the Parties’ activities under and in connection with this Agreement) on the date and frequency specified in Schedule 1

# **DISPUTE RESOLUTION**

## The Current Parties (and each Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2) intend for the dispute resolution procedures set out in the Primary Care Network Agreement to apply to this Agreement.

# **NOTICES**

## Any notice or other communication given to a Current Party (or given to an Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2) under or in connection with this Agreement shall be in writing and shall be:

### delivered by hand, courier or by recorded post or other next working day recorded delivery service at its registered office (if a company) or its principal place of business (in any other case)[; or

### sent by email to the following addresses: [Party 1 address], [Party 2 address], [Party 3 address] and [Party 4 address].]

## Any notice or communication shall be deemed to have been received:

### if delivered by hand or courier, on the date on which the delivery receipt is signed;

### if sent by recorded post or other next working day recorded delivery service, at the time recorded by the delivery service; and

### if delivered by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume,

### and in this clause 14.2.3 “**business hours**” means 9.00am to 5.00pm Monday to Friday on a working day, and in this clause 14 “**working day**” means that is not a weekend or public holiday in the place of receipt.

## This clause 14 shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution except for notices given under the dispute resolution procedure referred to in clause 13 (*Dispute resolution*).

# **VARIATION**

## Any amendment or variation to this Agreement shall be in writing and signed by duly authorised representatives of each of the Current Parties.

# **SEVERABILITY**

## If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

## If any provision or part-provision of this Agreement is deemed deleted under clause 17.1, the Current Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

# **WAIVER**

## No failure or delay by any Current Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy.

# **THIRD PARTY RIGHTS AND INDEPENDENCE**

## A person who is not a Current Party to this Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## Each Party enters into this Agreement, as an independent party. Without prejudice to Article 82 of GDPR, where applicable, each Party shall be responsible and liable for its own acts and omissions, and there shall be no joint and several liability.

# **ENTIRE AGREEMENT**

## This Agreement supersedes all prior representations and agreements between the Current Parties (whether written or oral) relating to the subject matter of the Agreement and sets forth the entire agreement and understanding between the Current Parties.

## Each Current Party (and each Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2) warrants to the other that it has not relied on any representation or agreement (whether written or oral) not expressly set out or referred to in the Agreement.

# **COUNTERPARTS**

## This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Agreement for all purposes.

# **GOVERNING LAW AND JURISDICTION**

## Each Current Party (and each Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2) submits to the non-exclusive jurisdiction of the English courts and agrees that the Agreement is to be governed and construed according to English law.

In witness of which the Parties have signed below.

**SCHEDULE 1 -** **PERMITTED PURPOSES AND AUTHORISED USERS**

1. **Permitted Purposes**

Permitted Purposes in relation to Patient Personal Data

* 1. [The provision, directly to the relevant Patient, of healthcare by any Registered Healthcare Professional who is a member of Staff of any Party.
  2. The direct management and supervision by senior Registered Healthcare Professionals of the provision of such healthcare.
  3. The use (to the extent necessary for them to perform the roles they are employed by a Party to perform in relation to the relevant Patient) of the Patient Personal Data by Authorised Users.]

***[Guidance note:*** *see the guidance note against paragraph 6, below, for guidance on whether to include the foregoing “standard” purposes, or to rely on the following paragraph 1.4.****]***

* 1. [Other p][P]urposes that are specifically stated in the Patient Privacy Notice.

Permitted Purposes in relation to Staff Personal Data

* 1. Such purposes as are specifically stated in the Staff Privacy Notice.

1. Authorised Users

No person shall be an Authorised User other than Staff within the following categories, and such persons may use Shared Personal Data only to the extent necessary for them to perform the roles they are employed by a Party to perform in relation to the relevant Patient:

* 1. [a Registered Healthcare Professional who is authorised by a Party to provide (and who is responsible for providing, on behalf of such Party) health care directly to Patients;
  2. a fully qualified nurse who is employed by and authorised by a Party to provide (and who is responsible for providing, on behalf of such Party) health care directly to Patients;
  3. a social worker who is employed by and/or authorised by a Party to provide (and who is responsible for providing, on behalf of such Party) health care directly to Patients;
  4. a member of Staff whose duties are the management of the direct provision of healthcare and/or social care systems and services in accordance with English law;
  5. a member of Staff whose duties are administrative or secretarial and who is acting under the direct instruction and supervision of a Registered Healthcare Professional;
  6. a healthcare assistant who is employed by a Party and is acting under the direct instruction and supervision of a Registered Healthcare Professional; and
  7. a junior nurse who is employed by a Party and is acting under the direct instruction and supervision of a Registered Healthcare Professional].

1. Duration of the Processing (retention periods)

*[Guidance Note: insert details of any retention periods and policies here. Retention periods should already be specified in detail in each Party’s existing Retention Policies, as well as in the Patient Privacy Notice.]*

1. Categories of Data Subject
   1. Patients.
   2. Staff.
2. Categories of Personal Data
   1. Categories of Personal Data (Patients)

***[Guidance Note:*** *list all categories of Patient Personal Data that are to be shared under this Agreement. For example, an appropriate level of detail to described a Patient’s identifiers and contact details would be: name, NHS number, date of birth, telephone number, email address, etc rather than “Identifiers” or “Contact details”. This level of detail means that the fields or categories of data within medical records that are to be shared will need to be set out: the Parties, and their advisers, cannot be left to infer or guess at what “medical records” contain. There may be a lot of fields of data to insert: this could be done by way of an annex to this Schedule.****]***

* 1. Categories of Personal Data (Staff)

***[Guidance Note:*** *list all categories of Staff Personal Data that are to be shared under this Agreement, if any. This will particularly include data that is recorded by the Electronic Information Processing Systems as part of user provisioning (e.g. username, real name) and user activity logging.****]***

1. [Legal bases for Processing]

***[Guidance Note:*** *the legal bases that the Parties intend to rely on can, optionally, be set out here. The advantage of doing that is that all of the Parties know what the legal bases are, and they should not change during the Term. The disadvantage is the lack of flexibility: as the Parties get used to sharing data, they may identify a wider range of purposes for sharing and using Shared Personal Data, and may need to rely on a wider range of legal bases. The alternative to “fixing” the legal bases in this schedule is for the Parties to rely solely on the Privacy Notices. This Agreement is ready for the Parties to take this approach, if paragraph 1 above is correctly set up, and if the Parties all provide Patients and Staff with the same, detailed and compliance Privacy Notices. The question is, are the Parties willing and able to dedicate the resource and careful compliance that is required to manage Privacy Notices in that way, which is the price that they must pay for having maximum flexibility? Or do the Parties prefer to forego flexibility in favour of keeping it simple, and having certainty and minimal change through the Term?****]***

* 1. [Legal bases for Processing (Patients)]

| **Grounds relied on** | **Why the grounds are met** |
| --- | --- |
| ***[Guidance Note:*** *insert the legal grounds for Processing, having regard to Articles 6 and 9 of GDPR****]*** | ***[Guidance Note:*** *insert details of how the grounds for processing are met****]*** |

* 1. [Legal bases For Processing (Staff) ]

| **Grounds relied on** | **Why the grounds are met** |
| --- | --- |
| ***[Guidance Note:*** *insert the legal grounds for Processing, having regard to Articles 6 and 9 of GDPR****]*** | ***[Guidance Note:*** *insert details of how the grounds for processing are met****]*** |

1. Confidentiality compliance

*[Guidance Note: Set out how each Party, before disclosing Shared Personal Data to the other Parties, will ensure that the disclosure does not breach confidentiality. Will this be based on each Party’s internal policy on these matters; on an agreed policy and procedure that applies to all Parties?]*

1. Additional Terms

*[Guidance note: insert any additional obligations for all Parties or a particular Party here.]*

1. Data Protection Contact

*[Guidance note: insert each Party’s “PoC” (Point of Contact), as at the Commencement Date, here.]*

1. Review Date/ Frequency

*[Guidance note: insert fixed dates or intervals at which the Parties will meet to review this Agreement.]*

**SCHEDULE 2 – AGREED SHARING MECHANISMS**

***[Guidance note:*** *insert details of how the Shared Personal Data will be transmitted from one Party to the others. The possible mechanisms include:*

* *all Parties use the same Electronic Information Processing System which has built-in facilities for such data sharing, e.g. the EMIS-hosted version of EMIS software, or GP Connect;*
* *the Parties use different Electronic Information Processing Systems, but agree to implement an Electronic Data Interchange (such as the Medical Interoperability Gateway) that effects the data sharing.]*

**SCHEDULE 3 – SECURITY**

***[Guidance Note:*** *set out the key security measures that, as a minimum, each of the Parties must implement during the Term. For example:*

### *controls to ensure that only privileged users (e.g. network administrators who act with approval or under instruction) can access Staff Personal Data;*

### *role-based access controls, and other measures to prevent persons other than Authorised Users from accessing Patient Personal Data;*

### *authentication controls (such as the NHS Smart Card, if available) to ensure that only Authorised Users can access Patient Personal Data;*

### *controls on Authorised Users’ access to the Patient Personal Data;*

### *measures to ensure that all Processing of Patient Personal Data is automatically logged;*

### *arrangements for regular spot-checks, reviews and audits on user activities.*

*Clause 6 (Privacy Notices) is drafted in a way that assumes that measures along the lines of the above will be in place.****]***

* 1. **SCHEDULE 4 - SHARED PROCESSORS**

***[Guidance Note:*** *A Shared Processor under this Agreement is a Processor who Processes the Shared Personal Data on behalf of all of the Parties (not just for one of the Parties), for example because it hosts an Electronic Data Interchange.****]***

|  |  |  |
| --- | --- | --- |
| **Shared Processor** | **Shared Processor Data** | **Shared Processor Purpose(s)** |
|  |  |  |

**SCHEDULE 5 – DEED OF ACCESSION**

**THIS DEED** is dated [DATE]

**PARTIES**

1. [FULL PARTY NAME] [*Guidance Note: party to be defined*];
2. [FULL PARTY NAME] [*Guidance Note: party to be defined*];
3. [FULL PARTY NAME] [*Guidance Note: party to be defined*];
4. [FULL PARTY NAME] [*Guidance Note: party to be defined*],

(together, the “**Current Parties**”); and

1. [FULL NAME OF NEW PARTY] (“**New Party**”) [*Guidance Note: party to be defined*].

**BACKGROUND**

1. The Data Sharing Agreement was entered into between [insert a list of the original Parties].
2. Under clause 7 (*Accession of New Party*) of the Data Sharing Agreement, a person may become a Party to that agreement subject to the terms of that clause.
3. It is proposed that the New Party becomes a party to the Data Sharing Agreement.
4. Definitions and Interpretation
   1. The following definitions and rules of interpretation apply in this Deed:
5. “**Data Sharing Agreement**” means the deed that was entered into on [DATE] between [insert a list of the original Parties].
   1. The definitions set out in clause 1 of the Data Sharing Agreement are incorporated into this Agreement.
6. New Party’s accession

With the consent of the Current Parties, the New Party shall be joined as a party to the Data Sharing Agreement with effect from the date of this Agreement. The New Party's participation shall be subject to the terms set out in this Deed.

1. New Party's obligations

The New Party agrees that it shall be bound by the terms of the Data Sharing Agreement as a Party to the Agreement.

1. General
   1. This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Agreement for all purposes.
   2. Each party to this Deed submits to the non-exclusive jurisdiction of the English courts and agrees that this Deed is to be governed and construed according to English law.

In witness of which the parties to this Deed have executed it as a Deed and delivered it on the date stated at the beginning of it.

***[Guidance Note:*** *Intended to be executed by relevant parties as a Deed.****]***

END OF SCHEDULE 5

***[Guidance Note:*** *This is where the signature clauses for the original Parties to the Data Sharing Agreement must be set out.****]***