

This Data Processing Agreement (“**Agreement**”) is between

**THE PARTICIPATING PHARMACY**

(the “**Organisation**”)

and

Midlands and Lancashire Commissioning Support Unit

(the “**Data Processor**”)

(together as the “**Parties**”)

**WHEREAS**

**The Data Processor has entered into an agreement with NHS England (“Head Contractor”) under which the data processor has agreed to Support the Early Diagnosis of Cancer (Community Pharmacy Pilot).**

- (A) The Organisation acts as a Data Controller.
- (B) *The organisation wishes to **be subcontracted to provide** certain Services, which imply the processing of personal data, to a 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 and with the UK GDPR. The [UK GDPR](#) is the [retained EU law](#) version of the [General Data Protection Regulation \(\(EU\) 2016/679\)](#) ([EU GDPR](#)) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of [section 3](#) of the European Union (Withdrawal) Act 2018 and as amended by [Schedule 1](#) to the [Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(SI 2019/419\)](#).
- (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 “**Organisation Personal Data**” means any Personal Data Processed by a Contracted Processor on behalf of the Organisation pursuant to or in connection with the Principal Agreement;
  - 1.1.3 “**Contracted Processor**” means a Data Processor;

- 1.1.4 “**Data Protection Laws**” means (i) the Data Protection Act 2018 (ii) the UKGDPR, the LED and any applicable national Laws implementing them as amended from time to time (iii) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations.
- 1.1.5 “**EEA**” means the European Economic Area
- 1.1.6 “**UK GDPR**” means UK General Data Protection Regulation. The UK GDPR is the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).
- 1.1.7 “**Data Transfer**” means:
- 1.1.7.1 a transfer of Organisation Personal Data from Organisation to a Data Processor; or
- 1.1.7.2 an onward transfer of Organisation Personal Data from a Contracted Processor to a Subcontracted processor, or between two establishments of a Contracted Processor.
- 1.1.8 “**Services**” means the services the organisation provides.
- 1.1.9 “**Subprocessor**” means any person appointed by or on behalf of the Contracted Processor to process Personal Data on behalf of the Organisation 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 Organisation Personal Data**
- 2.1 The Contracted Processor shall:
- 2.1.1 comply with all applicable Data Protection Laws in the Processing of Organisation Personal Data; and
- 2.1.2 not Process Organisation Personal Data other than on the relevant Organisation’s documented instructions.
- 2.2 The Organisation instructs the Contracted Processor to process Organisation Personal Data.

### **3. Processor Personnel**

The Contracted 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 Organisation Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know/access the relevant Organisation Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Data Protection 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, the Contracted Processor shall in relation to the Organisation 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 GDPR.
- 4.2 In assessing the appropriate level of security, the Contracted Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

### **5. Subprocessing**

- 5.1 The Contracted Processor shall not appoint (or disclose any Organisation Personal Data to) any Subprocessor unless required or authorised by the Organisation.

### **6. Data Subject Rights**

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

## **7. Personal Data Breach**

- 7.1 The Contracted Processor shall notify the Organisation without undue delay upon becoming aware of a Personal Data Breach affecting Organisation Personal Data, providing the Organisation with sufficient information to allow the Organisation to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- 7.2 The Contracted Processor shall cooperate with the Organisation and take reasonable steps as are directed by the Organisation to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **8. Data Protection Impact Assessment and Prior Consultation**

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

## **9. Deletion or return of Organisation Personal Data**

- 9.1 Subject to this section 9, the Contracted Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the processing of Organisation Personal Data, delete and procure the deletion of all copies of those Organisation Personal Data.
- 9.2 The Contracted Processor shall provide written certification to Organisation that it has fully complied with this section 9 within 10 business days of the Cessation Date.

## **10. Audit rights**

- 10.1 Subject to this section 10, the Contracted Processor shall make available to the Organisation on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Organisation or an auditor mandated by the Organisation in relation to the Processing of the Organisational Personal Data by the Contracted Processor.
- 10.2 Information and audit rights of the Organisation 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 Contracted Processor may not transfer or authorise the transfer of Organisation Personal Data to countries outside the UK or International Organisations without the prior written consent of the Organisation. If

Personal Data processed under this Agreement is transferred outside of the UK or to International Organisations, the Parties shall ensure that the Personal Data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on as applicable, EU approved standard contractual clauses (SCCs) or certain Binding Corporate Rules (BCRs) for the transfer of personal data, UK Adequacy Regulations, the International Data Transfer Agreement, or the International Data Transfer Addendum to the new European Commission SCCs.

## **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 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, sent by post or sent by email to the address or email address set out in the heading of this Agreement or 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 the United Kingdom.

**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 the United Kingdom, subject to possible appeal.

This Agreement is entered into with effect from the date it is electronically signed and dated.

### **Organisation**

Electronically signed by **a designated signatory on behalf of the participating Pharmacy**

### **Contracted Processor**

Signed by Liz Miller for and on behalf of **Midlands and Lancashire CSU**:

Signature \_\_\_\_\_  \_\_\_\_\_

Title \_\_\_ Director of Nursing & Clinical Services \_\_\_\_\_

Date Signed \_\_\_\_\_ 27/08/2024 \_\_\_\_\_

## ANNEX – DATA PROCESSING SERVICES

1. The Contracted Processor shall comply with any further written instructions with respect to processing by the Organisation.
2. Any such further instructions shall be incorporated into this Annex.

Description	Details
Subject matter of the processing	Midlands and Lancashire CSU will be processing data received from participating Community Pharmacies as part of the Community Pharmacy Early Diagnosis of Cancer Pilot.
Duration of the processing	Up until 1 <sup>st</sup> April 2025
Nature and purpose of the processing	<p>As part of the Community Pharmacy Early Diagnosis of Cancer Pilot , Midlands and Lancashire CSU (the Processor) will be processing personal data received from participating Community Pharmacies (the Controller) for the purposes of hosting a Microsoft Forms for the Community Pharmacy Early Diagnosis of Cancer Pilot which is for those individuals who present with suspected symptoms of cancer.</p> <p>As patients attend their Pharmacy, a Pharmacist will determine whether a clinical referral for the above purpose may be required and will ask the patient if they consent for this referral to occur. This referral may be for Secondary Care or for Primary Care. In addition, a patient may be offered symptom management advice or signpost to other services if conditions/symptoms worsen. The consultation will be completed on Microsoft Forms which will set out a series</p>

of questions. The Form is provided and hosted by Midlands and Lancashire CSU.

The data within the form which is for the purpose of the recording the referral to Primary Care or Secondary Care, or for symptom management advice or signposting will be processed by Midlands and Lancashire CSU acting as a Processor to the participating Community Pharmacy.

Where data has been submitted by the participating Community Pharmacy for NHS England to use for the purposes of carrying out Qualitative and Quantitative Evaluations, this falls outside of the scope of this Agreement apart from the function provided by Midlands and Lancashire CSU to pseudonymise data on behalf of the Community Pharmacists to allow it to be used for the Quantitative Evaluation by NHS England. This means for the pseudonymisation process and by providing the pseudonymised data (the act of pseudonymising the data meets this requirement) to NHS England, Midlands and Lancashire CSU are acting as a Processor to the Community Pharmacists under this Agreement. Where data is provided by the Community Pharmacists to NHS England by the use of the Microsoft Forms for the purposes of carrying out Qualitative and Quantitative Evaluations (other than where identifiable data requires pseudonymisation), NHS England are the Data Controller upon Midlands and Lancashire CSU receiving the form and so that data falls outside of this Agreement. When data has been pseudonymised (provided to NHS England) then this data also falls outside of the



	<p>scope of this Agreement as NHS England will be Data Controllers.</p> <p>Further to the above, Midlands and Lancashire will only provide data for the qualitative evaluation to NHS England where the Community Pharmacists have provided confirmation of consent to be contacted for evaluation purposes (which is included in the data collection form for Pharmacists to read out to the patient), and the patient has provided explicit consent as part of the referral process to share their information with the evaluation team for the qualitative evaluation.</p>
<p>Type of Personal Data</p>	<ul style="list-style-type: none"> <li>• Identifiers - NHS Number, Name (first, last and title)</li> <li>• Date of Birth</li> <li>• Contact details (preferred primary and preferred secondary telephone number, and preferred contact time)</li> <li>• Full address</li> <li>• Email address</li> <li>• Gender at Birth and Gender Identity if different to that at birth</li> <li>• Preferred Language (including whether an interpreter is required)</li> <li>• Smoking Status</li> <li>• Date of Consultation</li> <li>• Referring Pharmacy details (including Name, name of Pharmacist, Address of Pharmacy, contact details of Pharmacy, ICB Area)</li> <li>• Patients GP Details (registered with GP, name of GP Practice, GP Practice address)</li> </ul>

	<ul style="list-style-type: none"> <li>• Information relating to symptoms presented including data required for the referral process</li> <li>• The above data as a minimum for the purposes of pseudonymising data on behalf of the participating Community Pharmacy before providing it to NHS England</li> <li>• The above data where required for the qualitative evaluation where the Patient has consented to participate.</li> </ul>
Categories of Data Subject	Patients