**DATA PROCESSING AGREEMENT**

**Between**

**[PRIORY MEDICAL CENTRE]**

**and**

**[PURE PHYSIOTHERAPY]**

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##### **DATA PROCESSING AGREEMENT**

**THIS AGREEMENT** is dated [09/06/2023]

**BETWEEN:**

1. **[party 1]** of Priory Road, Swindon, SN3 2EZ (**“Controller”**); and
2. **[PARTY 2]** of Haywood House, Hydra Business Park, Nether Lane, Sheffield, S35 9ZX (**“Processor”**),

(with each a "**Party**"and both the "**Parties**").

##### **BACKGROUND:**

1. The Processor is the supplier of the VIRTUAL FIRST CONTACT PHYSIOTHERAPIST service.
2. The Processor is required to Process the Shared Personal Data on behalf of the Controller as specified in schedule 1.
3. This Agreement effects the appointment of the Processor and sets out the terms and conditions that shall apply to its Processing of the Shared Personal Data as specified in schedule 1 of this Agreement.
4. This Agreement is entered into with the purpose of ensuring compliance with the Data Protection Act 2018 (“DPA”) and associated legislation. Any processing of data by the Processor on behalf of the Controller must comply with the terms of this agreement and with the DPA.

**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:

|  |  |
| --- | --- |
| Commencement Date | 09/06/2023 |
| Controller | has the meaning given to it in the UK GDPR; |
| Data Protection Impact Assessment | means an assessment for the purposes of Article 35 of the UK GDPR, of the impact of envisaged Processing of Personal Data; |
| Data Protection Legislation | means all laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018; |
| Data Protection Officer | has the meaning given to it in the UK GDPR; |
| Data Subject | has the meaning given to it in the UK GDPR; |
| Data Subject Access Request | a request made by, or on behalf of, a Data Subject in accordance with the Data Subject’s rights under the Data Protection Legislation to access their Personal Data; |
| Duration | the duration of this Agreement; |
| ICO | Information Commissioners Office, the supervisory Authority for the UK; |
| Personal Data | has the meaning given to it in the UK GDPR; |
| Personal Data Breach | has the meaning given to it in the UK GDPR and includes also any breach of Article 5(1)(f) (the integrity and confidentiality principle) of UK GDPR; |
| Processing | has the meaning given to it in the UK GDPR, and the terms “**Process**” and “**Processed**” shall be construed accordingly; |
| Processor | has the meaning given to it in the UK GDPR; |
| Processor Personnel | means all persons employed or engaged by or on behalf of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement; |
| **Shared Personal Data** | means the Personal Data to be shared and Processed under this Agreement and specified in Schedule 1 of this Agreement; |
| **Sub-Processor** | means any third party appointed to Process the Shared Personal Data on behalf of the Processor; |
| **Supervisory Authority** | has the meaning given to it in the UK GDPR; |
| **Third Country** | means any country other than the UK |
| **UK GDPR** | the United Kingdom General Data Protection Regulation, 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; |
| **Working Day** | means a day other that a Saturday, Sunday or bank holiday in England. |

## Clause, Annex 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 a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## A reference to a statute 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.

## A reference to writing or written includes email.

# COMMENCEMENT AND DURATION

## This Agreement shall commence on the Commencement Date and shall continue for the duration unless:

### the Controller terminates the appointment of the Processor by giving not less than one month’s prior notice to the Processor; or

### either Party ceases to be a party to the Agreement.

### at which point this Agreement shall terminate with immediately effect.

## On the expiry or termination of this Agreement, the Processor shall cease to Process the Shared Personal Data.

# RIGHTS AND OBLIGATIONS OF THE DATA CONTROLLER

## The Controller is responsible for ensuring the processing of personal data takes place in compliance with data protection legislation and clauses in this Agreement.

## The Controller has the right and obligation to make decisions about the purposes and means of the processing of personal data.

## The Controller shall be responsible, among other, for ensuring the processing of personal data, which the Processor is instructed to perform, has a legal basis.

# PROCESSING UNDER INSTRUCTION

## The Processor shall process personal data on behalf of the Controller on the basis that the processor shall only process personal data in line with documented instructions from the Controller, unless required to do so by Law.

## Such instructions shall be specified in Schedule 1 to this Agreement. Subsequent instructions can also be given by the Controller throughout the duration of the Agreement, but such instructions shall always be documented and kept in writing in connection with the Clauses of this Agreement.

## The Processor shall immediately inform the Controller if instructions given by the Controller contravene data protection legislation.

# CONFIDENTIALITY

## The Processor shall only grant access to the personal data being processed on behalf of the controller to persons under the Processors authority who are subject to an appropriate confidentiality undertaking which is enforceable by the Processor against the Processor personnel or against any Sub-Processor personnel.

## The list of persons to whom access has been granted shall be kept under periodic review. On the basis of this review, such access to personal data can be withdrawn, if access is no longer necessary, and personal data shall consequently not be accessible anymore to those persons.

## The Processor shall at the request of the Controller demonstrate that the concerned persons under the Processors authority are subject to the above mentioned confidentiality.

# SECURITY MEASURES

## Taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Controller and Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

## Depending on the relevance, the measures may include:

* Encryption and Pseudonymisation;
* The ability to ensure ongoing confidentiality, integrity availability and resilience of processing systems and services;
* The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
* A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

## The Processor shall ensure as a minimum, compliance with the latest version of the NHS Data Security and Protection Toolkit.

## The Processor shall in relation to any personal data processed pursuant to this agreement, ensure the Processor personnel:

### do not process the personal data except in accordance with this agreement;

### are aware of and comply with the Processors duties under this Agreement;

### have completed adequate training in the handling and protection of personal data.

# INTERNATIONAL TRANSFERS

## The Processor shall not transfer personal data to any third country unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

### the Processor has, prior to such transfer, established or procured the establishment of appropriate safeguards in relation to the transfer of the personal data;

### 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

### 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

### the Processor complies with all reasonable instructions notified to it in advance of such transfer by the Controller with respect to such transfer.

# SUB PROCESSORS

## Before appointing or allowing any Sub-Processor to Process any Personal Data, the Processor must:

### notify the Controller in writing of the intended Sub-Processor and Processing;

### obtain the written consent of the Controller to the Processor appointing or using the proposed Sub-Processor to Process the relevant Personal Data; and

### enter into a written agreement with the Sub-Processor which appoints the Sub-Processor on terms and conditions that comply with Data Protection Legislation and are no less onerous on the Sub-Processor, and no less protective of the Personal Data and of Data Subjects, than the provisions of this Agreement; and

### provide the Controller with such information regarding the proposed Sub-Processor as the Controller may reasonably require.

## If any authorisation is given under clause 8.1.2, the Processor shall not make any changes concerning the addition or replacement of other Processors without first obtaining the Controller’s written consent to such changes.

## The Processor shall remain fully responsible for, and liable in respect of, all acts or omissions of its sub-Processors.

# DATA SUBJECT RIGHTS

## The Processor must assist the Controller by taking appropriate technical and organisational measures to enable the Controller to respond to requests from individuals to exercise their rights under the Data Protection Legislation.

## Subject to Clause 9.1, the Processor shall notify the Controller without undue delay (and in any event within two (2) working days of the Processor becoming aware) if it:

### receives any Data Subject Access Request (or purported Data Subject Access Request);

### receives any request to rectify, block or erase any Personal Data;

### receives any other request, compliant or communication relating to either Party’s obligations under the Data Protection Legislation;

### receives any communication from the ICO or any other regulatory authority in relation to Personal Data Processed under this Agreement; or

### receives a request from any third party for disclosure of Personal Data where compliance with such request is required by Law;

# ASSISTANCE TO THE CONTROLLER

## Taking into account the nature of the processing and the information available, the Processor must assist the Controller in meeting its obligations to:

* Implement appropriate technical and organisational security measures as specified in Clause 6;
* Notify personal data breaches to the ICO;
* Notify personal data breaches to data subjects;
* Carry out Data Protection Impact Assessments (DPIAs) when required; and
* Consult the ICO where a DPIA indicates a there is a high risk that cannot be mitigated.

## The Processor shall notify the Controller’s Data Protection Officer without undue delay (and in any event within twenty-four (24) hours of the Processor becoming aware) following the Processor becoming aware of an actual Personal Data Breach

## The Processor shall co-operate with the Controller and take reasonable steps as are directed by the Controller to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## The Processor shall provide reasonable assistance to the Controller with any DPIAs and prior consultations with the ICO or other supervising authorities, which the Controller considers to be required by articles 35 or 36 of the GDPR, in each case solely in relation to the Processing of Controller Personal Data by, and taking into account the nature of the Processing and information available to the Processor.

# ERASURE OR RETURN OF DATA

## The Processor shall, in relation to any Personal Data that is Processed pursuant to this Agreement, at the written direction of the Controller delete or return the Personal Data (and any copies of it) on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

# AUDITS AND INSPECTIONS

## The Processor, when requested shall provide to the Controller, the information necessary to demonstrate the compliance of the Processor (or, where applicable, compliance of Sub-Processors) with Data Protection Legislation.

## The Processor shall allow for and contribute to (and ensure that, where applicable, its Sub-Processors allow for and contribute to) audits conducted by the Controller or its designated auditor.

## The Controllers rights under this Clause 12.2 include a right for the Controller, or its designated auditor, to access premises used by or on behalf of the Processor, and to access and interview any Processor Personnel.

# DATA PROTECTION OFFICERS

## Each Party shall designate its own Data Protection Officer if required by Data Protection Legislation or (if not so required) shall designate one of its senior managers as being responsible for overseeing and managing the Party’s compliance with Data Protection Legislation.

## Each Parties designated Data Protection Officer or designated Officer with responsibility for overseeing and managing the Party’s compliance with Data Protection Legislation are documented in Schedule 1 to this Agreement.

## Each Party shall notify all changes to the identity and contact details of the designated Officer to the other Party before such changes enter into effect within the notifying Party’s organisation.

# VARIATION

## Any amendment or variation to this Agreement shall be in writing and signed by the Parties (or their duly authorised representatives).

## If the Data Protection Legislation changes in a way that the Agreement is no longer adequate for the purpose of governing lawful Processing exercises, the Parties agree they will negotiate in good faith to review the Agreement in the light of the new legislation.

# NOTICES

## Any notice or other communication given by either Party under or in connection with this Agreement shall be in writing, addressed to the Party’s Data Protection Officer, and shall be delivered by hand, or by pre-paid first-class post or other next working day delivery service at its principle place of business.

## 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; or

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

## No notice may be sent by email.

## This clause 15 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.

# 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 16.1, the 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.

# THIRD PARTY RIGHTS

## A person who is not a 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.

# ENTIRE AGREEMENT

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

## Each Party 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.

# GOVERNING LAW AND JURISDICTION

## Each Party submits to the exclusive jurisdiction of the UK courts and agrees that the Agreement is to be governed and construed in the country in which the Parties are established, namely England and Wales.

# SIGNATURES

This Agreement has been executed as a Deed and is delivered and takes effect on the date set out at the head of this Agreement.

Signed on behalf of the Controller:

|  |  |
| --- | --- |
| **Name** | SHELLA HOLLISTER |
| **Position** | OPERATIONS MANAGER |
| **Date** | 20 JUNE 2023 |
| **Signature** |  |

Signed on Behalf of the Processor:

|  |  |
| --- | --- |
| **Name** | Tom Billers |
| **Position** | Head of Operations |
| **Date** | 11th July 2023 |
| **Signature** | TBillers |

# SCHEDULE 1

**Data Processing Instructions**

| **Description** | **Details** |
| --- | --- |
| **Subject matter of the Processing** | Virtual First Contact Physiotherapy services |
| **Duration of the Processing** | As per agreed service level agreement  To be reviewed annually |
| **Nature and purposes of the Processing** | To provide virtual first contact physiotherapy services |
| **Type(s) of Personal Data** | Name  NHS identification number  Medical history  Medical records  Home address  Mobile number  Email address |
| **Type(s) of Special Category Data** | Any sensitive data  Personal data revealing racial or ethnic origin;  Personal data revealing political opinions;  Personal data revealing religious or philosophical beliefs;  Personal data revealing trade union membership;  genetic data;  Biometric data (where used for identification purposes);  Data concerning health;  Data concerning a person’s sex life; and  Data concerning a person’s sexual orientation. |
| **Categories of Data Subject** | Patients  Vulnerable adults  Users |
| **Third Countries Personal Data will be transferred to** | The data is not permitted to be transferred to any third parties |
| **Details of any Sub-Processors** | n/a |
| **Additional Processing Instructions** | n/a |

**DATA PROTECTION POINTS OF CONTACT**

|  |  |  |  |
| --- | --- | --- | --- |
| **Controller** | | **Processor** | |
| **Name** | Renata Smolskyte | **Name** | Tom Billers |
| **Role** | PCN Manager | **Role** | Head of Operations |
| **Contact**  **Details** | renata.smolskyte1@nhs.net | **Contact**  **Details** | Thomas.billers@purephysiotherapy.co.uk |