

DATA PROCESSING AGREEMENT

Between

[GP Practice - Name of Controller]

and

**Bath & North East Somerset, Swindon & Wiltshire
Clinical Commissioning Group (BSW CCG) for the
extract of GP data and provision to Graphnet for the
BSW Integrated Care Record & Population Health
Management Platform**

Summary

This Data Processing Agreement is written to establish the appropriate controls and limitations required for Bath & North East Somerset, Swindon & Wiltshire Clinical Commissioning Group (the CCG) to extract, validate and supply data from General Practices (the dataset) to Graphnet Health Ltd for the BSW Integrated Care Record and Population Health Management platform.

The detailed processing instructions to achieve the extraction, validation and loading of data are set out in the schedule at the end of this agreement. The Practice signing the agreement are the controller and the CCG are the processor for the activities of extraction, validation and loading of data into Graphnet. This processing agreement relates only to the activities of extraction, validation and loading of data. It does not relate to the use of the data within the Graphnet products themselves. Use of the data in the ICR and PHM platform is governed by the Data Sharing Agreement. The DSA defines the controllership of data on the actual ICR and PHM platform.

These processing activities may be superseded by arrangements directly between the supplier of the general practice system (TPP) and Graphnet Health Ltd. When such a process is established it will be covered by a processing agreement between the practice and TPP Ltd and this processing agreement will cease.

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THIS AGREEMENT is dated <date, month, year>

Parties

(1)

[FULL LEGAL NAME OF ORGANISATION]

[legal status of organisation, e.g. incorporated and registered in England and Wales with company number [NUMBER]]

whose [registered] office is at [Insert main or registered office address] (the “Controller”)

AND

(2) **BATH & NORTH EAST SOMERSET, SWINDON & WILTSHIRE CLINICAL COMMISSIONING GROUP** whose main address is at **TBC** (“the CCG”)

(Each a “Party” and together the “Parties”).

BACKGROUND

- (A) The CCG is the supplier of the Services for extraction, validation and loading of the data.
- (B) The Controller wishes to formally to appoint the CCG as its Processor to ensure that Personal Data is processed in line with Data Protection Legislation.
- (C) This Agreement sets out the Personal Data that the CCG shall Process on behalf of the Controller, and the purposes for which the CCG shall Process the Personal Data on behalf of the Controller, together with the associated obligations of the CCG to ensure compliance with Data Protection Legislation.

AGREEMENT

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings, unless inconsistent with the context or as otherwise specified:

Commencement Date shall have the meaning given in paragraph 2 (Commencement and Duration of this Agreement) of the Schedule;

Controller shall mean a “data controller” for the purposes of the DPA 1998 and a “controller” for the purposes of the GDPR;

Data Protection Legislation means (i) the DPA 2018 (ii) the GDPR, 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;

Data Protection Officer means the officer referred to in Articles 37 to 39 (inclusive) of GDPR, and the contact details for each Party's Data Protection Officer (as at the date of this Agreement) are set out in paragraph 4 (Data Protection Officers) of the Schedule;

Data Subject means a data subject (as that term is defined in Data Protection Legislation) and in particular a data subject of the type(s) referred to in paragraph 3 (Details of Data Subjects, Personal Data and Processing) of the Schedule;

DPA 2018 means the Data Protection Act 2018;

Duration means the duration of this Agreement, as specified in or calculated in accordance with paragraph 2 (Commencement and Duration of this Agreement) of the Schedule;

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679);

Law means any law or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the CCG is bound to comply;

Personal Data shall take the meaning given in the Data Protection Legislation and more specifically means the personal data type(s) described in paragraph 3 (Details of Data Subjects, Personal Data and Processing) of the Schedule;

Personal Data Breach means an actual breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any of the Personal Data transmitted, stored or otherwise processed by the CCG;

Processor shall mean a "processor" for the purposes of the GDPR and the DPA 2018 (as such legislation is applicable);

Processor Personnel means persons employed or engaged from time to time by or on behalf of the CCG in the Processing of the Personal Data, including employees, workers, consultants and agents of the CCG;

Processing (and cognate terms, including **Process** and **Processed**) shall have the meaning given in the Data Protection Legislation;

Pseudonymisation shall take the meaning given in the Data Protection Legislation;

The CCG's IG Assessment means the CCG's latest NHS Data Security & Protection toolkit self-assessment (or any future toolkit self-assessment format) that has been submitted prior to the Commencement Date;

Special Categories of Personal Data shall take the meaning given in the Data Protection Legislation and include those more specifically described in paragraph 3 (Details of Data Subjects, Personal Data and Processing) of the Schedule;

Standing Instructions means the written instructions of the Controller referred to in paragraph 1 (Details of Services Agreement and Services) of the Schedule;

Sub-processor means any third party appointed to process Personal Data on behalf of the CCG related to this Agreement;

Third Country means a state or jurisdiction other than the United Kingdom or EU member state, and also means any international organisation (as that term is defined in GDPR); and

Working Day means a day other than a Saturday, Sunday or bank holiday in England

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule (and any Annex) forms 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 Schedule (and any Annex).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 References to clauses and the Schedule (and any Annex) are to the clauses and Schedule (and any Annex) of this Agreement and references to paragraphs are to paragraphs of the Schedule (and any Annex).

- 1.9** Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 DURATION

- 2.1** This Agreement shall commence on the Commencement Date and shall continue for the Duration.

3 PERSONAL DATA PROCESSING

- 3.1** Details of the types of Personal Data and Special Categories of Personal Data that shall be Processed by the CCG pursuant to this Agreement, the subject matter of the Processing, the nature and purpose of the Processing, the categories of Data Subjects whose Personal Data shall be Processed and the duration of the Processing are as set out in the Schedule to this Agreement.

4 PROCESSING UNDER INSTRUCTION

- 4.1** The Parties acknowledge and agree that, for the purpose of the Data Protection Legislation, the CCG is a Processor of the Personal Data and

Practice is the Controller of the Personal Data.

- 4.2** The CCG shall, in relation to any Personal Data that is Processed pursuant to this Agreement, Process that Personal Data only in accordance with the written instructions:

4.2.1 set out in the Standing Instructions; or

4.2.2 the other reasonable written instructions notified by the Controller to the CCG from time to time;

Unless the CCG is required to do otherwise by Law.

- 4.3** The Controller acknowledges that the CCG's obligations under this Agreement shall not apply to the extent that the CCG is required by Law to Process the Personal Data other than in accordance with the Controller's instructions. If the CCG is required by Law to Process Personal Data otherwise than in accordance with the Controller's written instructions, the CCG shall notify the Controller's Data Protection Officer of that legal requirement before processing the Personal Data, unless the Law prohibits such notification on important grounds of public interest.

5 CONFIDENTIALITY

- 5.1** The CCG shall, in relation to any Personal Data processed pursuant to this Agreement, ensure that Processor Personnel are:
- 5.1.1** subject to appropriate confidentiality undertakings which are enforceable by the CCG against the Processor Personnel or (in the case of employees or third parties appointed by a Sub-processor) against the relevant Sub-processor; or
 - 5.1.2** are under an appropriate statutory obligation of confidentiality

6 SECURITY MEASURES

- 6.1** Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of the Processing pursuant to this Agreement, as well as the risk of varying likelihood and severity for the rights and freedoms of living individuals, each Party shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
- 6.2** The CCG will ensure as a minimum, compliance with the security measures set out in the latest version of the CCG IG Assessment. The Controller acknowledges and agrees that it has evaluated the CCG's IG Assessment and the CCG's technical and organisational security measures and that such are appropriate for the purposes of the Processing pursuant to this Agreement.
- 6.3** The CCG shall, in relation to any Personal Data processed pursuant to this Agreement, ensure that:
- 6.3.1** the Processor Personnel do not process the Personal Data except in accordance with this Agreement;
 - 6.3.2** the Processor Personnel:
 - 6.3.2.1** are aware of and comply with the CCG's duties under this Agreement;
 - 6.3.2.2** are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless the CCG is authorised or directed in advance and in writing to do so by the Controller (or is otherwise permitted by this Agreement);
 - 6.3.2.3** have undergone adequate training in the use, care, protection and handling of Personal Data

7 SUB-PROCESSORS

- 7.1** The Controller hereby authorises the CCG to permit the Sub-processors identified or referred to in paragraph 3 of the Schedule to Process any of the Personal Data on behalf of the CCG.
- 7.2** Before allowing any Sub-processor, other than those permitted pursuant to clause 7.1, to Process any Personal Data pursuant to this Agreement, the CCG must:
- 7.2.1** notify the Controller in writing, of the intended Sub-processor and Processing;
 - 7.2.2** obtain the written consent of the Controller to the Processing of the relevant Personal Data by the intended Sub-processor; and
 - 7.2.3** enter into a written agreement (being one that is enforceable by the CCG) with the Sub-processor which gives effect to the terms set out in this Agreement such that they apply to the Sub-processor
- 7.3** To the extent that the CCG permits any Sub-processor to Process the Personal Data, the CCG shall to that extent remain responsible for the Processing of the Personal Data by such Sub-processor.

8 DATA SUBJECT RIGHTS

- 8.1** The CCG must assist the Controller by taking appropriate technical and organisational measures to the extent that, in the absence of such measures, the Controller shall be unable to comply in accordance with Data Protection Legislation with the exercise by Data Subjects of their rights under the Data Protection Legislation.

9 SUPPORTING CONTROLLER'S OBLIGATIONS

- 9.1** The CCG must assist the Controller in ensuring compliance with their obligations as set out in Articles 32 (Security of Processing) to 36 (Data Protection Impact Assessment and Prior Consultation) (inclusive) of the GDPR, taking into account the nature of the Processing of the Personal Data pursuant to this Agreement and the information available to the CCG.
- 9.2** The CCG shall notify the Controller, as soon as reasonably practicable, about any request or complaint received from a Data Subject (without responding to that request, unless authorised to do so by the Controller).
- 9.3** The CCG shall notify the Controller's Data Protection Officer without undue delay (and in any event within twenty-four (24) hours of the CCG becoming aware) following the CCG becoming aware of an actual Personal Data Breach. The Controller shall consult with the CCG before notifying the Information Commissioner (or any other supervisory authority

for the purposes of Data Protection Legislation) and before notifying any Data Subjects about any such Personal Data Breach.

10 RETURN OR DESTRUCTION OF DATA

10.1 The CCG 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 CCG is required by Law to retain the Personal Data.

11 ACCESS TO INFORMATION

11.1 The CCG shall make available to the Controller information necessary to demonstrate the compliance of the CCG (or, where applicable, compliance of Sub-processors) with Data Protection Legislation.

11.2 At the Controller's cost, the CCG 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.

11.3 The CCG shall notify the Controller if, in the CCG's opinion, any of the Controller's instructions pursuant to clause 11.1 or clause 11.2 infringes the Data Protection Legislation.

12 DATA PROTECTION OFFICERS

12.1 The Controller and the CCG each designate the Data Protection Officer whose details are set out in paragraph 4 of the Schedule, for the purposes of this Agreement.

12.2 Each Party shall notify all changes in 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.

13 INTERNATIONAL TRANSFERS

13.1 The CCG 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:

13.1.1 the Controller and/or the CCG (and/or its Sub-processor) has provided appropriate safeguards in relation to the transfer as determined by Data Protection Legislation;

13.1.2 the Data Subjects have enforceable rights (such as the ability to prevent the transfer of their Personal Data to the Third Country) and effective legal remedies (such as by means of the CCG exercising enforcing contractual remedies against any Sub-processor);

13.1.3 The CCG (and its Sub-processor, if applicable) complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

13.1.4 (without prejudice to the CCG's rights referred to in clause 4.2.2) the CCG complies (and ensures that its Sub-processor, if applicable, complies) with any reasonable instructions notified to the CCG in advance by the Controller with respect to the transfer of the Personal Data to the Third Country.

14 RECORDS OF PROCESSING

14.1 The CCG must create and maintain a record of all Processing activities carried out by the CCG on behalf of the Controller, and ensure any contracted sub processors also maintain and create a record of all processing activities pursuant to this Agreement, containing:

14.1.1 the categories of Processing carried out;

14.1.2 where applicable, transfers of Personal Data to a Third Country, including the identification of that Third Country and, where relevant, documentation of suitable safeguards;

14.1.3 the general description (as set out in the CCG IG Assessment) of the technical and organisational measures taken by the CCG to ensure a level of security for the Personal Data in accordance with clause 6 (Security Measures) above.

14.2 The CCG shall ensure that the record of processing maintained in accordance with this clause 14 is provided to the Controller within five (5) Working Days following receipt by the CCG's Data Protection Officer of a written request from the Controller.

15 PROCESSOR'S LEGAL OBLIGATIONS

15.1 This Agreement does not relieve the CCG from any obligations imposed upon it by the Data Protection Legislation.

16 VARIATION, FURTHER LEGISLATION AND GUIDANCE

16.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.2 The Parties agree to take account of any amendment, re-enactment or extension to the Data Protection Legislation, and any relevant guidance issued by the Information Commissioner or the European Data Protection Board.

16.3 The Parties agree, at either Party's written request, to correspond and/or meet with a view to reviewing and amending this Agreement to ensure that it takes account of any

amendment, re-enactment or extension to the Data Protection Legislation, and that it complies with any relevant guidance issued by the Information Commissioner or the European Data Protection Board.

17 INTELLECTUAL PROPERTY RIGHTS

17.1 To the extent that the CCG is not the owner of copyright or database right in the Personal Data and databases that it uses for the purposes of Processing the Personal Data, the Controller hereby grants to (and agrees that it shall procure for) the CCG a royalty-free, non-exclusive, worldwide licence to use the Personal Data, from and including the Commencement Date for the Duration.

18 CONFLICT

18.1 If there is an inconsistency or conflict between any of the provisions of this Agreement and the provisions of any other agreement between the Controller and the CCG, the provisions of this Agreement shall prevail in relation to Personal Data.

19 THIRD PARTY RIGHTS

19.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20 SEVERANCE

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, each Party shall at the request of the other Party negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, compliant with Data Protection Legislation, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 FURTHER ASSURANCE

21.1 Each Party shall (and shall use all reasonable endeavours to procure that any necessary third party shall) at the other Party's request promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to clauses 16 (Variation, Further Legislation and Guidance), 17 (Intellectual Property Rights), 20 (Severance).

22 LIABILITY

22.1 Nothing in this Agreement excludes or limits the liability of either Party for:

22.1.1 death or personal injury caused by such Party's negligence;

22.1.2 fraud or fraudulent misrepresentation; or

22.1.3 any other liability which cannot lawfully be excluded or limited

23 ENTIRE AGREEMENT

23.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Processing of Personal Data by the CCG for the purposes of the Services.

23.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in or cross-referenced directly by this Agreement.

23.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

24 NOTICE

24.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing, addressed to the Party's then-current 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 main or registered office.

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

24.2.1 if delivered by hand, on signature of a delivery receipt; or

24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service].

24.3 No notice may be sent by email.

24.4 This clause 24 does 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.

25 GOVERNING LAW

25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be

governed by and construed in accordance with the law of England and Wales.

26 JURISDICTION

26.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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.

Executed as a Deed by the

[Name of Controller]

acting by

a partner, in the practice:

[SIGNATURE OF PARTNER]

GP Partner

Executed as a deed
by Bath & North East Somerset, Swindon &
Wiltshire Clinical Commissioning Group
acting by and under the signature of:



.....

[Caroline Gregory]
Senior Information Risk Owner
Director of Finance, BSW]

SCHEDULE

Details of Services Agreement, Data Subjects, Personal Data and Processing

1 Commencement and Duration of this Agreement

| | |
|---------------------------|---|
| Commencement Date: | {TBC} |
| Duration: | <p>This agreement expires on 31/03/2024.</p> <p>It may be repealed before that date if an alternative solution for the processing detailed in this agreement is established and agreed.</p> <p>If the practice wishes to withdraw from the agreement they may do so at anytime and their participation in the programme will be terminated.</p> |

2 Details of Data Subjects, Personal Data and Processing

| | |
|---|---|
| Subject matter of the processing | <p>The CCG are using the 'Strategic Reporting Extract' (SRE) to take downloads of the dataset required for the Integrated Care Record and Population Health Management platform from each participating practice system (TPP SystemOne) and collating these into one data set to provide to Graphnet.</p> <p>This removes the need for Graphnet to receive individual feeds from each general practice. Each practice will be responsible for agreeing this feed in their system.</p> <p>The CCG will hold the data on the Swindon Primary Care network run by the CCG, which is separate from the CCG's own network and specifically established for practice support activities. The data will be on a separate machine just for this purpose (a virtualised gateway PC). This is stored on the Azure platform already in place for the Primary Care Network and has been subject to its own specific Data Protection Impact Assessment and is already in use to provide networks for practices. This will only be accessible to a short list of approved CCG staff to manage the data processing.</p> <p>The data will be an initial bulk upload, followed by daily updates of changes to the systems.</p> <p>Prior to this there may be a period of testing conducted to check that the data can be extracted and amended to the correct formatting and structure for upload into Graphnet.</p> |
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|-------------------------------------|---|
| | <p>Further bulk updates will only be needed if and when updates to TPP SystemOne are performed.</p> <p>The CCG will not hold the data files for any longer than is necessary and will securely destroy and upload processing files after a maximum of 30 days.</p> <p>In addition to the extraction and provision of data to Graphnet, the CCG may as required undertake limited troubleshooting on the data, this may require:</p> <ul style="list-style-type: none"> • Unpack and extract the minimum data required to investigate any potential data quality issue. For example it may only be necessary to look at data of a small number of practices for a common issue. Further more only necessary data items would be extracted, such as NHS number (no further demographics) and the affected fields by specifying the relevant data items and tables during the 'unpacking' process. • Where the CCG need to look at a specific identifiable patient record following identification of a potential issue, then this will only be done when the permission of the relevant practice had been gained. • The CCG will liaise with affected practices during any identified investigation to ensure they are aware of what is being undertaken on their behalf. <p>The CCG will not make any further uses of the data extracted without specific approved amendment to this agreement.</p> <p>As noted in the opening summary, this agreement only covers the extraction, validation and loading of data into the Graphnet platform. It does not cover any use of the data once it has been uploaded onto the platform. Use of the data on the ICR/PHM platform is subject to a specific data sharing agreement that defines the controllership, purposes and bases for use of the data on the platform.</p> |
| Duration of Processing | For the period of provision of the BSW Integrated Care Record contract (31/03/2024), unless superseded by a process between TPP and Graphnet. |
| Nature/purpose of Processing | The provision of patient data into the Integrated Care Record and Population Health Management platform to support both direct care and analytical activities as set out in the BSW ICR/PHM Data |

| | |
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| | Sharing Agreement |
| Categories of Data Subjects | General Practice patients |
| Type(s) of Personal Data | Personal and special category data of patients in the practice. Specific data items are defined (TBC) |
| Retention of data | This process is to extract, validate and securely upload practice data to Graphnet Health for the provision of the ICR/PHM platform. Whilst this is an ongoing process, data extracts will not be kept for any longer than necessary, once the upload for that extraction has been validated and completed. When a direct process is available between TPP and Graphnet, this process will be ceased and any remaining extracts at the conclusion of the process will be securely deleted. |
| Third Countries or International Organisations Personal Data will be transferred to | None |
| Sub-Processors | None |

4 Data Protection Officers

| | |
|--|-----------------------------|
| Controller's Data Protection Officer: | Jason Roberts, Medvivo Ltd. |
| The CCG's Data Protection Officer: | Julie-Anne Wales, BSW CCG. |