



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

***Section 38/Section 39 Service Provider
Joint Controller Data Sharing Terms***

Between

Health Service Executive

And

Provider

JOINT CONTROLLER DATA SHARING TERMS (HSE AND PROVIDER)

RECITALS

- A. These data sharing terms constitute the Parties' joint Controller arrangement for the purposes of Article 26 of the GDPR.
- B. The Parties acknowledge and agree that, for the purposes of Data Protection Laws, and the Processing of the Personal Data as anticipated by these Terms, the Provider and the Executive are joint Controllers.
- C. Appendix 1 of these Terms contains a description of the Purpose of the Processing, as well as the type of Personal Data Processed by the Parties under these Terms.
- D. To the extent that the parties are independent controllers then their Processing of Personal Data will be governed by the terms of Clause 29 of the Arrangement and these terms shall not apply.
- E. To the extent that the relevant Processing is already covered by an existing data sharing agreement in place for this purpose between the Parties, then these Terms shall not apply.

TERMS

1. DEFINITIONS

Terms not otherwise defined in these Terms will have the meaning as set forth in the Arrangement. The following definitions apply in these Terms (including the Recitals above), unless the context otherwise requires:

Arrangement as defined in Recital A;

Data Controller or **Controller** has the meaning given to that term in Article 4 of the GDPR;

Data Processor or **Processor** has the meaning given to that term in Article 4 of the GDPR;

Data Protection Laws means all applicable legislation relating to Personal Data and privacy, including the Data Protection Acts, 1988-2018, the Data Sharing and Governance Act 2019, the General Data Protection Regulation (EU) 2016/679 (the "**GDPR**"), the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336/2011) and any secondary legislation, including any statutory instrument, order, rule or regulation, made thereunder and any regulations or other legislative measures and/or implemented and/or delegated acts thereunder;

Data Subject has the meaning given to that term in Article 4(1) of the GDPR;

EEA shall mean the states that are contracting parties to the Agreement on the European Economic Area from time to time;

Jointly Controlled Personal Data shall mean the Personal Data and Special Categories of Personal Data Processed for the Purpose as more specifically detailed in Appendix 1 of these Terms;

Personal Data has the meaning given to that term in Article 4 of the GDPR;

Personal Data Breach has the meaning given to that term in Article 4 of the GDPR;

Processing, Process and like words have the meaning given to those terms in Article 4 of the GDPR;

Purpose shall mean the purpose of the Processing as more specifically detailed in Appendix 1 and for the avoidance of doubt is not any other purpose or purposes for which either of the Parties may Process Personal Data and Special Categories of Personal Data as independent Controllers;

Special Categories of Personal Data has the meaning given to that term in Article 9(1) of the GDPR;

Standard Contractual Clauses shall mean the contractual clauses dealing with the transfer of Personal Data outside the European Economic Area, which have been (i) adopted by the European Commission; or (ii) adopted by a relevant Supervisory Authority, such as the Data Protection Commission, and approved by the European Commission, under Data Protection Laws;

Terms shall mean these data sharing terms; and

Supervisory Authority has the meaning given to that term in Article 4 of the GDPR and in Ireland, is the Data Protection Commission whose principal administrative offices are at 21 Fitzwilliam Square South, Dublin 2, D02 RD28, Ireland, or any successor or replacement thereof.

2. ROLE OF THE PARTIES AS JOINT CONTROLLERS

2.1 Each Party shall be responsible, as joint Controller, for its own Processing of the Jointly Controlled Personal Data, which means that the Parties jointly determine the purposes and means of Processing of the Jointly Controlled Personal Data. Each Party must fully comply with its respective obligations as a joint Controller under Data Protection Laws in respect of the Jointly Controlled Personal Data. Notwithstanding this, the Provider remains fully responsible for the accuracy of any Jointly Controlled Personal Data it provides to the Executive or another party under Clause 10 (Information Requirements) of the Arrangement.

2.2 The Parties shall remain independent Controllers in respect of Personal Data (including Special Categories of Personal Data) which each of them Processes for any purpose other than the Purpose such as, for example, the provision of treatment and care to Data Subjects.

3. DATA SUBJECT RIGHTS REQUESTS

3.1 The Parties will inform one another as soon as possible of any requests from Data Subjects exercising their rights under Data Protection Laws, in particular, Chapter III of the GDPR (including their right of access to, or rectification or erasure of their Personal Data). Each Party shall, to the extent that such a request affects the Processing of Jointly Controlled Personal Data by the other Party, provide reasonable assistance to that other Party to enable compliance with Data Protection Laws.

3.2 Notwithstanding the foregoing, each Party shall remain responsible itself, in respect of Jointly Controlled Personal Data held by it, for dealing with requests received by it from Data Subjects who are exercising their rights in respect of such Jointly Controlled Personal Data. Each Party may inform Data Subjects making any such requests that the other Party may also hold Personal Data relating to that Data Subject, and the other Party shall then deal with any request made directly to it by Data Subjects.

3.3 Each of the Parties takes full responsibility for complying with the obligations to provide information to Data Subjects, as set out in Articles 13, 14 and 26(1) and (2) of the GDPR and for documenting the Processing activities carried out.

4. BREACH NOTIFICATION

- 4.1 Further to Clause 29.5 (Data Protection) of the Arrangement, each Party shall notify the other without undue delay if it becomes aware of, or suspects:
- 4.1.1 any breach of these Terms; or
 - 4.1.2 a Personal Data Breach which involves any Jointly Controlled Personal Data which is Processed by that Party or (as applicable) its Processors and is likely to affect or invoke the other Party's obligations under Data Protection Laws; or
 - 4.1.3 any situation or envisaged development that shall in any way influence, change or limit the Processing of the Jointly Controlled Personal Data.
- 4.2 The Parties agree that the responsibility for reporting or communicating with Data Subjects or a Supervisory Authority in relation to a Personal Data Breach falls to the Party whose Processing has suffered the Personal Data Breach.
- 4.3 Each Party shall document all Personal Data Breaches in accordance with Data Protection Laws and fully cooperate with the other Party to ensure compliance with Data Protection Laws. Each Party shall use reasonable endeavours to mitigate any damage suffered by a Data Subject in these circumstances.
- 4.4 Neither Party shall retain or process Personal Data or Special Category Data for longer than is necessary to carry out the purposes for which it was collected.

5. TECHNICAL & OPERATIONAL MEASURES

- 5.1 The Parties shall implement appropriate technical and organisational measures to:
- 5.1.1 prevent unauthorised or unlawful Processing of the Jointly Controlled Personal Data and the accidental loss or destruction of, or damage to, the Jointly Controlled Personal Data; and
 - 5.1.2 ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Jointly Controlled Personal Data.

6. INTERNATIONAL DATA TRANSFERS

- 6.1 Neither Party, acting as a joint Controller, shall Process and/or transfer Jointly Controlled Personal Data to any country outside the EEA unless one of the following conditions is met:
- 6.1.1 The Processing and/or transfer of Jointly Controlled Personal Data is in or to:
 - (a) a country outside the EEA in respect of which an adequacy decision made by the European Commission under Article 45(3) of the GDPR is in force; or
 - (b) a country outside the EEA subject to the execution of Standard Contractual Clauses or other appropriate safeguards under Article 46 of the GDPR as between the Party and any third party, where that Party is transferring the Jointly Controlled Personal Data (i.e. it is the data exporter) and the third party recipient is receiving the Jointly Controlled Personal Data (i.e. it is the data importer); or
 - (c) a country outside the EEA but where the transferee (i.e. the data importer) of the Jointly Controlled Personal Data is a parent or subsidiary company of a Party provided that that

Party and that parent or subsidiary company have adopted Binding Corporate Rules which have been approved by the relevant national Supervisory Authority under Article 47 of the GDPR.

7. CONSEQUENCES OF BREACH

- 7.1 Without affecting indemnity, other right or remedy available to the Executive, a breach by the Provider of any of the provisions of these Terms shall be deemed a “serious breach” within the meaning of Clauses 34.1 and 34.6 (Termination or Expiry) of the Arrangement and where that breach is irremediable or if such breach is remediable and the Provider fails to remedy that breach within thirty (30) calendar days after being notified by the Executive to do so.

8. VARIATION

- 8.1 The Executive may implement reasonable variations to these Terms from time to time, including but not limited to amendments required to reflect any changes in laws, including Data Protection Laws or practice and/or Executive policy and which will be made available to the Provider on the HSE website.

APPENDIX 1

JOINTLY CONTROLLED PERSONAL DATA

1 Purpose of the Processing

The Processing of Jointly Controlled Personal Data between the parties for the purpose of the consistent delivery of services, to the extent that such Processing is not already covered by an existing data sharing agreement in place for this purpose.

2 Description of the Jointly Controlled Personal Data

The Parties may disclose, exchange or otherwise Process the following categories of Personal Data and Special Categories of Personal Data:

Personal Data, which may include, but is not limited to the following:

- First and Last name
- Title
- Position
- Date of Birth
- Home contact details (address, telephone number, mobile number, personal email address)
- Business contact details (address, telephone number, mobile number, personal email address, work location)
- Family life
- Civil Partnership and Marital status
- Employer name & address
- Employee number
- Personal Public Service Number (PPSN)
- Individual Health Identifier (DTI)
- Medical Record Number (MRN)
- Personal life data
- Professional life data
- Connection data
- Location data
- Financial and bank details
- Employment details
- Education details
- General Practitioner contact details (name, address, contact telephone number)

Special Categories of Personal Data, which may include, but is not limited to the following:

- Religious or philosophical beliefs
- Trade union membership
- Data concerning health
- Sex life or sexual orientation
- Biometric data
- Genetic data

3 Categories of Data Subjects whose Personal Data is processed

The Parties may disclose, exchange or otherwise Process Personal Data relating to the following categories of Data Subjects:

- Current, former and prospective staff and contractors of the Executive and/or the Provider
- Patients, clients and service users, or their parents next of kin, legal guardians or attorneys, of the Executive and/or the Provider
- Business partners, service providers and suppliers (who are natural persons) of the Executive and/or the Provider
- Staff and contractors (who are natural persons) of business partners, service providers and suppliers of the Executive and/or the Provider