

Data Processing Agreement

DATED: 13/07/2022

- (1) Dudley Wood Surgery (Y02212)**
- (2) NEC Software Solutions UK Limited**
- (3) NHS Black Country ICB**

**DATA PROCESSING
AGREEMENT IN RELATION
TO**

**AN AGREEMENT FOR DIGITISATION
SERVICES BETWEEN**

**NHS Black Country ICB
AND**

NEC Software Solutions UK Limited



THIS AGREEMENT is made on: 13/07/2022

BETWEEN

- (1) **Dudley Wood Surgery**, a partnership whose address is 10 Quarry Road, Dudley Wood, Dudley, West Midlands, DY2 0EF

(the "**Practice**", [DN: 'practice name' is the name of the GP Contractor or as it appears on its GP contract – executed by the sole practitioner or a partner/director with authority to sign for the practice].

- (2) **NEC Software Solutions UK Limited ("Supplier")** incorporated and registered in England and Wales with company number 00968498 whose registered office is at 1st Floor, iMex Centre, 575-599 Maxted Rd, Hemel Hempstead HP2 7DX
- (3) **NHS Black Country ICB, ("ICB")** whose registered address is at: Civic Centre, St Peter's Square, Wolverhampton, WV1 2SH

each being a "**Party**" to this Agreement, and "**Parties**" shall be interpreted accordingly.

BACKGROUND

- (A) The Supplier has entered into a contract (**NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018) dated 24 March 2022**) of such contract with the ICB for the digitisation of patient records held by primary care medical practices located in the area for which the ICB is responsible ("**Services Contract**").
- (B) The Practice, as a provider of primary medical services, wishes the Supplier to digitise the personal data of patients of the Practice in accordance with the Services Contract.
- (C) In consideration of the fees paid to the Supplier under the Services Contract, the Supplier agrees to enter into and comply with this Agreement which sets out the Supplier's obligations as to how it will process personal information about patients or other service users ("**Data**") on behalf of the Practice and how it will comply with Data Protection Legislation. This Agreement is intended to document details of the processing to be carried out by the Supplier in relation to data from the Practice and is intended to supplement the provisions of the Services Contract. The liability provisions in relation to processing carried out under this Agreement shall be as set out in Services Contract and any and all liability shall be between the Supplier and the ICB acting on behalf of the Practice.

IT IS AGREED AS FOLLOWS:

1 Definitions and Interpretation

- 1.1 The provisions of this Agreement are to be interpreted in accordance with Schedule 1 (Definitions and Interpretation).

Status of this Agreement

- 1.2 The Supplier acknowledges that it has been commissioned by the ICB to provide the Services to which this Agreement relates to the Practice under the Services Contract.
- 1.3 Any breach by the Supplier of its duties or obligations under this Agreement shall be considered a breach of the Services Contract and entitle the ICB to take any action it deems appropriate in accordance with the provisions of the Services Contract.

2 Status of Data

- 2.1 The Supplier acknowledges and agrees that the Data as described in Schedule 2 constitutes, or is capable of constituting, personal data under the EU General Data Protection Regulation ((EU) 2016/679) (the "**Regulation**") and the Data Protection Act 2018 (the "**DPA**"), and that much of this personal data relates to the health of individual patients ("**data subjects**"), and therefore constitutes Special Category Data.
- 2.2 Each of the Practice and the Supplier shall instruct its Data Protection Officer (or equivalent) for the time being to oversee compliance with this Agreement.

3 Obligations in respect of Data

- 3.1 Each Party's obligations under this Agreement are in addition to, and do not relieve, remove or replace, its obligations under Data Protection Legislation.
- 3.2 The Supplier's obligations under this Agreement are in addition to, and do not relieve, remove or replace (unless specifically stated as doing so) the Supplier's obligations under the Services Contract.
- 3.3 The Parties acknowledge and agree that under this Agreement for the purposes of Data Protection Legislation, the Practice is the Controller and the Supplier is the Processor of the Data.
- 3.4 Without prejudice to the Supplier's obligations under Clause 4, the Supplier shall keep all of the Data protected from any Security Breach.

4 Data Processing

- 4.1 The Supplier shall notify the Practice immediately if it considers that any of the Practice's instructions infringe the Data Protection Legislation.
- 4.2 The Supplier shall provide all reasonable assistance to the Practice in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Practice, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;

- (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of the Data.

4.3 The Supplier shall, in relation to any Data Processed in connection with its obligations under this Agreement and the Services Contract:

- (a) Process that Data only in accordance with Table A set out in Schedule 2, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall, unless prohibited by Law, promptly notify the Practice before Processing the Data;
- (b) Process the Data only to the extent necessary for the purpose of providing the Services and in accordance with the Practice's written instructions (including with respect to transfers of Data to a Third Country);
- (c) ensure that it has in place Protective Measures, which have been reviewed and approved by the Practice as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the Data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (d) ensure that:
 - (i) the Supplier Personnel do not Process Data except in accordance with this Agreement (and in particular Table A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Agreement and the Services Contract;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Data and do not publish, disclose or divulge any of the Data to any third party unless directed in writing to do so by the Practice or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data including data security awareness training in accordance with the requirements of the NHS Data Security and Protection Toolkit.
- (e) not Process in, or otherwise transfer Data to, a Third Country unless the

prior written consent of the Practice has been obtained and the following conditions are fulfilled:

- (i) the Practice or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Practice in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Practice with respect to the Processing of the Data;
- (f) on termination of the Services Contract or the completion of the Processing envisaged under this Agreement, request in writing instructions from the Practice as to the return or destruction of any Data provided to the Supplier under this Agreement. The Supplier acknowledges that it may be required to retain the Data for up to three months upon completion of the Processing. Where further to the Practice's directions the Supplier is to destroy the Data, the Supplier shall also delete such Data (to the fullest extent possible) from the Supplier's systems. The Supplier may only retain any Data where required to do so by Law.

4.4 Subject to Clause 5.6, the Supplier shall notify the Practice immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with any Data Processed under this Agreement;
- (e) receives a request from any third party for disclosure of any Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

4.5 The Supplier's obligation to notify under Clause 5.5 shall include the provision of further information to the Practice in phases, as details become available.

4.6 Taking into account the nature of the Processing, the Supplier shall provide the Practice with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 5.5 (and insofar as possible within the timescales reasonably required by the Practice) including by promptly providing:

- (a) the Practice with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Practice to enable the Practice to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Practice, at its request, with any Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Practice following any Data Loss Event;
 - (e) assistance as requested by the Practice with respect to any request from the Information Commissioner's Office, or any consultation by the Practice with the Information Commissioner's Office.
- 4.7 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement and in particular this Clause 5.
- 4.8 The Supplier shall allow for audits of its Processing activity by the Practice or the Practice's designated auditor.
- 4.9 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 4.10 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
- (a) notify the Practice in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Practice;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Agreement such that they apply to the Sub-processor; and
 - (d) provide the Practice with such information regarding the Sub-processor as the Practice may reasonably require.
- 4.11 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 4.12 The Practice may, at any time on not less than 30 Business Days' notice, revise this Clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 4.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Practice may on not less than 30 Business Days' notice to the Supplier amend this Clause 5 to ensure that it complies with any guidance issued by the Information Commissioner's Office.

5 Termination

- 5.1 This Agreement shall commence on the Effective Date and, unless the Services Contract is terminated by the ICB, shall continue in force until the processing of the Data on behalf of the Practice is completed by the Supplier.

6 Disclaimer

6.1 The Practice acknowledges that the ICB strongly recommends that the Practice:

- (a) carries out an inventory of all paper medical records prior to their collection for Processing by the Supplier; and
- (b) appoints a representative to be present when the paper medical records are packaged by the Supplier for transfer to the Supplier's facilities.

6.2 The Practice further acknowledges that it will have no right to raise a claim against the ICB or the Supplier (through the ICB) in respect of any paper medical records which have, or appear to have, been lost or mislaid while in the possession of the Supplier if the Practice has failed to carry out the recommendations set out in Clause 7.1 and the Supplier has complied with all aspects of the procedures for providing the Services as set out in the Specification (as such term is defined in the Services Contract).

6.3 If the Practice informs the ICB upon completion of the Processing by the Supplier of the paper medical records that the Practice believes any paper medical records have been lost by the Supplier, the ICB will carry out a full investigation into such issue. Unless the outcome of the investigation demonstrates that the Supplier has been negligent or failed to comply with its obligations under this Agreement or the Services Contract, responsibility and liability in respect of any missing paper medical records shall rest with the Practice.

7 Variations to this Agreement

7.1 Any variation to the terms of this Agreement shall be agreed in writing by the Parties, such agreement is not to be unreasonably withheld or delayed by any Party.

8 Notices

8.1 Any notices given under this Agreement must be in writing and must be served in the ways set out below in this Clause 8 at the addresses notified by each Party to the others from time to time. The following table sets out the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Personal delivery	On delivery	Properly addressed and delivered
Prepaid first class recorded delivery domestic postal service	9.00am on the second Business Day after posting	Properly addressed prepaid and posted

9 Third Party Rights

9.1 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Agreement.

9.2 The right of each Party to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a Party to this Agreement.

10 Severability

10.1 If any part of this Agreement is declared invalid or otherwise unenforceable, it will be severed from this Agreement, and this will not affect the validity and/or enforceability of the remaining provisions.

11 Survival of Terms

11.1 Those provisions of this Agreement which are expressly or by implication intended to come into or remain in force and effect following termination of this Agreement will so continue and continue to apply to each Party, subject to any limitation of time expressed in this Agreement.

12 Waiver

12.1 Any relaxation or delay of any Party in exercising any right under this Agreement must not be taken as a waiver of that right and shall not affect that Party's ability subsequently to exercise that right.

13 Costs And Expenses

13.1 Each Party will be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution and variation of this Agreement.

14 Law and Jurisdiction

14.1 This Agreement and any dispute arising out of or in connection with it, whether such dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, will be governed by, and construed in accordance with, the laws of England and each Party hereby submits to the exclusive jurisdiction of the English courts.

Signed by the authorised representative of Dudley Wood Surgery:

Name:	Arun Venugopal	Signature:	<i>Arun Venugopal</i>
Position:	PRACTICE MANAGER	Date:	13.07.2022

Signed by the authorised representative of NEC Software Solutions UK Limited

Name:	Charlotte Ganz	Signature:	<i>CGanz</i>
Position:	Senior Legal Counsel	Date:	01/07/2022

**Signed by the authorised representative of THE AUTHORITY
Black Country Integrated Care Board (BC ICB) (Lead Commissioner)**

Name:	Fran Freeman	Signature:	<i>Freeman</i>
Position:	Digital Project Manager	Date:	01/07/2022

Schedule 1

Definitions and Interpretation

1 Interpretation

- 1.1 The headings in this Agreement will not affect its interpretation.
- 1.2 Reference to any statute or statutory provision, to Law, or to Guidance, includes a reference to that statute or statutory provision, Law or Guidance as from time to time updated, amended, extended, supplemented, re-enacted or replaced.
- 1.3 Reference to a statutory provision includes any subordinate legislation made from time to time under that provision.
- 1.4 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement unless expressly stated otherwise.
- 1.5 References to any body, organisation or office include reference to its applicable successor from time to time.
- 1.6 Any references to this Agreement or any other documents or resources includes reference to this Agreement or those other documents or resources as varied, amended, supplemented, extended, restated and/or replaced from time to time and any reference to a website address for a resource includes reference to any replacement website address for that resource.
- 1.7 Use of the singular includes the plural and vice versa.
- 1.8 Use of the masculine includes the feminine and vice versa.
- 1.9 Use of the term “including” or “includes” will be interpreted as being without limitation.
- 1.10 The following words and phrases have the following meanings:

"Business Day"	means any day which is not a Saturday, Sunday or a bank or public holiday in the United Kingdom;
"Controller"	shall have the same meaning as set out in the Data Protection Legislation;
"Data"	means the categories of Personal Data as set out in Schedule 2 of this Agreement;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Practice of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	means (i) the Data Protection Act 2018 and any successor or equivalent legislation; (ii) the GDPR and any applicable national implementing Law as amended from time to time; (iii) the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "Data Protection Regulations"); (iv) the UK GDPR as defined in the Data Protection Regulations; (v) and the Privacy and

	Electronic Communications (EC Directive) Regulations 2003; and (vi) all applicable Law about the processing of personal data and privacy;
“Data Protection Officer” and “Data Subject”	shall have the same meanings as set out in the GDPR;
“Data Subject”	has the meaning as set out in the Data Protection Legislation;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Effective Date”	means the date of signature of this Agreement;
“Indirect Losses”	means loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;
“Law”	means: (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (b) any enforceable EU right within the meaning of section 2(1) European Communities Act 1972; (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (d) guidance; (e) and any applicable code, in each case in force in England and Wales;
“Personal Data”	has the meaning as set out in the Data Protection Legislation;
“Process”	has the meaning as set out in the Data Protection Legislation;
“Processor”	has the meaning as set out in the Data Protection Legislation;
“Personal Data Breach”	shall have the same meaning as set out in the GDPR and includes also any breach of Article 5(1)(f) (<i>the integrity and confidentiality principle</i>) of the GDPR;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
“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 any cybersecurity or other legislation.
“Special Category Data”	means the special categories of personal data as defined in the Data Protection Act 2018;
“Sub-processor”	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Agreement.
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or sub-contractor who is either partially or fully engaged in the Processing of the Data;
“Third Country”	means either any country other than a European Union Member State or a member of the European Economic Area at the time of transfer of Personal Data.

Schedule 2

Table A – Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	Digitisation of paper patient medical records, known as Lloyd George Records, will be scanned according to the standards and requirements of the Black Country ICB and transferred to EMIS for upload into General Practices' clinical systems.
Duration of the Processing	March 2022 – March 2023
Nature and purposes of the Processing	<ul style="list-style-type: none"> • Collection • Packing • Transportation • Receipting/auditing • Storage of records pre-scanning • Scanning • Uploading • Quality assurance • Storage of record post scanning • Return of empty Lloyd George envelope • Destruction <p>Transformation of hard copy patient records to digital format.</p>
Type of Personal Data	<p>Patient Name, Date of Birth, Address, Ethnicity, NHS Number and full Lloyd George Patient Notes, including:</p> <ul style="list-style-type: none"> • Current and Past Significant Problems • Current and past medications • Current and past investigation results • Current and past images <p>Includes Special Category Personal Data (Ethnicity and Health Data)</p>
Categories of Data Subject	Patient (medical record)
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>Lloyd George record consist of two parts: contents and the envelope.</p> <p>The content will be kept for 60 days after the paper record has been digitised.</p> <p>After 60 days, if the practice instructs the supplier to destroy the content, the supplier will be responsible for destroying the content adhering to the set standards and guidance.</p> <p>If practices do not give permission to the supplier for destruction, contents will be continued to be stored by the</p>

	<p>supplier until instructed otherwise.</p> <p>By law, envelopes need to be retained by the GP practice, supplier will be responsible for returning envelopes to the practice.</p>
<p>Agreed Sub-processor</p>	<p>The Practice agrees to the following Sub-processor being appointed by the Supplier to digitise images and provide an upload service in respect of this Agreement:</p> <p>Microtech Support Limited, a company incorporated and registered in Scotland with company number SC253441 and its registered office at 17-19 Hill Street, Kilmarnock, Ayrshire KA3 1HA</p>