

Schedule 3: Data Sharing Agreement

1 INTENTION AND APPLICATION OF THIS DSA

- 1.1 The Parties agree to share the Shared Personal Data for the Agreed Purposes as set out in this Data Sharing Agreement (**DSA**).
- 1.2 The Parties agree and acknowledge that they are each independent Controllers in relation to the Shared Personal Data.
- 1.3 This DSA supersedes all prior agreements, negotiations and discussions between the Parties in relation to their data protection obligations.

2 DEFINITIONS

In addition to the definitions set out at Clause 1.1 of the Agreement, the following definitions shall apply to this DSA:

- 2.1 **Agreed Purposes** has the meaning set out in paragraph 3 of this DSA.
- 2.2 **Data Subject, Personal Data, Personal Data Breach, Processor, Processing** (including **Process, Processes** and **Processed**) and **Appropriate Technical and Organisational Measures** have the meaning set out in the Data Protection Laws.
- 2.3 **Lawful Bases for Sharing** means the lawful bases on which the Parties will share the Personal Data as set out in paragraph 6 of this DSA.
- 2.4 **Shared Personal Data** means the Personal Data to be shared between the Parties under paragraph 5 of this DSA.
- 2.5 **Special Categories of Personal Data** has the meaning set out in the Data Protection Laws and for the purpose of this DSA shall include information relating to criminal convictions and offences.

3 PURPOSE

- 3.1 This DSA sets out the framework for the sharing of Personal Data when one Controller discloses Personal Data to another Controller. It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.
- 1.3. The Parties consider this data sharing initiative is necessary for the Council to provide high-quality, low cost interventions that are considered extremely helpful to Service Users/Qualifying Persons. The Council is commissioning that service from the Provider. The Council has a statutory and contractual duty to commission services to residents of North Somerset. The Service has been developed in line with the Care Act 2014, which sets out this vision and general responsibilities for social care, supporting the wellbeing of individuals and reinforcing the transformation necessary to enable greater choice, control and personalisation. The Care Act 2014 highlights the need for home improvement agencies, handyman or maintenance services as information and advice providers to help in preventing reducing or delaying care needs.
- 3.2 In addition, the Council has statutory obligations under the Care Act 2014 in relation to ensuring services delivered by the Provider meet required quality standards and ensuring that the Council and the Provider cooperate in delivering the Services. Therefore, the Council is entering into the Contract, and this data sharing arrangement, with the Provider in order to discharge these statutory and contractual obligations.
- 3.3 The Parties consider this data sharing initiative is justifiable on the grounds that the statutory and contractual obligations set out above would not be achievable if not for the sharing of the

Shared Personal Data between the Parties. The sharing of the Shared Personal Data will benefit Services Users and the community as a whole. The Parties have assessed to what extent Personal Data needs to be shared in order for the Provider to provide the Services and for the Council to discharge its statutory and contractual obligations above, and those in the Care Act 2014 regarding oversight of the Services, and consider that the extent of data sharing set out below is proportionate.

3.4 The Parties agree to only share the Shared Personal Data for the following purposes:

- 3.4.1 To enable the Provider to provide the Services to Service Users/Qualifying Persons;
- 3.4.2 To enable the Council to discharge its statutory and contractual obligations to Service Users;
- 3.4.3 Compliance with any data protection obligations as set out in this DSA;
- 3.4.4 To enable the Council to comply with any other statutory or regulatory obligations set out in the Contract;
- 3.4.5 To enable the Provider to provide assistance to the Council in relation to any legal or other proceedings relating to the carrying out of the Services, or notification of an incident which may give rise to such proceedings, in accordance with Clause 21 ("Assistance in Legal and Other Proceedings").

3.5 The Provider shall not Process Shared Personal Data in a way that is incompatible with the purposes described in this paragraph [3] of this DSA (**Agreed Purposes**).

4 SINGLE POINT OF CONTACT

4.1 Each Party shall appoint a single point of contact (**SPoC**) who will work together to reach an agreement with regards to any issues arising from the data sharing and to actively improve the effectiveness of the data sharing initiative. The points of contact for each of the Parties are:

The Council []

The Provider []¹

5 SHARED PERSONAL DATA

5.1 Shared Personal Data shall include the following types of Personal Data relevant to the following categories of Data Subject:

5.1.1 Service users/Qualifying Persons: Name, data of birth, gender, marital status, national insurance number, contact details, previous addresses, financial information, NHS number, care preferences, information about family and friends, information about external healthcare providers, videos and photographs, information about long term wishes, healthcare information (including disabilities or special requirements, medical records, medical history, records required by care home regulations, such as risk assessments, care plans and records of the care provided and details of support and care needs).

5.1.2 Care Staff: Name, data of birth, gender, contact details, job role, qualifications, professional experience, grievance or disciplinary issues.

¹ Guidance note to Provider: This needs to include the role and contact details of someone who will be able to assist the Council should it need help with a data protection query/issue, such as in relation to a subject access request or a complaint about the way in which personal data has been handled. This should therefore ideally be a contact with some knowledge of data protection issues, or a contact with knowledge of the contract and data sharing arrangements. This does not need to be a named individual; just a named role.

- 5.1.3 **External healthcare professionals:** Name, job role, employer and place of work, qualifications, professional opinion.
- 5.2 Shared Personal Data shall include the following types of Special Categories of Personal Data relevant to the following categories of Data Subject:
- 5.2.1 **Service users/Qualifying Persons :** Health information, racial/ethnic origin, religious beliefs, sex life and sexual orientation, criminal conviction data.
- 5.3 The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.

6 **LAWFUL BASES FOR SHARING**

- 6.1 The sharing of the Shared Personal Data between the Parties will be carried out on the following lawful bases (**Lawful Bases for Sharing**):
- 6.1.1 Personal Data:
- (a) Article 6(1)(c) UK GDPR *processing is necessary for compliance with a legal obligation;*
 - (b) Article 6(1)(e) UK GDPR *processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority;*
 - (c) Article 6(1)(f) UK GDPR *processing is necessary for legitimate interests.*
- 6.1.2 Special Categories of Personal Data:
- (a) Article 9(2)(b) UK GDPR *processing is necessary for obligations relating to employment, social security and social protection;*
 - (b) Article 9(2)(f) UK GDPR *processing is necessary for the establishment, exercise or defence of legal claims;*
 - (c) Article 9(2)(g) UK GDPR *processing is necessary for reasons of substantial public interest;*
 - (d) Article 9(2)(h) UK GDPR *processing is necessary for the assessment of the working capacity of the employee, the provision of health or social care or treatment or the management of health or social care systems and services;*
 - (e) Article 10 UK GDPR *processing is carried out under official authority or is authorised by law* (in relation to Personal Data relating to criminal convictions and offences).
- 6.2 Each Party will ensure that it only further Processes the Shared Personal Data fairly and lawfully and that it has legitimate grounds under the Data Protection Legislation for the Processing of Shared Personal Data.

7 **COMPLIANCE WITH THE DATA PROTECTION LEGISLATION**

- 7.1 Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Laws.
- 7.2 The Provider warrants and undertakes that it will:

- 7.2.1 Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its Personal Data Processing operations.
- 7.2.2 Respond within a reasonable time and as far as reasonably possible to enquiries from the Commissioner in relation to the Shared Personal Data.
- 7.2.3 Respond to a request from a Data Subject in accordance with the Data Protection Legislation.
- 7.2.4 Where applicable, pay the appropriate fees to the Commissioner to Process all Shared Personal Data for the Agreed Purposes.
- 7.2.5 Maintain complete and accurate records and information to demonstrate its compliance with this DSA.
- 7.2.6 Take all appropriate steps to ensure compliance with the security measures set out in paragraph 11 of this DSA.
- 7.2.7 Not disclose or transfer Shared Personal Data outside the UK unless it complies with the obligations set out in paragraph 13 of this DSA.
- 7.3 Any Party sharing Shared Personal Data warrants and undertakes that it is entitled to provide the Shared Personal Data to the recipient party and will ensure that the Shared Personal Data are accurate.

8 LAWFUL, FAIR AND TRANSPARENT PROCESSING

- 8.1 The Provider shall ensure that:
 - 8.1.1 it Processes the Shared Personal Data fairly and lawfully during the term of this DSA;
 - 8.1.2 it only shares the Shared Personal Data with the Council on the Lawful Bases for Sharing;
 - 8.1.3 it only further Processes the Shared Personal Data on one or more of the legal bases set out in the Data Protection Legislation;
 - 8.1.4 it provides clear and sufficient information to the Data Subjects, in respect of the Shared Personal Data, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for Processing their Personal Data and such other information as is required by Articles 13 and 14 of the UK GDPR.
- 8.2 Where appropriate, each Party shall ensure that it has all necessary consents in place to enable lawful transfer of the Shared Personal Data for the Agreed Purposes.

9 DATA QUALITY

- 9.1 Each Party shall ensure that before the Commencement Date, Shared Personal Data are accurate, and it will update the same if required prior to transferring the Shared Personal Data.
- 9.2 In the event that either Party becomes aware of any changes to the Shared Personal Data, or aware or suspects that any of the Shared Personal Data contains inaccuracies, it shall notify the other Party without undue delay.

10 DATA SUBJECTS' RIGHTS

- 10.1 The Provider agrees to provide such assistance as is reasonably required to enable the Council to comply with requests from Data Subjects to exercise their rights under the Data Protection Laws within the time limits imposed by the Data Protection Laws.
- 10.2 The SPoC for each Party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request. The SPoC for each Party are detailed in paragraph 4 of this DSA.

11 DATA SECURITY

- 11.1 The Provider undertakes to have in place throughout the term of the DSA Appropriate Technical and Organisational Measures (to comply with the obligations under Article 32 of the UK GDPR) to prevent unauthorised or unlawful Processing of the Shared Personal Data and the accidental loss or destruction of, or damage to, the Shared Personal Data to 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 Shared Personal Data to be protected.
- 11.2 It is the responsibility of the Provider to ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with the Appropriate Technical and Organisational Measures noted in paragraph 11.1 of this DSA together with any other applicable national guidance and have entered into confidentiality agreements relating to the Processing of Personal Data.
- 11.3 The level, content and regularity of training referred to in paragraph 11.2 of this DSA shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and Processing of the Shared Personal Data.

12 DATA RETENTION AND DELETION

- 12.1 The Provider shall not retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes or in accordance with any statutory or professional requirements in relation to the retention of certain records.
- 12.2 All Shared Personal Data must be stored appropriately by the Provider in accordance with the Provider's data storage and retention policies and procedures. No Personal Data should be stored by personnel on their own personal computer systems.
- 12.3 The Provider shall ensure that once Shared Personal Data is no longer required and relevant retention periods have expired, Personal Data is securely and permanently deleted in accordance with the Provider's retention and disposal policies or returned to the Council as appropriate.

13 DATA TRANSFERS

- 13.1 For the purposes of this clause, transfers of Personal Data shall mean any sharing of Personal Data with a third party, and shall include, but is not limited to, the following:
- 13.1.1 subcontracting the Processing of Shared Personal Data to a Data Processor; and
 - 13.1.2 granting a third-party Controller access to the Shared Personal Data.
- 13.2 If the Provider appoints a third-party Data Processor to Process the Shared Personal Data it shall comply with Article 28 and Article 30 of the UK GDPR.
- 13.3 If the Provider grants a third party Controller access to the Shared Personal Data, it shall comply with Article 26 of the UK GDPR (in the event the third party is a joint Controller) and shall comply with the Commissioner's Data Sharing Code of Practice (as may be updated from time to time).

- 13.4 The Provider shall not transfer any Shared Personal Data outside the UK unless the transferor:
- 13.4.1 complies with the provisions of Article 26 of the UK GDPR (in the event the third party is a joint Controller); and
 - 13.4.2 ensures that: (i) the transfer is to a country providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) where neither (i) nor (ii) is applicable or appropriate, one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.

14 PERSONAL DATA BREACHES

- 14.1 Each Party shall comply with its obligation to report a Personal Data Breach to the Commissioner under Article 33 of the UK GDPR and (where applicable) Data Subjects under Article 34 of the UK GDPR and shall each, promptly (and in any event within twenty-four (24) hours) inform the SPoC of the other party, where the other party is likely to be affected by the Personal Data Breach, irrespective of whether there is a requirement to notify the Commissioner or Data Subject(s).
- 14.2 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

15 RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE COMMISSIONER

- 15.1 In the event of a dispute or claim brought by a Data Subject or the Commissioner concerning the Processing of Shared Personal Data against one or both of the Parties, the Parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.

16 REVIEW AND TERMINATION OF THIS DSA

- 16.1 The Parties will periodically review the sharing of the Shared Personal Data under the Agreement to ensure that such sharing continues to be necessary having consideration to the Agreed Purposes.
- 16.2 Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this DSA which existed at or before the date of termination or expiry. Any provision of this DSA that expressly or by implication is intended to come into or continue in force on or after termination of this DSA shall remain in full force and effect.

17 ALLOCATION OF COST

- 17.1 Each Party shall perform its obligations under this DSA at its own cost.