

This Data Processing Agreement ("**Agreement**") forms part of the Contract for Services ("**Principal Agreement**") between (the "**collecting NHS trust**") and the British Orthopaedic Foot and Ankle Society (the "**Data Processor**") (together as the "**Parties**")

WHEREAS

(A) The collecting NHS trust acts as a Data Controller.

(B) The **British Orthopaedic Foot and Ankle Society** wishes to subcontract certain Services, which imply the processing of anonymised personal data, to the Data Processor.

(C) The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing and with the *Regulation (EU) 2016/679* of the European Parliament and of the *Council of 27 April 2016* on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing *Directive 95/46/EC* (General Data Protection Regulation).

(D) The Parties wish to lay down their rights and obligations.

IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

1.1 Unless otherwise defined herein, capitalised terms and expressions used in this Agreement shall have the following meaning:

1.1.1 "**Agreement**" means this Data Processing Agreement and all Schedules;

1.1.2 "**Company Personal Data**" means any Personal Data Processed by a Contracted Processor on behalf of collecting NHS trust pursuant to or in connection with the Principal Agreement;

1.1.3 "**Contracted Processor**" means a Subprocessor;

1.1.4 "**Data Protection Laws**" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

1.1.5 "**EEA**" means the European Economic Area;

1.1.6 "**EU Data Protection Laws**" means *EU Directive 95/46/EC*, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.7 "**GDPR**" means EU General Data Protection Regulation 2016/679;

1.1.8 "Data Transfer" means:

1.1.8.1 a transfer of collecting NHS trust anonymised Personal Data from the collecting NHS trust to a Contracted Processor; or

1.1.8.2 an onward transfer of collecting NHS trust anonymised Personal Data from a Contracted Processor to a Subcontracted Processor, or between two establishments of a Contracted Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

1.1.9 "Services" means the data collection services the collecting NHS trust provides.

1.1.10 "Subprocessor" means any person appointed by or on behalf of Processor to process Personal Data on behalf of the collecting NHS trust in connection with the Agreement.

1.2 The terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

2. Processing of Company Personal Data

2.1 Processor shall:

2.1.1 comply with all applicable Data Protection Laws in the Processing of collecting NHS trust Personal Data; and

2.1.2 not Process Company Personal Data other than on the relevant collecting NHS trust documented instructions.

2.2 The Company instructs Processor to process collecting NHS trust Personal Data.

3. Processor Personnel

3.1 Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the collecting NHS trust Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant collecting NHS trust Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor shall in relation to the collecting NHS trust Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4.2 In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

5. Subprocessing

5.1 Processor shall not appoint (or disclose any collecting NHS trust Personal Data to) any Subprocessor unless required or authorised by the collecting NHS trust.

6. Data Subject Rights

6.1 Taking into account the nature of the Processing, Processor shall assist the collecting NHS trust by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Company obligations, as reasonably understood by collecting NHS trust, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2 Processor shall:

6.2.1 promptly notify collecting NHS trust if it receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and

6.2.2 ensure that it does not respond to that request except on the documented instructions of collecting NHS trust or as required by Applicable Laws to which the Processor is subject, in which case Processor shall to the extent permitted by Applicable Laws inform collecting NHS trust of that legal requirement before the Contracted Processor responds to the request.

7. Personal Data Breach

7.1 Processor shall notify collecting NHS trust without undue delay upon Processor becoming aware of a Personal Data Breach affecting collecting NHS trust Personal Data, providing collecting NHS trust with sufficient information to allow the collecting NHS trust to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2 Processor shall co-operate with the collecting NHS trust and take reasonable commercial steps as are directed by collecting NHS trust to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation

8.1 Processor shall provide reasonable assistance to the collecting NHS trust with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which collecting NHS trust reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of collecting NHS trust Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9. Deletion or return of Company Personal Data

9.1 Subject to this section 9 Processor shall promptly and in any event within 10 Business days of the date of cessation of any Services involving the Processing of collecting NHS trust Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those collecting NHS trust Personal Data.

9.2 Processor shall provide written certification to Company that it has fully complied with this section 9 within 10 business days of the Cessation Date.

10. Audit rights

10.1 Subject to this section 10, Processor shall make available to the collecting NHS trust on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the collecting NHS trust or an auditor mandated by the collecting NHS trust in relation to the Processing of the collecting NHS trust Personal Data by the Contracted Processors.

10.2 Information and audit rights of the collecting NHS trust only arise under section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

11. Data Transfer

11.1 The Processor may not transfer or authorise the transfer of Data to countries outside the UK without the prior written consent of the collecting NHS trust. If personal data processed under this Agreement is transferred from the UK outside, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on UK approved standard contractual clauses for the transfer of personal data.

12. General Terms

12.1 Confidentiality. Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement ("Confidential Information") confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

- (a) disclosure is required by law;
- (b) the relevant information is already in the public domain.

12.2 Notices. All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement at such other address as notified from time to time by the Parties changing address.

13. Governing Law and Jurisdiction

13.1 This Agreement is governed by the laws of England, Wales and Scotland.

IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.

Collecting NHS trust: _____

Signature: _____

Name: _____

Title: _____

Date Signed: _____

Hosting NHS Trust: University Hospitals of Leicester NHS Trust

CHIEF INVESTIGATORS:

Jitendra Mangwani
Joint Chief Investigator
University Hospitals of Leicester NHS Trust
British Orthopaedic Foot and Ankle Society Scientific & Outcomes Committees

Lyndon Mason
Joint Chief Investigator
Liverpool University Hospitals NHS Foundation Trust, University of Liverpool
British Orthopaedic Foot and Ankle Society Outcomes Committee

Karan Malhotra
Joint Chief Investigator
Royal National Orthopaedic Hospital NHS Trust
British Orthopaedic Foot and Ankle Society Outcomes & IT Committees

BOFAS DATA PROTECTION OFFICERS

Mr Mark Davies
Caldicott Guardian
British Orthopaedic Foot and Ankle Society

Mr Lyndon Mason
Senior Information Risk Owner
British Orthopaedic Foot and Ankle Society

Ms Jo Millard
Data Protection Officer
British Orthopaedic Foot and Ankle Society

