



**Data Processing Agreement**

**between**

**The Scottish Ministers (Scottish Government)**

**And**

**The Care Inspectorate**

**DATA PROCESSING AGREEMENT**

**BETWEEN**

**The Scottish Ministers acting through Scottish Government** (where the Scottish Ministers are the Data Controller) having its headquarters at St Andrew’s House, Regent Road, Edinburgh. EH1 3DG (“the **SG**”) (the data controller)

AND

**Social Care and Social Work Improvement Scotland, commonly known as “the Care Inspectorate”** having its headquarters at Compass House, 11 Riverside Drive, Dundee, DD1 4NY (“the Care inspectorate”) (the data processor)

**BACKGROUND**

- (A) The SG Processes Personal Data (each as defined below) in connection with its own business activities.
- (B) The Care Inspectorate Processes Personal Data on behalf of the SG.
- (C) The SG wishes to engage the services of the Care Inspectorate (each as defined below) to Process certain Personal Data on its behalf.
- (D) The scope and type of Personal Data that will be Processed by the Care Inspectorate as part of such services is more particularly described in the Schedule to this Agreement (the Schedule). This Personal Data may consist of (but is not limited to): gender; date of birth, as well as special categories of Personal Data such as health and ethnic origin data.

**THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:**

**DEFINITIONS AND INTERPRETATION**

1. The following words and phrases used in this Agreement and the Schedule shall have the following meanings:

<b>DEFINITION</b>	<b>INTERPRETATION</b>
“Agreement”	means this agreement and any variations made in accordance with Clause 6 hereof;
“Care Home”	all registered Care Homes in Scotland (with the exception of those specifically for children and young people)
“Data Protection Laws”	means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or

	directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.
"Data Processor"	has the meaning given in the Data Protection Laws;
"Data Controller"	has the meaning given in the Data Protection Laws
"Data Subject"	has the meaning given in the Data Protection Laws
"GDPR"	means the General Data Protection 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
"Personal Data"	has the meaning given in the Data Protection Laws and includes Personal Data provided to or otherwise made available to Care inspectorate by or on behalf of SG for the purposes of providing Services and in respect of which, SG is Data Controller and Care Inspectorate is Data Processor;
"Processing"	has the meaning set out in the Data Protection Laws (and "Process", and "Processes" shall be construed accordingly);
Protective Measures:	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 the such measures adopted by it.
"Services"	means any of the following services provided by the Care Inspectorate in relation to the project: (i) <b>Data Collection</b> of the annual Scottish Care Homes Census. Collection of data



	<p>through the Care Inspectorate eForm system and customer support to Care Homes provided through the Care Inspectorate Contact Centre helpline.</p> <p>(ii) The dataset will be used to pre-populate the Scottish Care Home Census eform for the following census year. The dataset is used for 'statistics and research purposes' only.</p> <p>(iii) The dataset will be securely transferred to the ScotXed team in SG following completion of data collection, using an agreed method.</p>
"Sub-Contract/Sub-Contracting"	means the process by which either party arranges for a third party to carry out its obligations under this Agreement and "Sub-Data Processor" shall mean the party to whom the obligations are subcontracted;
"Supervisory Authority"	has the meaning given in the Data Protection Laws
"Technical and Organisational Measures"	means measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing.

## TERM

2.1 This Agreement shall commence from the last date of signature.

2.2 This Agreement shall continue in full force and effect for so long as the Care Inspectorate is Processing Personal Data on behalf of the SG or until terminated in accordance with Clause 7 below.

2.3 The "Authorised Person" for each Party is as listed in Part 2 of the schedule attached to and forming part of this Agreement ("Schedule").

## DATA PROCESSING OBLIGATIONS

3.1 The Care Inspectorate acknowledges that any Personal Data described in the scope of the Schedule will be Processed in connection with the Services under this Agreement. For the purposes of any such Processing, parties agree that the Care Inspectorate acts as the Data Processor and the SG acts as the Data Controller. Both Parties agree to negotiate in good faith any such amendments to this Agreement that may be required to ensure that both parties meet all their obligations under the Data Protection Laws. The provisions of this clause 3.1 are without prejudice to any obligations and duties imposed directly on the Care Inspectorate under the Data Protection Laws and the Care Inspectorate hereby agrees to comply with those obligations and duties.

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3.2 The Care Inspectorate will, in respect of the Services, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.

3.3 The Care Inspectorate will provide the SG with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

3.4 The Care Inspectorate must:

3.4.1 agree and comply with the terms of the data processing provisions set out in the Agreement and the Schedule;

3.4.2 Process Personal Data only as necessary in accordance with obligations under the Agreement and any lawful written instructions given by the SG (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Care Inspectorate is subject; in which case the Care Inspectorate must, unless prohibited by that law, inform the SG of that legal requirement before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of Care Inspectorate's obligations under this Agreement or as is required by law;

3.4.3 subject to clause 3.4.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the SG's prior written consent;

3.4.4 take all reasonable steps to ensure the reliability and integrity of any Care Inspectorate employees who have access to the Personal Data and ensure that Care Inspectorate personnel comply with the Care Inspectorate's internal policies and procedures relating to information governance and data protection and the duties under this clause;

are subject to appropriate confidentiality undertakings with Care Inspectorate or the relevant Sub-processor;

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 directed in writing to do so by the SG or as otherwise permitted by this Agreement; and

have undergone adequate training in the use, care, protection and handling of Personal Data.

3.4.5 ensure that it has in place Protective Measures, which are appropriate to protect against a Personal Data Breach, which the SG may reasonably reject (but failure to reject shall not amount to approval by the SG of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Personal Data breach;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;



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3.4.6 The Care Inspectorate shall not engage a sub-processor to carry out Processing in connection with the Services without prior specific or general written authorisation from the SG. In the case of general written authorisation, the Care Inspectorate must inform the SG of any intended changes concerning the addition or replacement of any other sub-processor and give SG an opportunity to object to such changes.

3.4.7 If the Care Inspectorate engages a sub-processor for carrying out Processing activities on behalf of the SG, the Care Inspectorate must ensure that same data protection obligations as set out in this Agreement are imposed on the sub-processor by way of a written and legally binding contract. The Care Inspectorate shall remain fully liable to the SG for the performance of the sub-contractor's performance of the obligations.

3.4.8 The Care Inspectorate must provide to the SG reasonable assistance including by such Protective Measures as may be appropriate in complying with Articles 12-23 of the GDPR.

3.4.9 The Care Inspectorate must notify the SG 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 Personal Data;

(c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Laws;

(d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Agreement or;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

within **3 business days** of receipt of the request or any other period as agreed in writing with the SG from time to time.

3.5 Taking into account the nature of the Processing and the information available, the Care Inspectorate must assist the SG in complying with the SG's obligations concerning the security of Personal Data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

(a) notifying a Personal Data breach to the SG without undue delay and in any event no later than **24 hours** after becoming aware of a Personal Data breach;

(c) assisting the SG with communication of a Personal Data breach to a Data Subject;

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- (d) supporting the SG with preparation of a data protection impact assessment;
  - (e) supporting the SG with regard to prior consultation of the Supervisory Authority.

3.6 At the end of each census period the Care Inspectorate shall delete all the Personal Data other than that which is necessarily required to pre-populate the census documentation for the next census period, unless Data Protection Laws requires storage of the Personal Data.

### 3.7 The Care Inspectorate must

- (a) provide such information as is necessary to enable the SG to satisfy itself of the Care Inspectorate's compliance with this clause 3;
- (b) allow for audits of its Data Processing activity under this Agreement only by the SG or the SG's designated auditor; and
- (c) inform the SG, if in its opinion, an instruction from the SG or its designated auditor infringes any obligation under the Data Protection Laws.

3.8 The Care Inspectorate must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the SG containing the information set out in Article 30(2) of the GDPR.

3.9 If requested, Care Inspectorate must make such records referred to in clause 3.8 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

3.10 The Care Inspectorate shall comply in all respects and shall at all times act in such a manner to assist the SG to comply, with the following:

- a) The Data Protection Laws and all codes and guidance issued pursuant thereto;
- b) the [Human Rights Act 1998](#);
- c) the [common law duty of confidentiality](#);
- d) the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004;
- e) the Statistics & Registration Service Act 2007;

3.11 The Care Inspectorate shall not seek to gain commercial advantage from its access to Personal Data.

## SECURITY

4.1 The Care Inspectorate will employ such Protective Measure necessary to keep the Personal Data safe from unauthorised use or access, alteration, transmission, publication, loss, destruction, theft or disclosure.

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4.2 Without prejudice to the requirements of clause 3.5, the Care Inspectorate shall notify the SG as soon as practicable if it becomes aware of any unauthorised or unlawful Processing, loss of, damage to or destruction of the Personal Data, or if such Personal Data becomes damaged, corrupted or unusable.

4.3 All Personal Data shall be stored securely (by the CI) until such time as it is no longer required. Scottish Government will notify the CI when the original data file can be destroyed upon completion of the transfer and loading process.

## **DISPUTE RESOLUTION AND VARIATION**

5.1 Any disputes arising will be referred first to the Authorised Persons and if not resolved within 10 working days, will then be escalated to the signatories to this Agreement.

5.2 No variation of this Agreement shall be effective unless it is in writing and signed by authorised signatories of both parties.

## **TERM and TERMINATION**

6.1 This Agreement shall commence on the date of last execution and shall continue for a term of five years, unless terminated earlier in accordance with clause 6.2.

6.2 Either party shall be entitled to terminate this Agreement by giving not less than **6 months** written notice.

## **GOVERNING LAW**

7.1 This Agreement shall be governed by and construed in accordance with Scots law.



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IN WITNESS WHEREOF these presents typewritten on this and the preceding pages are executed as follows: -

**SIGNED by Angela Campbell, Deputy Director, Scottish Government**

for and on behalf of the **Scottish Ministers (Data Controller)**

Date 28<sup>th</sup> May 2019

Witness: Neil White

**SIGNED by Peter Macleod, Chief Executive, Care inspectorate**

for and on behalf of **Care Inspectorate (Data Processor)**

Date ..... 30/5/19

Witness: .....



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## **SCHEDULE**

The following is the Schedule referred to in the foregoing Data Processing Agreement between the SG and the Care Inspectorate.

### **Part 1**

#### **Data Processing provision as required by Article 28(3) GDPR.**

This Schedule includes certain details of the Processing of Personal Data in connection with the supply of services under the Agreement.

##### **1. Subject matter and duration of the Processing of Personal Data**

The obligations and rights of the SG as the Data Controller are set out in this Agreement.

The Care Inspectorate will collect data on behalf of the SG from all registered Care Homes in Scotland (with the exception of those specifically for children and young people) for the purposes of informing SG policies on social care and for the monitoring and planning of care home provision in Scotland. The collection will be carried out on an annual basis, and statistical data will be held indefinitely.

The Scottish Care Homes Census (SCHC) has been running in its current form since March 2003. The SCHC provides SG, local authorities, the private and voluntary sector with information on all registered care homes in Scotland, allowing them to monitor and plan services for the future.

The results are published annually (under a Service Level Agreement) by Information Services Division (ISD) Scotland in a National Statistics Release.

##### **2. The nature and purpose of the Processing of Personal Data**

The purpose of the data collection is to satisfy research questions that additionally support SG policy objectives.

The data is collected on behalf of the SG who issue the initial request to care homes asking them to participate in the census.

Personal Data is available for long-stay Care Home residents and the data can be linked with other data sources such as health records subject to approval by relevant privacy panels.

Pseudonymised data may be shared with approved researchers or academics to ensure that maximum value is obtained from this statistical data source. The data can only be used for statistical and research purposes.

3. The type of Personal Data to be Processed

The Personal Data that will be made available to the Care Inspectorate may consist of (but is not limited to): gender; date of birth, as well as special categories of Personal Data such as health and ethnic origin data.

4. The categories of Data Subject to whom Personal Data relates

The Data Subjects are long-stay residents in Care Homes. A large proportion will be people with dementia or learning disabilities.

**Part 2**

Any further information, including documents referred to, or any questions or comments relating to this Agreement should be directed to the following Authorised Persons, who may change from time to time in accordance with instructions from an Authorised Person in writing (including e-mail):

	Name and contact details
Scottish Ministers (Scottish Government) Authorised Persons	Neil White, Health & Social Care Analysis Division, Scottish Government, [REDACTED]
Care Inspectorate (Care Inspectorate) Authorised Persons	Ingrid Gilray, Intelligence and Analysis Manager [REDACTED]

The Care Inspectorate Data Protection Officer	Rachel Mitchell, Information Governance Lead, [REDACTED]
SG Data Protection Officer	Stuart Gardner [REDACTED]



