

## DATA PROCESSING AGREEMENT

This Agreement is made on the 20th day of February 2018

### BETWEEN

- (1) CFH Total Document Management Ltd a company incorporated under the laws of England and Wales with registered number 1716891 whose registered office is at St Peter's Park, Wells Road, Radstock, Bath BA3 3UP (the “**Data Processor**”); and
- (2) [ Oakley Health Group ] whose address is [ <sup>51 Frogmore Road</sup> Blackwater ] (the “**Data Controller**”);

Together referred to as the “**Parties**” (and each a “**Party**”).

### WHEREAS

This Agreement provides an operating framework to enable lawful disclosure of Data from the Data Controller to the Data Processor and processing of that Data by the Data Processor on behalf of the Data Controller, taking account of the Data Protection Act 1998 as amended and other applicable legislation and the Common Law Duty of Confidence.

The terms and conditions of this Agreement shall apply to all Data provided by the Data Controller, or obtained by the Data Processor from other sources as part of the delivery of Services, or derived from any combination thereof.

This Agreement between the Data Controller and the Data Processor supports all Services contracted from the Data Processor by the Data Controller

The Data Processor’s Data Protection Registration Number is Z5722574.

**NOW IT IS HEREBY AGREED** as follows:

### 1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

**Agreement** means this Agreement and other documentation deemed to be part of this Agreement as agreed by the Parties.

**Common Law Duty of Confidence** means the obligations in respect of confidential information owed by either Party to the other or to any third party

**Confidential Information** means all confidential information, however recorded or preserved, relating to an organisation or an individual person and which was labelled as confidential, or which should reasonably be considered confidential because of its nature or the manner of its disclosure. This includes, but is not limited to, non-personal corporate or technical information that is commercially sensitive, drafts of

documents that are not ready for publication, restricted information & restricted documents.

**Data**

any data or information, in whatever form, including images, still and moving, and sound recordings, the provision of which comprises the Services (wholly or in part), including any personal data

**Data Controller Data**

means any Data supplied by or on behalf of the Data Controller to the Data Processor for the purposes of completing Services as specified by the Data Controller and the Data Processor

**Data Controller Information**

means any Data Controller Data or Data Controller Confidential Information including, but not limited to, all backed-up information, copies and printed copies

**Data Processing**

means the processing (including obtaining, recording, holding or carrying out any operation or set of operations) of any Data (which may include Personal Data) whilst undertaking the Services

**Data Processor Representative**

means the person who is signing the Contract on behalf of the Data Processor with consideration of the Contract and with the intention of creating legal relations

**Data Protection Legislation**

Means;  
prior to 25 May 2018, the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time); and

from 25 May 2018 onwards Regulation (EU) 2016/679 (the "General Data Protection Regulation" or "GDPR") and the Privacy and Electronic Communications (EC Directive) Regulations including any law based on or enacting essentially equivalent provisions in the United Kingdom to the GDPR and any applicable guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time)

<b>Information Commissioner</b>	means the person who is in the role of the Information Commissioner (in accordance with the DPA) from time to time during the agreement between the Parties. The Information Commissioner is the government-appointed regulator in the field of freedom of information and the protection of personal data
<b>Initial Period</b>	means a period of [12] months commencing on the Commencement Date.
<b>Personal Data</b>	means any factual information or expressions of opinion relating to an individual who can be identified from that information, whether directly or in conjunction with any other information
<b>Renewal Period</b>	means each successive [12]-month period after the Initial Period for which this Agreement is renewed.
<b>Sensitive Personal Data</b>	means any Personal Data relating to an individual's racial or ethnic origin, political opinions, religious beliefs (or other beliefs of a similar nature), membership of a trade union, physical or mental health or condition, sexual life, commission or alleged commission of any offence, or proceedings for any offence committed or alleged to have been committed by him (including the disposal of such proceedings or the sentence of any court in such proceedings).
<b>Service</b>	means the services to be supplied by the Data Processor under this Agreement as set out in [Schedule 1].
<b>Term</b>	means the Initial Period and any Renewal Periods.

1.2 In this Agreement, for the purposes of the DPA:

- (i) the Data Controller shall be the "data controller" that is to say the individual or organisation that decides the purpose and manner of processing Personal Data, including what Personal Data will be processed and how it will be obtained; and
- (ii) the Data Processor shall be the "data processor" that is to say the individual or organisation that processes Personal Data on behalf of a Data Controller.

1.3 Unless the context otherwise requires, the singular shall include the plural and vice versa and a reference to one gender shall include all the other genders.

1.4 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## **2. GENERAL**

2.1 The Data Processor shall deliver the Services to the Data Controller in accordance with the service levels set out in this Agreement or as otherwise agreed between the Parties.

2.2 The Data Processor shall process the Data Controller Information for the purpose of only and in compliance with the Data Controller's instructions from time to time.

2.3 The Data Controller acknowledges that the Data Processor is under no duty to investigate the completeness, accuracy or sufficiency of any instructions or the Data Controller Information.

2.4. The Data Processor and the Data Controller shall each comply with all relevant requirements of the DPA, including regularly reviewing and updating all relevant notifications to the Information Commissioner.

2.5 The Data Processor shall take appropriate technical and organisational measures against unlawful or unauthorised processing of Data Controller Information and against accidental loss, destruction of and damage to Data Controller Information. For avoidance of doubt, such technical and organisation measures will not include the restoration of data.

2.6 The Data Processor shall not transfer or permit the transfer of Data Controller Information to any territory outside the European Economic Area.

## **3. POLICIES AND PROCEDURES**

3.1 The Data Processor shall maintain and ensure the implementation of appropriate confidentiality, information security, data protection and record management policies and shall comply with all reasonable requests of the Data Controller in this respect.

3.2 The Data Processor shall provide the Data Controller with copies of the policies referred to in 3.1 on the Data Controller's reasonable request.

## **4. DATA PROCESSOR EMPLOYEES**

4.1 The Data Processor shall undertake all reasonable background checks to verify the identity, honesty, trustworthiness and general suitability of all employees who are or are likely to be involved in Data Processing with respect to the Data Controller Information.

4.2 The Data Processor shall include appropriate confidentiality clauses in employment contracts.

4.3 The Data Processor shall ensure that all its employees are aware of (and act in accordance with) the DPA and ensure its employees are adequately trained to understand and comply with their responsibilities under the DPA, the Common Law Duty of Confidence and this

Agreement and shall provide the Data Controller with evidence of such training on the Data Controller's reasonable request.

## **5. SECURITY**

5.1 The Data Processor shall ensure that the Data Controller Information is kept secure and shall use all reasonable security practices and systems to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Data Controller Information.

5.2 The Data Processor shall promptly notify the Data Controller immediately of any incidents or activities that suggest non-compliance with any of the terms of this Agreement. This includes 'near miss' situations even if no actual damage to or loss or inappropriate disclosure of Data Controller Information results

5.3 The Data Processor will not be liable for any loss of or damage to Data Controller Information arising out of or in connection with any circumstance beyond the Data Processor's reasonable control, including fire, flood, strikes, lock-outs, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or accident.

5.4 Subject always to clause 5.3, the Data Processor shall ensure that all Data Controller Information (including any equipment on which it is stored) is adequately protected from unauthorised access or theft of Data Controller Information.

5.5 The Data Processor shall ensure that Data Controller Information is only held on secure servers and not on portable media or devices such as laptops or USB memory sticks or CD-ROMs.

5.6 The Data Controller agrees that all Data Controller Data will only be supplied via encrypted and password protected e-mail attachment, via such secure transfer systems as the Secure File Transfer Protocol (SFTP), Secure FTP or alike, as specified by the Data Processor and agreed to by the Data Controller or as agreed by the Parties prior to enactment of Data Controller services.

5.7 The Data Processor will ensure adequate back-up facilities as part of a general Business Continuity Plan is in place in the event of restriction of services for any reason.

5.8 The Data Controller will only make physical printed paper copies of Data Controller Information if this is essential for delivery of the Services. These physical copies will remain on site and securely retained unless essential for delivery of services and such removal of physical printed copies is confirmed by the Data Controller to the Data Processor.

## **6. SECURE DESTRUCTION**

6.1 On termination of the Services or at the Data Controller's earlier request, the Data Processor shall ensure that:

- (a) Data Controller Information held in paper form, regardless of whether as originally provided by the Data Controller or printed from the Data Processor's Information Technology Systems, is destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713; and
- (b) Data Controller Information stored on electronic storage media is entirely deleted.

6.2 The Data Processor will provide relevant records and certificates of secure destruction and/or deletion to the Data Controller.

## **7. SUBCONTRACTING OF SERVICES**

7.1 The Data Processor shall not sub-contract any or all aspects of delivery of the Services without the explicit written authorisation of the Data Controller.

7.2 The Data Processor shall ensure that all sub-Data Processors are contractually subject to appropriate data processing and confidentiality agreements.

## **8. MONITORING AND AUDIT**

8.1 The Data Processor shall make its premises available for audit by the Data Controller or (subject to clause 8.2) its nominated representative on receipt of five Business Days' notice and confirmation of the identity of visiting auditors. Access will be given to Data Controller Information but not to any other commercially sensitive data.

8.2 The Data Processor reserves the right to refuse entry to any auditor at its sole reasonable discretion. This refusal may include, but is not limited to any competitor of the Data Processor.

8.3 All persons employed or engaged by or on behalf of or under the instruction of one Party in or about the performance of the Services or otherwise on the premises of the other Party shall comply with all reasonable instructions and requirements of such other Party as to their conduct whilst on such premises and comply with all reasonable health, safety and other Regulations or the policies as may be applicable and as notified to the first Party in writing from time to time.

8.4 The Data Processor shall be entitled to refuse to admit to its premises any person employed by the Data Controller (or a sub-contractor thereof) whose admission would, in the opinion of the Data Processor, be prejudicial to security or health and safety or otherwise in the reasonable opinion of the Data Processor be undesirable.

8.5 The Data Controller may only exercise its audit rights under this Agreement once in every calendar year.

## **9. FREEDOM OF INFORMATION**

9.1 The Data Processor acknowledges that the Data Controller is a public authority for the purpose of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) as amended, extended or re-enacted from time to time.

9.2 Basic details of the contract shall be collated and all information in regards to enquires, issues, costings, orders and alike shall be kept in an appropriate manner.

9.3 If either the Data Controller or the Data Processor is statutorily required to, or a governing body or legal entity requires the disclosure of further information in regards to the agreed services or alike then:

- (a) whichever Party is asked to disclose required information, the other Party shall offer reasonable assistance and co-operation to enable the disclosing Party to comply with its obligations;
- (b) The disclosing party shall consult the other Party regarding commercial or other confidentiality issues in relation to the agreed services, however the final decision about disclosure of information or application of exemptions shall rest solely with the disclosing Party

## **10. CONFIDENTIALITY**

10.1 The Data Processor acknowledges that the Data Controller Information includes Data Controller Data.

10.2 The term Confidential Information does not include any information that:

- (a) Is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its representatives in breach of this clause 10);
- (b) Was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
- (c) Was, is, or becomes, available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
- (d) Was known to the receiving Party before the information was disclosed to it by the disclosing Party;
- (e) The Parties agree in writing is not confidential or may be disclosed; or
- (f) Is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

10.3 Each Party shall keep the other Party's Confidential Information confidential and shall not use or disclose any Confidential Information except for the purposes of this Agreement or as otherwise expressly permitted by this clause 10.

10.4 A Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as it is legally permitted to do so, it gives the other Party as much notice of the disclosure as possible.

10.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information, other than those expressly stated in this agreement, are granted to the other Party, or are to be implied from this agreement.

10.7 The provisions of this clause 10 shall continue to apply after termination of this Agreement.

## **11 INTELLECTUAL PROPERTY RIGHTS**

11.1 All intellectual property rights in any software, system, product or otherwise created by the Data Processor to enable provision of the Services under this Agreement shall be and remain the property of the Data Processor.

11.2 All intellectual property rights generated, or originally owned by the Data Processor, shall remain with the Data Processor.

11.3 All intellectual property rights generated, or originally owned by the Data Controller, shall remain with the Controller.

11.4 Save as otherwise expressly permitted in this Agreement, none of the intellectual property rights subsisting in either Party's trade marks or brands shall be used by the other Party without prior written consent or as necessary for the purposes of this Agreement.

11.5 Nothing in this Agreement transfers, or creates an obligation to transfer, any intellectual property rights from one Party to the other.

## **12. WARRANTIES**

12.1 The Data Processor warrants and represents that it will discharge its obligations under this Agreement with due skill, care and diligence.

12.2 The Data Controller warrants and represents that:

(a) It has the right to authorise the Data Processor to process the Data Controller Information in accordance with this Agreement;

(b) As far as it is aware, such processing of the Data Controller Information will not infringe the Intellectual Property Rights of any third party;

(c) The Data Controller Information contains nothing that is defamatory or indecent; and

(d) It is not aware of any circumstances likely to give rise to breach of the DPA;

12.3 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

12.4 Without limiting the effect of clause 12.3, the Data Processor does not warrant that the results of the Services:

(a) Will be accurate, complete, reliable, secure, useful, fit for purpose or timely;



- (b) Will have been tested for use by the Data Controller or any third party; or
- (c) Will be suitable for or be capable of being used by the Data Controller or any third party.

### **13. LIMITATION OF LIABILITY**

13.1 Neither Party excludes or limits liability to the other for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or
- (c) any matter for which it would be unlawful for the parties to exclude liability.

13.2 Subject to clause 13.1, the Data Processor shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) any loss or corruption (whether direct or indirect) of Data Controller Information (other than as is provided in the DPA);
- (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.

13.3 Clause 13.2 shall not prevent claims, which fall within the scope of clause 13.4, for:

- (a) direct financial loss that are not excluded under any of the categories set out in clause 13.2(a) to clause 13.2(d); or
- (b) tangible property or physical damage.

13.4 Subject to clause 13.1, the Data Processor's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall in all circumstances be limited to the total charges paid by the Data Controller to the Data Processor during the 12-month period immediately before the date on which the cause of action first arose.

13.5 Any dates quoted for delivery of the Services are approximate only, and the time of delivery is not of the essence.

13.6 The Data Controller shall indemnify the Data Processor against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Data Processor arising out of or in connection with the processing of the Data Controller Data

under this agreement (“Claims against Data Processor”), except to the extent that such Claims against Data Processor have arisen out of or in connection with any negligence or wilful default of the Data Processor or any breach by the Data Processor of the warranty in clause 12.1. For clarity, Claims against Data Processor shall include any claim or action claiming that the provision, receipt or use of all or part of the Data Controller Information infringes any third party Intellectual Property Right.

13.7 The Data Controller acknowledges that:

(a) the Data Processor is reliant on the Data Controller for direction as to the extent to which the Data Processor is entitled to use and process the Data Controller Information; and

(b) Claims against Data Processor include any claim or action brought by a data subject arising from any action or omission by the Data Processor, to the extent that such action or omission resulted directly or indirectly from the Data Controller's instructions.

(c) The Data Controller obtained explicit consent from data subjects for their Personal Data prior to the processing of it by the Data Processor where required by law.

## **14. TERM AND TERMINATION**

14.1 This Agreement shall commence on the Commencement Date and shall remain in force for the Initial Period, unless terminated earlier in accordance with clause 14.2. The Term shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than [60] days before the end of the Initial Period or the relevant Renewal Period, to terminate this agreement.

14.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

(a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified [in writing] to make that payment;

(b) The other Party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;

(c) The other Party:

(i) suspends, or threatens to suspend, payment of its debts;

(ii) is unable to pay its debts as they fall due or admits inability to pay its debts;

(iii) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as amended, extended or re-enacted from time to time;

(d) The other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

(e) A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

(f) An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);

(g) The holder of a qualifying floating charge over the assets of that other Party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) A person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

(i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other Party's assets and that attachment or process is not discharged within 14 days;

(j) any event occurs or proceeding is taken with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(i) (inclusive);

(k) The other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

14.4 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

14.5 On any termination of this Agreement for any reason or expiry of the Term, the Data Controller shall immediately pay any outstanding amounts owed to the Data Processor under this Agreement.

14.6 Since the 25<sup>th</sup> of May 2018 the Data Processor shall retain Information (including all electronic data received from the Data Controller) only for so long as is necessary to complete the purpose for which the Information has been supplied and, in particular, the Data Processor shall permanently and securely dispose of all Information after 30 days

following the completion of the processing for which the Information had been supplied unless otherwise agreed in writing and within the maximum timeframe under the GDPR regulation. For the avoidance of doubt any Information prior to that date held when GDPR will commence, will follow the course of the Information obtained after that date, days being counted similarly.

## **15. ASSIGNMENT**

This Agreement is personal to the Data Controller and it shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Data Processor (which is not to be unreasonably withheld or delayed).

## **16. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **17. REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. ENTIRE AGREEMENT**

18.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

18.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

18.3 No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

## **19. VARIATION**

Except as expressly provided in this agreement, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **20. SEVERANCE**

20.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to

the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

20.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **21. THIRD-PARTY RIGHTS**

21.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 as amended, extended or re-enacted from time to time to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, other than in that Act.

21.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

## **22 NO PARTNERSHIP**

Nothing in this Agreement shall constitute a partnership, joint venture or employment with or between any of the Parties and neither Party shall hold itself out as the agent or employee of the other Party.

## **23. ENGLISH LANGUAGE**

All notices, demands or other communications made or given or delivered between the Parties pursuant to this agreement shall be in writing in the English language.

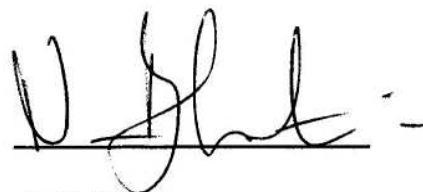
## **24. GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the Law of England and Wales and each party hereby irrevocably submits to the jurisdiction of the English Law Courts

**AS WITNESS** the hands of the duly authorised representatives of the parties hereto the day and year first above written

Signed for and on behalf of

Signed:



Name: Dr Neil Bhatia

Title: GP Partner, IG Lead

Signed for and on behalf of **CFH DOCMAIL  
LIMITED**

Signed: \_\_\_\_\_

Name: J R Broadway

Title: Director of Legal Affairs