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DATED

NON-PROCESSOR AGREEMENT

between

NHS BUSINESS SERVICES AUTHORITY

and

SONAR INFORMATICS LIMITED

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This agreement is dated

BETWEEN

- (1) **NHS BUSINESS SERVICES AUTHORITY** of Stella House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne NE15 8NY (**Authority**) which term shall include its successors and permitted assigns; and
- (2) **SONAR INFORMATICS LIMITED** incorporated and registered in England and Wales with company number 05580587 whose registered office is at 71 Goldhawk Road, Shepherds Bush, London W12 8EG (**Supplier**),

each a **Party** and together the **Parties**.

BACKGROUND

- A. The Authority is a Special Health Authority and an arm's length body of DHSC. It provides a range of critical central services to NHS organisations, NHS contractors, patients and the public. The Supplier is a supplier of point of care software used Pharmacy Contractors.
- B. The Authority needs to receive data from Pharmacy Contractors via the MYS System. The Authority is collecting this data to enable the reimbursement of Pharmacy Contractors in England for the provision of certain services outlined in the CPCF and as referenced in the Drug Tariff, and also to provide the requisite reporting to the Authority, NHSE and DHSC.
- C. As well as providing software to Pharmacy Contractors, the Supplier has developed, or will develop, under the terms of this Agreement the Bespoke Software in order to provide data feeds to the Authority via the API. The Supplier has agreed to make changes to the Supplier's Software to develop the Bespoke Software, which will facilitate delivery of the certain services for those Pharmacy Contractors that wish to use it. The facilitation will enable the transmission of required data from the Supplier's Software to the MYS System via the API and enable the receipt into the Supplier's Software of Response Data from the Authority via the MYS System.
- D. The Parties have agreed to enter into this Agreement for the purpose of recording the arrangement between them and ensuring mutual data protection and information security compliance.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

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

Agreement	this data processing agreement including the Schedules;
API	the application programming interface that has been developed by and is owned by the Authority to facilitate the feed of data between the Software and the MYS System;
Applicable Law	English law;
Bespoke Software	the code/technology which the Supplier has developed or will develop to implement the Bespoke Software Specification under this Agreement to enable:

	- the real-time transmission of Pharmacy Contractor Data from the Software to the MYS System, and - the real-time receipt into the Software of Response Data1;
Bespoke Software Specification	the specification provided by the Authority which sets out the Authority's business requirements regarding the Bespoke Software, as set out in the Software Development Agreement;
Controller	shall have the meaning given in Data Protection Legislation;
CPCF	the Community Pharmacy Contractual Framework published 22 July 2019, as updated and amended from time to time and including any period extending the term of its application;
Data Protection Legislation	all applicable data protection laws relating to the processing of personal data and privacy, including the UK GDPR and DPA;
Data Subject	shall have the meaning given in Data Protection Legislation;
DHSC	the Department of Health and Social Care of His Majesty's Government;
DPA	the Data Protection Act 2018;
Drug Tariff	the NHSE Electronic Drug Tariff compiled on behalf of DHSC by NHSBSA as updated and amended from time to time;
Effective Date	the date the Agreement has been signed by both parties;
MYS System	the Authority's 'Manage Your Service' portal used by Pharmacy Contractors to submit claims for services provided by them to NHS patients, which Processes Relevant Data;
NHSE	the executive non-departmental public body NHS Commissioning Board known as NHS England;
Personal Data	shall have the meaning given in Data Protection Legislation;
Personal Data Breach	a personal data breach as defined in Data Protection Legislation;
Pharmacy Contractor	a contractor providing services to NHS Patients, and who the supplier supports in connecting to the MYS System via the Bespoke Software. These may include GP Practices, Pharmacies and Dental Practices as appropriate.
Pharmacy Contractor Data	the data sent by the Pharmacy Contractors to the MYS System through the Bespoke Software to enable the Authority to carry out payment for activities carried out and reporting to commissioners.

Process	shall have the meaning given in Data Protection Legislation;
Processor	shall have the meaning given in Data Protection Legislation;
Relevant Data	the Pharmacy Contractor Data and Response Data;
Response Data	confirmation as to whether a specified Pharmacy Contractor has completed their declaration to be reimbursed based on the data provided by the Supplier;
Services	the works, duties and obligations to be carried out by the Supplier under the Software Development Agreement;
Software	the software and/or services provided by the Supplier to each Pharmacy Contractor, including the front-end user interface;
Software Development Agreement	a software development agreement signed by the Parties on or around the date of this Agreement setting out the terms under which the Supplier will provide certain software development services to the Authority;
Special Category Data	special categories of personal data as defined under Article 9(1) UK GDPR;
Switch Off	in the case of: - the Supplier, means to switch off the Bespoke Software; and - the Authority, means to disable the connection between the MYS System and the Bespoke Software;
Term	the term of this Agreement as set out in clause 7.1;
UK GDPR	shall have the meaning given in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
Working Day	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

1.2 In this Agreement, including the Schedules:

- (a) references to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment, modification or statutory extension of any of the above;
- (b) except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes all genders; words denoting persons include firms and corporations and vice versa;

- (c) headings are included in this Agreement for ease of reference only and shall not affect interpretation or construction;
- (d) any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done; and
- (e) the words include or including shall be construed without limitation to the words following.

2 CONSIDERATION

In consideration of the mutual benefits of data protection and information security compliance, the parties agree to the provisions of this Agreement.

3 PROTECTION OF PERSONAL DATA

- 3.1 Where any Relevant Data is Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Controller, the Pharmacy Contractor is a Controller and that the Supplier is either:
- (a) a Processor of the Pharmacy Contractor; and/or
 - (b) a mere conduit that transmits but does not store the Relevant Data; and/or
 - (c) a facilitator that does not Process the Relevant Data in any way.
- 3.2 The Authority's legal basis for Processing is public task (Article 6(1)(e) UK GDPR).
- 3.3 The Relevant Data are Special Category Data, as the information relates to patients' health, and the Processing is part of the management of health care systems or services. The Authority's condition for Processing is the management of healthcare systems in Article 9(2)(h) UK GDPR (with the safeguards in Article 9(3)) and schedule 1 part 1 paragraph 2 of the DPA (with the safeguards in section 11(1) DPA).
- 3.4 The specific regulations under which personal data is processed are documented in Schedule 4 to this agreement.
- 3.5 As at the Effective Date, the Supplier confirms that its position is as set out in the option in clause 3.1(a)¹. If that position changes during the Term, then:
- (a) the Supplier shall notify the Authority of the changed position without undue delay; and
 - (b) whether the Supplier notifies the Authority of the change or not, the applicable option in clause 3.1 shall automatically apply.
- 3.6 The Supplier shall assist the Authority in the Authority's compliance with any obligations under Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its obligations under Data Protection Legislation to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

¹ Supplier to advise of its set-up. If the Supplier will not transmit, store or touch any Relevant Data or otherwise Process the Relevant Data on behalf of the Authority then clause 3.2(b) applies. Otherwise clause 3.2(a) applies. If neither option in clause 3.2 applies, for example the Supplier is a controller in its own right, the supplier should notify the Authority immediately.

- 3.7 In the event of a Personal Data Breach in respect of the Relevant Data or which involves the Services or the System, the Authority shall be entitled (but not obliged) to turn off the Bespoke Software without prior notice to the Supplier. The duration of this outage shall be determined by the Authority in its sole discretion. The Authority shall communicate updates to the Supplier in a timely manner.

4 RESPONSIBILITIES

Each Party shall comply with its responsibilities as set out in Part 2 of Schedule 1 (Operational Details).

5 INDEMNITY

- 5.1 The Supplier must put in place and maintain in force (and procure that its sub-contractors put in place and maintain in force) at its (or their) own cost (and not that of any employee) appropriate indemnity arrangements in respect of:

- (a) employers' liability;
- (b) public liability; and
- (c) professional negligence.

- 5.2 Within five (5) Working Days following written request from the Authority, the Supplier must provide documentary evidence that indemnity arrangements required under clause 5.1 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 5.3 If the proceeds of any indemnity arrangements are insufficient to cover the settlement of any claim relating to this Agreement the Supplier must make good any deficiency.

- 5.4 The Supplier must not take any action or fail to take any reasonable action nor (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any indemnity arrangements put in place in accordance with clause 5.1 may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired, or which may otherwise render any sum paid out under those indemnity arrangements wholly or partly repayable.

6 VARIATION

- 6.1 In the event that there is a change during the Term in applicable Data Protection Legislation in any part of the UK or there is a change which means the Supplier becomes a Processor of the Authority, and the Authority reasonably determines that this Agreement is, wholly or in part, no longer appropriate in the light of Data Protection Legislation or the Supplier's new role as Processor, the Authority shall notify the Supplier of its determination and (a) each Party shall promptly take such reasonable and appropriate steps necessary to ensure its on-going compliance with applicable Data Protection Legislation, and (b) the Supplier shall negotiate with the Authority in good faith to enter promptly into such variation to this Agreement as is necessary to ensure the Parties' on-going compliance with applicable Data Protection Legislation.

6.2 Except as more specifically set out elsewhere 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).

6.3 The authority may add additional services to this agreement as instructed by DHSC and NHSE. The Authority will notify the supplier as soon as reasonably practicable and at least 20 working days of any additional service. Services may be added sooner than this if it needs to be added urgently.

7 TERM AND TERMINATION

7.1 This Agreement shall start on the Effective Date and shall continue until terminated.

7.2 Either Party may terminate this Agreement on giving at least thirty (30) days' notice to the other Party. The Parties will collaborate as necessary to ensure an orderly exit from the Agreement.

7.3 On termination by either Party, the Authority shall Switch Off the Bespoke Software.

8 GENERAL

8.1 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.

8.2 If any provision or part of any provision of this Agreement is declared invalid or otherwise unenforceable, that provision or part of the provision as applicable will be severed from this Agreement. This will not affect the validity and/or enforceability of the remaining part of that provision or of other provisions.

8.3 Any relaxation of or delay by any Party in exercising any right under this Agreement must not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

8.4 Except as expressly set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or existing at law or in equity, by statute or otherwise.

8.5 Nothing in this Agreement will create a partnership or joint venture or relationship of employer and employee or principal and agent between any Authority and the Supplier.

8.6 Except as more specifically set out elsewhere in this Agreement, any notices given under this Agreement must be in writing and must be served by hand, post, or email. Notices:

(a) by post will be effective upon the earlier of actual receipt, or five (5) Working Days after mailing;

(b) by hand will be effective upon delivery; and

(c) by email will be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message. Notifications sent by email shall be to the following email addresses (as may be updated from time to time by giving the other Party written notice under this clause 8):

(i) the Supplier: prtipal.thind@sonarinfromatics.com and prtipal.thind@nhs.net; and

(ii) the Authority: nhsbsa.mys@nhs.net

- 8.7 This Agreement may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.
- 8.8 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

SCHEDULE 1 - OPERATIONAL DETAILS

Part 1: Data Flow

Pharmacy Contractor Data are sent by the Pharmacy Contractor to the Authority through the Bespoke Software.

Response Data are sent from the Authority to the Supplier via the Bespoke Software. A summary of those data are also made available to the Pharmacy Contractor in the MYS System.

The Response Data are stored in the MYS System.

Other data may be shared if relevant, including in relation to the Parties' responsibilities in Part 2 or otherwise under or pursuant to this Agreement, or in relation to external events.

Part 2: Responsibilities

Responsibilities	Details for this Agreement
Authority	- To ensure the compliance of its contractual relationships with third parties, including its suppliers. - To ensure the compliance of its own Processing of Relevant Data with Data Protection Legislation. - To deal with any Data Subject requests received by the Authority which relate to the Authority's Processing of Relevant Data as a Controller. - To ensure the security of the Relevant Data in the Authority's systems, including transmission to and from the Bespoke Software. - To notify the Supplier in advance of any maintenance to its own systems or to its side of the Bespoke Software, which affect the Services. - To appoint a single point of contact and communicate that contact's details to the Supplier. The Authority's single point of contact is its Data Protection Officer (the Authority Contact), details as at the Effective Date below: Data Protection Officer Information Governance NHS Business Services Authority Stella House Newcastle upon Tyne NE15 8NY Email: nhsbsa.dataprotection@nhs.net
Supplier	To ensure the compliance of its contractual relationships with third parties, including other members of the Supplier's group and its Processors.

	• To provide the Services in accordance with this Agreement. • To ensure its design of the System and its agreement with each Pharmacy Contractor complies with Data Protection Legislation. • To manage arrangements with the Pharmacy Contractors, including the addition of incoming Pharmacy Contractors who wish to use the Services, the Pharmacy Contractors' access to and use of the Services, and the departure of outgoing Pharmacy Contractors who no longer wish to use the Services. • To ensure that each Pharmacy Contractor can easily opt-into or out of the Services within the System. • To advise the Authority Contact immediately it becomes aware of a Personal Data Breach relating to the Relevant Data. • To ensure the security of the Relevant Data in its System, including transmission to and from the Bespoke Software. • To maintain the conformity of the System with the Security Requirements; the Supplier shall notify the Authority without undue delay if it becomes aware of any non-conformity; during the month preceding each anniversary of this Agreement, the Supplier shall certify the System's ongoing conformity with the Security Requirements. Notifications shall be made to the following Authority department, details are correct as at the Effective Date: nhsbsa.mys@nhs.net • To notify the Authority in advance of any maintenance to the System or to its side of the Bespoke Software, which affect the Services. • To appoint a single point of contact and communicate that contact's details to the Authority (the Supplier Contact), details as at the Effective Date below: pritpal.thind@sonarinfromatics.com and pritpal.thind@nhs.net
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SCHEDULE 2 - SERVICES

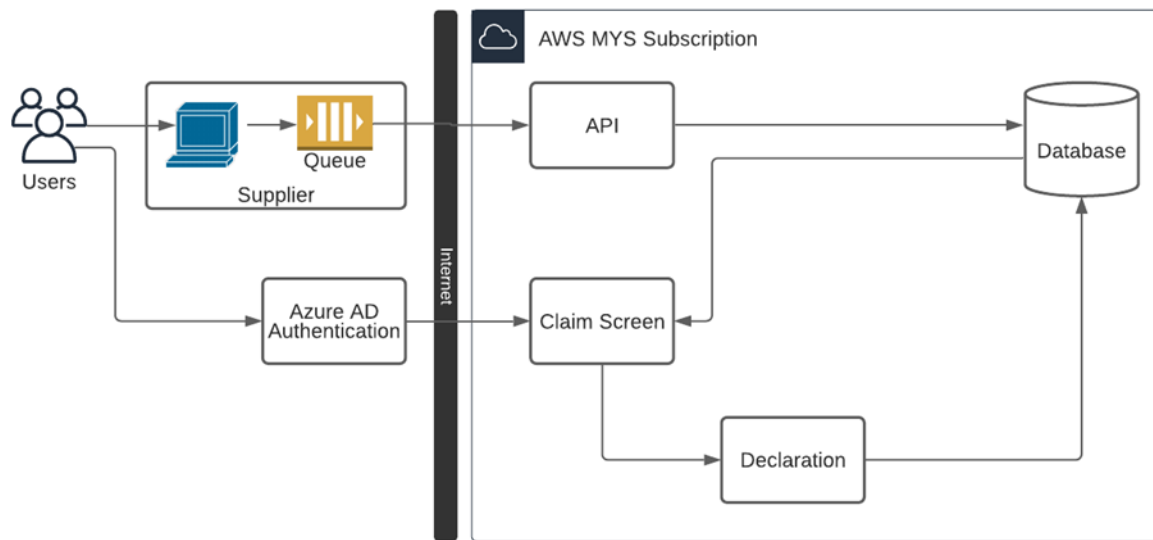
Part 1: Services

The facilitation of MYS: enabling the secure flows of Relevant Data from each Pharmacy Contractor's System to the Authority and from the Authority to each Pharmacy Contractor's System, using the Bespoke Software, in order for the Authority to confirm (or not confirm) the data received can be claimed for reimbursement and/or remuneration.

Part 2: Bespoke Software

The Bespoke Software is via API. Please see the topology diagram below for how the interface works and the Bespoke Software of MYS data in practice.

Please see the diagram below for the data transfer routes



SCHEDULE 3 - SECURITY REQUIREMENTS

Part 1: Security Requirements

The Supplier shall:

- ensure that the Bespoke Software complies with the Specifications and Data Protection Legislation;
- maintain the conformity of the Bespoke Software with the Specifications; the Supplier shall notify the Authority without undue delay if it becomes aware of any non-conformity; and
- within one (1) month of the Effective Date and after that, a maximum of once in each year of the Term on written request by the Authority, complete the SMP Questionnaire and submit it to the Authority, and shall respond to any queries raised by the Authority on the Supplier's responses to the SMP Questionnaire.

Each Party agrees that in the event of a Breach in respect of the Relevant Data or which involves the Bespoke Software, or if there is another event which that Party determines in its reasonable discretion means the Relevant Data may no longer be safe and secure, that Party shall be entitled (but not obliged) to Switch Off the Bespoke Software. If it Switches Off the Bespoke Software, that Party shall promptly notify the other Party at the following email address:

- Supplier: helpdesk@sonarinfromatics.com
- Authority: nhsbsa.mys@nhs.net

Part 2: Specifications

NHS BSA Interoperability Developer Guide to the NHS Business Services Authority API for Pharmacy Contractor claims



NHS_BSA_Claim_Interface_Guide_v0_27.pdf

SCHEDULE 4 - LAWFUL BASIS

The below table documents which law/regulations allow/require the Authority to Process the Relevant Data, via the MYS portal.

Data	Lawful Basis & Condition for Processing Special Category Data
Relevant Data relating to the NHS Advanced and Essential Services	• Article 6(1)(e) of the UK GDPR. • Article 9(2)(h) & Article 9(3) of the UK GDPR. • The National Health Service Act 2006. • The National Health Services (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. • The Pharmaceutical and Local Pharmaceutical Services (Prescriptions, Payments and Listings) Directions 2013

This Agreement has been signed by the Parties below.

Signed for and on behalf of **NHS BUSINESS SERVICES AUTHORITY** by:

Signed for and on behalf of **SONAR INFORMATICS LIMITED** by: