



DATA PROCESSOR AGREEMENT

This Data Processor Agreement establishes minimum data protection standards for Optos PLC, incorporated and registered in Scotland with company number SC139953 whose registered office is at Queensferry House, Carnegie Business Campus, Dunfermline, Fife KY11 8GR, United Kingdom (“**Optos**”) in connection with the Processing of Personal Data (both as defined below) in connection with the provision of Product(s) and Services under a Contract (all as defined below). This Data Processor Agreement is entered into by Customer and Optos and it governs the Processing of Personal Data by Optos that Customer uploads, provides to or otherwise makes accessible by Optos in connection with the provision of Product(s) and Services.

THIS DATA PROCESSOR AGREEMENT IS INCORPORATED INTO THE RELEVANT CONTRACT BY REFERENCE INTO THE ORDER FORM EXECUTED BY CUSTOMER. BY AGREEING TO AN ORDER FORM AND ENTERING INTO A CONTRACT THE CUSTOMER IS CONFIRMING THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THIS DATA PROCESSING AGREEMENT.

Optos may update the terms of this Data Processor Agreement from time to time. The Data Processor Agreement was last updated on 2023 20 April. You can find archived versions of the Data Processor Agreement here <https://www.optos.com/corporate-information/>.

IT IS AGREED AS FOLLOWS:

1. Definitions

1.1. In this Data Processor Agreement terms shall have the meaning given to them in the Contract unless defined below:



Affiliate	means in relation to each of the Parties the ultimate parent company of that Party and any company, or legal entity in which the ultimate parent company directly or indirectly owns more than 50% of the issued share capital or otherwise controls the activities of that company, or legal entity.
Contract	means the Contract entered into by Customer and Optos, formed by an Order Form entered into by a Customer detailed in the relevant Order Form, which incorporates the Terms and Conditions of Supply (published at https://www.optos.com/terms-and-conditions/) and this Data Processor Agreement.
Controller	means the Party which, acting alone or jointly with others, determines the purposes and means of the Processing of Personal Data.
Customer	means the party detailed in the relevant Order Form as the "Customer" and who has agreed to enter into this Data Processor Agreement by reference as part of accepting the Order Form and entering into the relevant Contract.
Data Laws	Protection means all applicable: (a) data protection and privacy legislation in force from time to time in the European Union, or a Member State of the European Union, including but not limited to the EU General Data Protection Regulation (2016/679) ("EU GDPR"), and any laws implementing the EU Electronic Communications and Privacy Directive (2002/58/EC); (b) data protection and privacy legislation in force from time to time in the United Kingdom, including but not limited to the Data Protection Act 2018, the EU GDPR as such law forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("UK GDPR"), and the Privacy Electronic Communications (EC Directive) Regulations 2003 (SI 2003/24/26); and (c) related mandatory guidance, guidelines, code of practice and codes of conduct guidance issued by a supervisory or competent authority; in each case, as amended, supplemented, re-enacted and/or replaced from time to time.
Data Subject	means an identified or identifiable natural person.
EEA	means the European Economic Area.



"EU Standard Contractual Clauses"		means the standard contractual clauses for the transfer of Personal Data from the EEA to third countries approved by European Commission Implementing Decision 2021/914 of 4 June 2021 (as may be amended, updated or superseded from time to time) in respect of processor to processor transfers.
Party		means Optos or Customer or both of them, as the context requires.
Personal Data		means any information relating to a Data Subject, including, but not limited to, Special Category Data.
Process Processing	or	means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
Processor		means the Party which Processes Personal Data on behalf of the Controller.
Security Breach		has the meaning assigned to that term in Clause 7.3.
Standard Contractual Clauses		means the UK Standard Contractual Clauses or the EU Standard Contractual Clauses, as relevant, specified under Section 17C of the Data Protection Act 2018 or approved under Clause 46(2)(c) of the EU GDPR, together with such supplementary measures in addition to the protections afforded in the Standard Contractual Clauses as may be necessary to ensure the relevant Personal Data is subject to an appropriate level of protection as required under Data Protection Laws.
Special Data	Category	means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data and biometric data not Processed for the purpose of uniquely identifying a natural person and only to the extent necessary for authentication and security purposes, data



concerning health or data concerning a natural person's sex life or sexual orientation or any Personal Data qualifying as such under applicable Regulations.

- Subprocessor** means a subcontractor or affiliate engaged by Optos who has, or may have, access to Personal Data.
- Optos Employee** means any person employed or hired by Optos involved with the performance of this Data Processor Agreement.
- Supervisory Authority** the Information Commissioner (as defined in Data Protection Laws) and any other relevant regulator or supervisory authority in the territories where the Parties to this Data Processor Agreement are established, or which otherwise have jurisdiction over the Parties.
- Transfer** has the meaning assigned to that term in Clause 9.1.
- "UK Standard Contractual Causes"** means the EU Standard Contractual Clauses as amended by the completed UK Addendum issued by the Information Commissioner's Office under or pursuant to section 119(A)(1) of the Data Protection Act 2018.

1.2. The Parties agree that this Data Processor Agreement shall replace any existing processor agreements the Parties may have previously entered into in connection with the activities covered by the Contract.

2. Processing of Personal Data

2.1. Optos shall perform its activities pursuant to the Contract, acting as Processor on behalf of Customer. Customer shall remain the Controller for all Personal Data that is Processed under the Contract. The categories of Data Subjects, categories of Personal Data, the duration of Processing and the Processing activities performed by Optos are described in **Appendix 1** and may be further detailed in the Contract.

2.2. This Data Processor Agreement shall apply to the processing of Personal Data by Optos and each of its Affiliates.

3. Obligations of Customer



- 3.1. As Controller, Customer shall comply with its obligations under Data Protection Laws and this Data Processor Agreement. More specifically, Customer warrants that it has a legal basis within the meaning of Article 6 of EU GDPR/UK GDPR to have Personal Data processed by Optos under the Contract and as detailed in Appendix 1, and in case of Special Category Data Customer can rely on a condition within the meaning of Article 9 of EU GDPR/UK GDPR to have such Special Category Data processed.
- 3.2. Customer shall instruct Optos to Process the Personal Data on Customer's behalf and in accordance with Data Protection Laws. The Processing instructions of Customer are documented in **Appendix 1** and further detailed in the Contract.
- 3.3. Customer may issue additional instructions with regard to Optos' Processing activities, or amend such instructions, provided that such instructions are clear, understandable, consistent with the terms of the Contract and this Data Processor Agreement, reasonable and in accordance with Data Protection Laws. Customer shall issue any such additional or amended instructions in writing or by electronic mail to Optos and Customer shall keep these instructions documented. Customer shall compensate Optos for reasonable costs incurred by Optos due to complying with such additional instructions.
- 3.4. Customer shall (a) grant Optos a reasonable amount of time to implement or comply with any additional or amended instructions and (b) cooperate with Optos to implement or comply with such additional or amended instructions.
- 3.5. Customer shall, without undue delay, but no later than thirty-six (36) hours from discovery, notify Optos of any violation of Data Protection Laws arising from the activities contemplated within this Data Processor Agreement or the Contract, inaccuracies with regard to a Data Subject's Personal Data, failures in performance regarding the commissioned Processing of Personal Data or other irregularities with regard to compliance with Data Protection Laws. In these events, Customer will take all measures, including, without limitation, legal measures, to avoid or limit as much as possible any potential adverse effects and damages to itself, Data Subjects, Optos, and Optos's Affiliates and Sub-processors.
- 3.6. Customer shall provide such assistance as Optos requests to enable Optos to respond to or defend against enquiries, requests or investigations from the Information Commissioner or other Supervisory Authority.

4. Obligations of Optos

- 4.1. As Processor, Optos shall comply with its obligations under Data Protection Laws and this Data Processor Agreement.
- 4.2. Subject to Clause 4.5, Optos shall ensure that it only Processes Personal Data in accordance with Customer's instructions.



- 4.3. During the term of this Data Processor Agreement, if Optos receives any request from a Data Subject relating to his or her Personal Data, Optos shall refer that Data Subject to Customer to submit his or her requests. Customer shall be responsible for responding to any such request. Optos shall provide such assistance as Customer may reasonably specify to enable Customer to meet its obligations to respond to requests for exercising the rights of Data Subjects pursuant to applicable Regulations, including, but not limited, to requests from Data Subjects to access, correct or delete their Personal Data. Customer will bear the costs of said assistance.
- 4.4. Optos shall provide such assistance as Customer may reasonably specify to enable Customer to (a) carry out a data protection impact assessment and a possible prior consultation with the Information Commissioner or other Supervisory Authority and (b) to respond to or defend against enquiries, requests or investigations from the Information Commissioner or other Supervisory Authority. Customer will bear the costs of said assistance.
- 4.5. Optos shall inform Customer if applicable law prevents Optos from fulfilling the instructions received from Customer, unless that law prohibits Optos from providing such information on compelling grounds of public interest.
- 4.6. Optos shall inform Customer if, in its opinion, an instruction received from Customer infringes Data Protection Laws.
- 4.7. Upon termination of this Data Processor Agreement or after the end of the provision of Processing activities (whichever is earlier), Optos and its Sub-processors (if any) shall, as directed by Customer, return all Personal Data to Customer and/or delete all copies of such Personal Data, unless applicable UK law or EU Member State law prohibits Optos from returning or deleting all or part of the Personal Data.

5. Subprocessors

- 5.1. At the time of the signature of this Data Processor Agreement, Optos engages other data processors as listed in **Appendix 1** and its Affiliates which are hereby approved by Customer. Optos shall notify Customer (for which email shall suffice) if it adds or removes Sub-processors. Customer may object in writing to Optos' appointment of a new Sub-processor within 10 (ten) calendar days of such notice, provided that such objection is based on reasonable grounds directly relating to Data Protection Laws. In such event, the Parties shall discuss such concerns in good faith with a view to achieving a resolution.
- 5.2. Optos may only engage a Sub-processor by way of a written data processor agreement with such Sub-processor that is compliant with Data Protection Laws.

6. Confidentiality



- 6.1. Optos ensures that all Optos Employees have committed themselves to confidentiality, for example, by means of a confidentiality clause in their employment contract.

7. Security and Security Breaches

- 7.1. Optos shall implement appropriate organisational and technical measures to protect the confidentiality, integrity and availability of the Personal Data consistent with Data Protection Laws, including, without limitation, to protect the Personal Data against destruction, loss, unauthorised disclosure or access, or any other form of unlawful processing. To clarify, Optos shall consider the state of the art and implementation costs when considering the appropriateness of such organisational and technical measures and ensure that such measures offer an appropriate level of security given the risks associated with Processing and the nature of the Personal Data to be protected.
- 7.2. Customer considers the measures described in **Appendix 1** appropriate as mentioned in Clause 7.1 and Customer therefore instructs Optos to implement and maintain these Security Measures. Optos may update or modify the Security Measures set out in Appendix 1 from time to time, provided that such updates and modifications do not result in any degradation of the level of security.
- 7.3. Optos shall, without undue delay notify Customer of any breach of the security measures as referred to in this Clause 7 leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed (a "**Security Breach**"). Optos shall also notify Customer if a Security Breach takes place at a Sub-processor. Optos shall maintain procedures aimed at detecting, responding to and recovering from Security Breaches.
- 7.4. At Customer's request, Optos shall provide all reasonable cooperation to handling Customer's Security Breach, such as assisting Customer in informing Supervisory Authorities and Data Subjects (if required); provided, however, that Customer will bear the cost of any such cooperation.
- 7.5. Optos' obligation to report or respond to a Security Breach as described under this Clause 7 does not alter Customer's responsibility and liability with regard to Security Breaches under Data Protection Laws and shall not be construed as an acknowledgement by Optos of any fault or liability with respect to the Security Breach.
- 7.6. Notwithstanding the above, Customer agrees that Customer is responsible for its secure use of the services described in the Contract, including securing its account authentication credentials, protecting the security of Personal Data when in transit to and from Optos and taking any appropriate steps to securely encrypt or backup any Personal Data uploaded to Optos.



8. Compliance

8.1. At Customer's request, Optos shall provide Customer with all reasonable information about Optos' Processing activities under the Contract necessary to enable Customer to verify Optos' compliance with the provisions of this Data Processor Agreement. Additionally, Optos shall once every 2 (two) years allow for an independent auditor (on a confidential basis) to conduct an audit if needed to demonstrate compliance with the provisions of this Data Processor Agreement. Customer will notify Optos in writing at least 30 (thirty) days prior to any such audit. Any such audit will be conducted during Optos' regular business hours at Optos' location and will not interfere unreasonably with Optos' business activities. The costs of such audit shall be borne by Customer, unless the audit reveals any material non-compliance by Optos under this Data Processor Agreement, in which case the reasonable costs of the audit shall be borne by Optos.

9. Transfer of Personal Data outside the UK and/or the EEA

9.1. The Parties acknowledge that Data Protection Laws contain restrictions on transferring Personal Data from the UK and/or an EU Member State, as applicable, to countries outside the UK and/or the EEA which do not ensure an adequate level of protection, which includes making such Personal Data accessible from any such country ("**Transfer**").

9.2. Optos, its Affiliates and its Sub-processors shall not Transfer Personal Data other than on the basis of a legally recognised transfer mechanism, such as the Standard Contractual Clauses unless Optos, its Affiliates or its Sub-processor are required to do so by applicable law; in such a case, Optos shall inform Customer thereof, unless that law prohibits such information on important grounds of public interest.

9.3. Where Optos adopts the Standard Contractual Clauses under Clause 9.2 the UK Standard Contractual Clauses shall apply to any cross border transfers of Personal Data of UK Data Subjects, as required by Data Protection Laws. Alternatively, where required by Data Protection Laws, in respect of cross border transfers of Personal Data of EU Data Subjects, the EU Standard Contractual Clauses shall apply. Where any replacement of, or amendment to the UK Standard Contractual Clauses and/or EU Standard Contractual Clauses is approved by a Supervisory Authority or by an equivalent competent authority under Data Protection Laws (**New Solution**), the New Solution shall, to the extent applicable, be deemed to replace the UK Standard Contractual Clauses and/or EU Standard Contractual Clauses (as applicable) from the date on which the New Solution is approved and, where applicable, published including in an official journal. Optos and Customer also agree to enter into any agreements that may be required in order to effect the lawful cross-border transfer of Personal Data, including the execution of any stipulated contracts approved by a Supervisory Authority for the lawful transfer of Personal Data.

10. Liability



- 10.1. Each Party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this Data Processor Agreement, whether in contract, tort or under any other theory of liability, is subject to the provisions of the Contract regarding (the limitation of) the Parties' liability, and any reference in such provisions to the liability of a Party means the aggregate liability of that Party and all of its Affiliates under the Contract and the Data Processor Agreement.
- 10.2. For the avoidance of doubt, Optos' and its Affiliates' total liability for all claims from Customer and all of its Affiliates arising out of or related to the Contract and this Data Processor Agreement shall apply in the aggregate for all claims under both the Contract and Data Processor Agreement, and, in particular, shall not be understood to apply individually or severally to Customer or its Affiliates.

11. Term and Termination

- 11.1. This Data Processor Agreement shall automatically terminate upon expiry or termination of the Contract.

12. Assignment

- 12.1. Customer may not assign any of its obligations, rights or remedies under this Data Processing Agreement without the prior written consent of Optos, and any attempt at such assignments shall be null and void.

13. Non-Waiver

- 13.1. The failure or delay of either party to exercise any right or remedy provided for herein shall not be deemed a waiver of the right or remedy or of any other rights or remedies available hereunder.

14. Severability

- 14.1. If any provision (or part provision) of this Data Processing Agreement is held to be unenforceable or invalid, the remaining provisions (or part provisions) thereof shall nevertheless be given full force and effect and the parties agree to negotiate, in good faith, a substitute valid provision (or part provision) which most nearly effects the parties' intent. Without limiting the foregoing, it is expressly understood and agreed that each and every provision (and part provision) of this Data Processing Agreement which provides for a limitation of liability, disclaimer of warranty or exclusion of damage is intended by the parties to be survivable and independent of any other provisions.



15. Governing Law

15.1. This Data Processing Agreement shall be governed by and construed in accordance with the laws of England without regard to its provisions regarding conflict of laws. The parties irrevocably agree that the courts in England shall have exclusive jurisdiction to settle any contractual or non-contractual dispute or claim that arises out of or in connection herewith.

16. No Agency or Joint Venture Relationship

16.1. Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal, agent, master or servant between Optos and Customer, or to provide Optos or Customer with the right, power or authority to incur any obligation or make any representations, warranties or guarantees on behalf of any other party hereto.

17. Notices.

17.1. All notices hereunder shall be in writing and shall be deemed to have been given when delivered by hand or when sent by registered or certified mail or commercial overnight courier (with receipt of delivery), in each case to the address stated in this Data Processing Agreement. Either party may designate a different address by giving notice in the manner herein provided.

18. Third Parties.

18.1. Any person who is not a party to this Contract shall not have any rights under or in connection with it.

Appendix 1

<p>Name data processing operation carried out for the controller</p>	<p>Customer Service / Repair Administration</p> <p>General: Optos manufacture “optomap®” retinal imaging equipment. Optos also offers ongoing maintenance and repair services to customers (as detailed below in “purposes of the processing”), as well as storage facilities for the customer data in the form of a standalone PC, cloud-based or via a link to the controller’s systems directly. It is during the aforementioned technical services in particular that an engineer for Optos may have visibility of, or access to personal data belonging to patients of the customer. This is kept to an absolute minimum, but is necessary in order to effect the necessary repairs or maintenance. The customer will need to grant access to Optos (the processor) prior to the processor having visibility or access and, upon completion of the service, visibility and/or access is immediately removed.</p> <p>Specific: Optos will install the equipment and the controller will link it to their internal systems. This means that the data will remain on controller systems at all times, and subject to controller security measures. If any technical measures are required, Optos engineers have remote access but will request remote access from the controller before access is attempted. This access will not be undertaken without permission from the controller and logs of the access will be made electronically. Access will only be available for the time needed by the processor to undertake the work, at which point the processor will end remote access. Personal data may be moved internally by the processor to undertake the technical support, but data will not be extracted from the controller’s environment.</p>
<p>Sub-processor</p>	<p>Not applicable at the date of the Contract – no sub-processors are required.</p>
<p>Purposes of the processing & lawful basis for processing</p>	<p>Customer Management; Others: Patient data can be visible or retained on device during service or replacement process:</p> <ul style="list-style-type: none"> • Remote technical support services

	<ul style="list-style-type: none"> • Installation and upgrade services (on site and remote) • Remote access for troubleshooting, repairs and software updates • Hardware replacement / repair on Customer site • Training of users <p>Lawful basis for processing data:</p> <p>Controller: Article 6(1)(a) – consent, (b) – contract, (e) – public interest or (f) – legitimate interests (depending upon the specific Personal Data being processed and the status of the Customer).</p> <p>Condition of processing for special category data (biometric data, health/medical data of patients):</p> <p>Controller: Article 9(2)(h) – medical diagnosis</p>
Categories of data subjects	<p>PII (Personally Identifiable Information)</p> <p>Biometrical identification data relating to patients of the Customer</p>

Category of personal data	Address, Country, Email, Location data, Name, Postal Code, Phone number, Others: Nature of faults & warranty/Service coverage, Retina scans
Special categories of data (sensitive data)	Health and Medical, including biometric data, namely Retina scans
Transfers to a third country including the identification of that third country (or international organisation) Description of transfer mechanism	Not applicable
Description of transfer mechanism	Not applicable
Duration of Processing	The duration of the Contract. As stated above, the data will only be accessed & processed for the period of the maintenance, whereupon it will be deleted, or handed back to the controller in full. Access to the data will be severed at this point by the engineer also.
Security measures	Data encryption; Remote end-to-end encryption; Information Security Policy; Privacy Policy; Health Information Privacy Policy

