



**GIG**  
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WALES

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

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## CONTRACTUAL CLAUSES AND ARRANGEMENTS PROCEDURE

### Introduction and Aim

Cardiff and Vale University Health Board (the UHB) is obliged to ensure that work conducted by others on their behalf meets all the required Information Governance standards. Where this work involves access to information about identifiable individuals the UHB will ensure that all third part agreements have appropriate arrangements in place that comply with the law, are recorded in contracts and are monitored effectively.

Information sharing agreements between organisations in the pursuance of patient healthcare including research are covered by separate procedures; Information Sharing Protocols and Data Disclosure Agreements.

### Objectives

- To ensure that the UHB meets its obligations in respect of information governance by ensuring that third party agreements demonstrate that contractors delivering services have appropriate arrangements in place that comply with the law, are recorded in contracts and are monitored effectively.

### Scope

This procedure applies to all of our staff in all locations including those with honorary contracts and third party agreements.

### Equality Impact Assessment

An Equality Impact Assessment has been completed for the overarching IG Policy. The assessment found that there was some impact on the equality groups mentioned in relation to communication. An action plan has been developed to address those areas.

### Documents to read alongside this Procedure

Information Governance Policy

### Approved by

Information Governance Sub Committee

### Accountable Executive or Clinical Board Director

Executive Director of Finance

### Author(s)

Head of Information Governance and Assurance

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**Summary of reviews/amendments**

<b>Version Number</b>	<b>Date of Review Approved</b>	<b>Date Published</b>	<b>Summary of Amendments</b>
1	22/06/2015	27/07/2017	New Procedure

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## 1. Introduction

- 1.1. This document sets out the UHB arrangements to ensure that work conducted by others on their behalf meets all the required Information Governance standards.
- 1.2. Where this work involves access to information about identifiable individuals the UHB will ensure that all third part agreements have appropriate arrangements in place that comply with the law, are recorded in contracts and are monitored effectively.

## 2. Purpose

- 2.1. The purpose of this procedure is to provide assurance to the Senior Information Risk Officer and ultimately the UHB Board that appropriate arrangements are in place.

## 3. Roles and Responsibilities

- 3.1. UHB managers shall discharge this requirement working in liaison with NWSSP –Procurement colleagues both in the setting up of contracts and agreements and in on-going monitoring to ensure that full compliance with the contract standards for information governance are met.
- 3.2. The Clinical Board Directors in their role as Information Asset Owners and their counterparts in non clinical directorates will be accountable for the performance of the contracts in terms of monitoring information governance arrangements including the monitoring of agreements.

## 4 Addressing Security in Third Party Agreements

- 4.1. The UHB, in the course of its business, contracts or makes arrangements with third parties, for example, cleaners, security guards, auditors, management consultants. The growth of shared services in the NHS has led to some organisations outsourcing some information processing responsibilities. The responsible managers in the UHB working with NWSSP-procurement colleagues will ensure that information governance requirements in outsourcing contracts are met safely, securely, lawfully and in confidence.

## 5. Information Governance Controls

- 5.1. The UHB shall have information governance controls in place with any third party that is provided with access to the organisation's

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information. The controls cover processes and procedures that are carried out by the organisation as well as procedures and processes that the third party must have in place and adhere to. This procedure requires areas to be covered in contract agreements such as:

- The type of third party that the organisation is contracting with;
- The type of information that the third party requires access to;
- How monitoring of the third party's compliance with the information governance controls will be carried out;
- The business continuity measures that will need to be in place within both the organisation and the third party to ensure continued performance of the contract;
- Training for the contracts staff in the organisation to ensure they have knowledge of the controls to be built into third party contracts
- Training for staff who work for the third party to ensure they are aware of information governance requirements; what they can and can't do and who they should contact if things go wrong.
- How information incidents will be reported and managed;

The type of information governance controls to be documented in the third party contract.

## **6. Risk Assessments**

- 6.1. The UHB shall carry out a risk assessment prior to any proposed agreement with a third party. Particular attention will be paid if the third party proposes using sub-contractors to provide services in order to undertake the contract. In such cases, the risk assessment must also include those sub-contractors. It is essential that the nature and level of access is determined before the risk assessment is conducted and before the information governance elements of the contract are completed.

## **7. Data Protection and Confidentiality**

- 7.1. The Information Asset Owners working with procurement colleagues shall take all reasonable steps to ensure that contractors and support organisations to whom personal information is disclosed comply with their contractual obligations to keep personal information secure and confidential. Data protection legislation imposes formal obligations on

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data controllers (the UHB) that use third party data processors to ensure that the processing by the data processor is carried out under a contract, which is made or evidenced in writing, under which the data processor (the contractor) is to act only on instructions from the data controller.

7.2. Access to electronic systems and networks clearly has Caldicott/confidentiality and Data Protection Act 1998 (DPA) implications which require confidentiality and non disclosure clauses to be included in the contract. It is also essential to know what security controls the third party has in place. The contractor will need to demonstrate that they have:

- Adequate security controls, policies and training
- Staff screened prior to commencing employment
- The necessary skills to train their staff in Caldicott/confidentiality and data protection

## 8. Freedom of Information

- 8.1. The UHB shall also ensure that in addition to the contractual performance requirements outlined above, the third party is aware of the possible impact of the Freedom of Information Act 2000 on the documentation connected with that contract. Many third parties will categorise all contracting documentation as confidential and not for disclosure outside of the contracting parties. In light of the Freedom of Information Act and transparency agenda this 'confidentiality' may not apply. The UHB will ensure that the third party is aware that even though they may have categorised a document as confidential, the UHB might be obliged to disclose the document, or parts of it, to an applicant making a request under the Freedom of Information Act.
- 8.2. The UHB shall determine that the general right of access to information is not impeded by ensuring that contracts are explicit as to which information is appropriate for disclosure and which information may merit exemption (and the period for which the exemption to disclosure may be claimed) to ensure that the 'confidential' categorisation is not used inappropriately
- 8.3. Responsibility for Information Governance performance within services provided under national contracts remains with the contracting authority. The UHB is responsible for the IG components of those services contracted and managed locally.

## 9. Key Components of Contracts

- 9.1. When entering into a third party agreement/contract the UHB will need to be assured that requirements are being satisfied and that contracts and agreements clearly specify what is expected. All relevant

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information governance controls shall be built into the specific supplier contract. In particular, if the contract requires that the UHBs information is to be shared with or accessed by the third party, the contract must explicitly describe the information types concerned; and how that information will be shared or accessed.

9.2. Contracts make specific reference to data protection and security issues, such as:

- Notification;
- Limitations on disclosure and use of data;
- Obligations to comply with limits set by the organisation;
- The security and data protection standards that apply to both parties;
- The restrictions placed upon the data processor to act only on instructions from the organisation (the data controller).
- Cyber security and business continuity planning.

Specific reference should also be made within contractual arrangements to freedom of information issues, such as:

- Duty to disclose;
- Exemption from disclosure provisions;
- Records management structure;
- Responsibility for freedom of information applications.

Additionally:

- Penalties for breach of the contract;
- A provision to indemnify the organisation against breaches by the third party;
- Responsibilities for costs, e.g. for security audit, subject access, for handling information requests;
- Specific reference to other relevant legal obligations, e.g. common law duty of confidence, Computer Misuse Act 1990, intellectual property rights and copyright;
- Duty to provide reports to the organisation on the effectiveness of information governance controls that the third party has implemented;



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- Measures that will be taken if the third party is no longer able to perform their role under the contract.

9.3. As part of the Procurement process in tendering for any goods and services the UHB will agree terms and conditions which includes provision to protect the Health Board on information governance are signed up at time of contract award. Clauses pertinent to information governance are:-

- Clause 36. Confidentiality
- Clause 35. Authorities data
- Clause 37. Data Protection
- Clause 38. Business Continuity Plan
- Clause 46. Third Party Rights
- Clause 47. Third Party Beneficiaries
- There is a section on Contract Governance and includes incident reporting and monitoring

9.4. Any contract relating to patient confidentiality the contractor shall sign up the UHBs Data Protection and IT Security Policies. The signed contracts/acceptances are held in the file in Procurement Offices.

## **10. Incident Reporting Mechanisms**

10.1. The UHB shall ensure that incident reporting is included in the contract and subject to the contract review process.

## **11. Monitoring and Review of Third Party Services**

11.1. The UHB shall ensure that there is a mechanism in place that provides assurances that information governance requirements have been met. The contractor will be required to provide evidence of information governance policies and procedures or controls to ensure that they are acceptable, complete and up to date.

11.2. Monitoring and reviews shall be designed to ensure that the services in question are being delivered, that controls are being adhered to and to resolve problems or unforeseen events. Information Asset Owners should ensure that monitoring is achieved on a regular basis and that good communication is maintained with the third party to ensure issues are resolved efficiently

## **12. Managing Changes to Third Party Services**

12.1. Changes should only take place following authorisation by the nominated Information Asset Owner, or other accountable personnel within the organisation.

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12.2. Written procedures should detail actions, agreements and authorisation for all changes, whether major or minor.