



An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency



ÚDARÁS UCHTÁLA na hÉIREANN
THE ADOPTION AUTHORITY of IRELAND

DATA SHARING AGREEMENT

**THE ADOPTION AUTHORITY OF IRELAND
TUSLA, THE CHILD AND FAMILY AGENCY
RELATING TO DATA SHARING
FOR SERVICES PROVIDED BY THE
BIRTH INFORMATION AND TRACING ACT 2022**

DATED 16/12/2022

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THIS DATA SHARING AGREEMENT (the “**Agreement**”) is made and entered into effective as of 16/12/2022 (the “**Effective Date**”) by and between:

PARTIES

- (1) **The Adoption Authority of Ireland (“AAI”)** Floor 3/4 Shelbourne House, Ballsbridge, Dublin , D04 H6F6, Ireland;
- (2) **TUSLA, the Child and Family Agency (“Tusla”)**, the Brunel Building, Hueston South Quarter, Saint John’s Road West, Dublin 8, D08 X01F]

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

WHEREAS:

- (A) The AAI is designated as the Central Authority for adoption in Ireland. Tusla is the dedicated State agency responsible for improving wellbeing and outcomes for children.
- (B) The Birth Information and Tracing Act 2022 (the “**Act**”) introduced better provision in respect of access by certain persons to information concerning their birth, origins. Following enactment, certain persons can access unrestricted information about their birth and early care.
- (C) The Act provides certain specified persons within sections of the Act, with access to birth certificate, birth, other information and provided items. The Act also provides for certain persons to amend their birth certificates with the General Registrar’s Office upon application to Tusla or the AAI.
- (D) The Act also establishes a statutory Tracing Service that allows certain people to trace family members, seek a reunion, or seek information about birth relatives.
- (E) A Contact Preference Register was established by the Act, the authority and administration for the register delegated to the AAI with information access to contact preferences and recorded items granted permitted by request to Tusla.
- (F) Information and Tracing services under the Act commenced on October 3 2022 and submitted to AAI and Tusla.
- (G) Proportionate and necessary to the fulfilment of their respective obligations under the Act, the AAI and Tusla will share personal and sensitive category data
- (H) Accordingly, the Act provides the lawful basis for the AAI and Tusla to process personal data during delivery of services under the Act, performed as a task in the public interest. In addition, Tusla and the AAI are required to share with each other and certain public bodies to comply with their obligations under the Act. As such Tusla and the AAI have agreed to enter into this Agreement to ensure that any sharing of personal data is carried out in accordance with the Act, GDPR and the Data Protection Act 2018.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

1.1 All capitalized terms used in this Agreement will have the meanings given to them as follows:

“Third Party Request”	means a written request from any third party for the disclosure of Shared Personal Data, including where compliance with such a request is required or purported to be required by applicable law or regulation;
“Applicable Data Protection Law”	means the General Data Protection Regulation (2016/679) (the “GDPR”) and the Irish Data Protection Acts 1988 to 2018, along with any national transposing measures, secondary legislation (including European Commission decisions) adopted under, and any case law interpreting the foregoing;
“Data”	means the personal data that one party receives from the other pursuant to the Agreement;
“Data Subject Request”	means an actual or purported request, notice or complaint from (or on behalf of) a data subject exercising his or her rights under Applicable Data Protection Law;
“Disclosing Party”	means the Party disclosing the Shared Personal Data;
“EEA”	means the European Economic Area;
“Personal Data Breach”	has the meaning set out in the GDPR and, for the avoidance of doubt, means a breach of Clause 7.3 of this Agreement;
“Receiving Party”	means the Party that receives the Shared Personal Data;
“Regulator”	means any independent public authority, including any regulator or supervisory authority established by a Member State, responsible for the monitoring and application of Applicable Data Protection Law, including, the Data Protection Commission in Ireland;
“Regulator Correspondence”	means any correspondence or communication from a Regulator in relation to the processing of Shared Personal Data;
“Representatives”	means, in relation to either Party, its officers and employees, professional advisers or consultants engaged to advise that Party, contractors or sub-contractors engaged by that Party;
“Restricted Country”	means a country, territory or jurisdiction which is not covered by an adequacy determination by a competent authority with jurisdiction over the party who wishes to export the Shared Personal Data outside of the European Economic Area and/or the UK;

“Shared Personal Data”	Means Personal Data shared as between the AAI and Tusla for the purpose of carrying out their respective functions under the Act, the general categories of which are hereto attached as Schedule 1.
“Stated Purposes”	means the purposes set out in Clause 2.2 for which the Shared Personal Data is to be shared;
“Special Category Data”	means the categories of personal data defined by the Act and GDPR.
“Term”	means the term of this Agreement, as set out in Clause 12; and
“Third Party Request”	means a written request from any third party for the disclosure of Shared Personal Data, including where compliance with such a request is required or purported to be required by applicable law or regulation.
“Data Controller” “Processing” and “Personal Data Breach”	shall have the meanings given to them in the Act subject to GDPR

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 a gender shall include the other gender;
- 1.2.4 persons shall include corporations;
- 1.2.5 words imparting the singular shall include the plural and vice versa;
- 1.2.6 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.7 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.8 a “Party” or the “Parties” refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

2 STATED PURPOSES

2.1 Under Section 66(3) of the Act the Parties are designated as Data Controllers for the performance of their functions under the Act. This Agreement establishes, in exchange of the mutual covenants herein, the framework for the sharing of the Shared Personal Data between the Parties as independent Data Controllers to fulfil their obligations under the

Act including to satisfy Information Requests submitted to the Adoption Authority of Ireland from Tusla or to Tusla from the Adoption Authority of Ireland.

2.2 The Parties have determined that the sharing of the Shared Personal Data is necessary to meet the Parties' obligations under the Act.

2.3 The Shared Personal Data shall be disclosed by the Disclosing Party to the Receiving Party only to the extent reasonably necessary for the Stated Purposes.

3 COMPLIANCE WITH DATA PROTECTION LAW

3.1 Both Parties shall at all times during the Term of this Agreement comply with their obligations as Data Controllers in respect of the processing of Shared Personal Data under Applicable Data Protection Law, subject to any exceptions and/or limitations to such data protection obligations expressly provided for under the Act.

3.2 In processing Shared Personal Data under this Agreement, the Parties shall, to the extent required by law, comply with any regulations and guidelines published pursuant to the Act by the Minister for Children, Equality, Disability, Integration and Youth to the extent that such guidelines and regulations pertain to compliance with Applicable Data Protection Law.

3.3 To facilitate Information Request transfers, each Party shall appoint at least one of its Representatives as a point of contact for all issues relating to the sharing of the Shared Personal Data and Applicable Data Protection Law (including, but not limited to, compliance and the handling of Personal Data Breaches). The contact details for the Parties' appointed points of contact are as follows:

3.3.1 Data Protection Officer, Adoption Authority of Ireland, Shelbourne House, Shelbourne Road, Dublin D04 H6F6

3.3.2 Data Protection Officer, Tusla the Child and Family Agency, The Brunel Building, Heuston South Quarter, Saint John's Road West, Dublin 8, D08 X01F

3.4 Any material breach of Applicable Data Protection Law by either Party shall, if not remedied within 90 days of written notice from the other Party, give the other Party grounds to terminate this Agreement with immediate effect.

4 PURPOSE

4.1 The Receiving Party shall only process Shared Personal Data in connection with the Stated Purposes and for such other purposes as are required by law.

4.2 The Disclosing Party shall ensure that the Shared Personal Data is accurate and up to date, to the best knowledge of the data controllers, as well as adequate, relevant and not excessive, prior to its disclosure to the Receiving Party.

5 FAIR AND LAWFUL PROCESSING

5.1 Both Parties shall at all times during the Term of this Agreement process the Shared Personal Data fairly and lawfully within the meaning of the Act.

5.2 Both Parties shall ensure the observance of GDPR principles for data protection, lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy,

storage limitation, information security, integrity, confidentiality and accountability throughout all shared data processing activities. .

- 5.3 The Disclosing Party shall ensure that it is not subject to any prohibition or restriction which would prevent or restrict the Receiving Party from processing (including disclosing, transferring and granting access to the Receiving Party) the Shared Personal Data for the Stated Purposes.
- 5.4 The Disclosing Party shall ensure that it has in place all required fair processing notices that are sufficient in scope in order to enable the Receiving Party to process the Shared Personal Data in accordance with Data Protection Law, subject to any exceptions and/or limitations to the provision of such notice expressly provided for under the Act.

6 DATA SUBJECT RIGHTS

- 6.1 Data Subject rights shall be administered by both parties in accordance with GDPR, subject to any exceptions and/or limitations to such Data Subject rights expressly provided for under the Act.
- 6.2 Each Party shall promptly (and without undue delay) notify the other Party in the event that it receives a valid Data Subject Request, Regulator Correspondence or Third Party Request in relation to the processing of Shared Personal Data under, or in connection with, this Agreement.
- 6.3 The Party that receives such a Data Subject Request, Regulator Correspondence or Third Party Request shall be responsible for responding to such request, but each Party shall provide reasonable assistance to the other Party in complying with its respective obligations under the Data Protection Legislation.
- 6.4 Each Party shall maintain records of all Data Subject Requests, Regulator Correspondence and Third-Party Requests received, the decisions made in response, and any information provided to the parties concerned, and shall share these with the other Party on request (to the extent permitted by law).

7 SECURITY

- 7.1 Both Parties shall implement appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of, and against the accidental loss or destruction of, or damage to, the Shared Personal Data, having regard to the state of technological development and the cost of implementing any such measures.
- 7.2 When putting appropriate technical and organisational measures in place, both Parties shall ensure a level of security appropriate to the nature of the Shared Personal Data which is to be protected, and to the potential harm resulting from the unauthorised or unlawful processing of, the accidental loss or destruction of, or damage to, the Shared Personal Data.
- 7.3 Each Party shall notify the other Party without undue delay if it suffers a Personal Data Breach relating to the Shared Personal Data. Notwithstanding the foregoing, each Party shall be responsible for handling any such Personal Data Breach and notifying Data

Subjects and / or the Regulator as required, and the other Party shall provide reasonable assistance in respect of same.

8 PERSONNEL

Each Party will impose appropriate contractual obligations on those of its personnel, agents or subcontractors who it authorises to access the Shared Personal Data, including obligations regarding confidentiality, data protection and data security.

9 TRANSFERS

The Parties shall ensure that any transfer of Shared Personal Data to a Restricted Country (including transfers of Shared Personal Data between the Parties) is carried out in accordance with the Data Protection Legislation.

10 NO PARTNERSHIP OR AGENCY

10.1 Nothing in this Agreement shall establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

10.2 Each Party hereby confirms that it is acting on its own behalf and not for the benefit of any other person.

11 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

12 TERM AND TERMINATION

12.1 This Agreement shall come into effect from the Effective Date and shall continue in force unless terminated by either Party on thirty (90) days' prior written notice or otherwise as provided for in this Agreement (the "Term") in which case it is envisaged by the Parties that a new agreement would be put in place.]

12.2 If Applicable Data Protection Law requires the Parties to adopt a different form of agreement relating to the disclosure, sharing and/or Processing of the Shared Personal Data, the Parties agree to terminate or amend this Agreement, as necessary.

13 VARIATION

No variation of or addition to this Agreement shall be effective unless in writing signed by each of the Parties or by a duly authorised person on its behalf.

14 NO WAIVER

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15 SEVERANCE

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid, or otherwise unenforceable, that or those provisions shall

be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

16 NOTICES

16.1 Any notice required or permitted to be given by any Party to the other Parties under this Agreement shall be in writing addressed using the details below. Notices sent by registered post shall be deemed to have been given 2 business days after the date of posting. Notices may be validly served by email and deemed received at the time of sending if sent during normal business hours in the recipient Party's jurisdiction or on the following business day if sent outside business hours in the recipient Party's jurisdiction.

16.1.1 For Adoption Authority of Ireland: Floor 3/4 Shelbourne House, Ballsbridge, Dublin, D04 H6F6, Ireland

16.1.2 For Tusla, the Child and Family Agency: The Brunel Building, Heuston South Quarter, Saint John's Road West, Dublin 8, D08 X01F, Ireland

17 LAW AND JURISDICTION

17.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Ireland.

17.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of Ireland.

18 SURVIVAL

All provisions of this Agreement which by their nature, extend beyond the expiration or termination of this Agreement shall survive the termination or expiration of this Agreement.

19 COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which, when taken together, shall constitute one and the same agreement. The Parties each consent and agree to the execution of this Agreement by way of electronic signature by or on behalf of any Party or all of the Parties. The Parties each further consent to and acknowledge that a copy of the executed version of this Agreement which is retained in electronic form shall constitute an original of this Agreement, and that such original shall be relied on by the Parties for subsequent reference and as evidence of this Agreement.

20 WAIVERS

The failure by any Party to assert any of its rights under this Agreement shall not be deemed to constitute a waiver by that Party of its right thereafter to enforce each and every provision of this Agreement in accordance with its terms.

21 SEVERABILITY

21.1 Each obligation under this Agreement shall be treated as a separate obligation and shall be severally enforceable as such, and in the event of any obligation or obligations being found by any authority of competent jurisdiction to be invalid or unenforceable, such

invalidity or unenforceability shall not affect the other provisions or parts of such provisions of this Agreement, all of which shall remain in full force and effect.

- 21.2 If any provision of this Agreement is judged to be void as going beyond what is reasonable in all the circumstances for the protection of the interest of a party, but would be valid if part of the wording thereof were deleted or the periods thereof reduced or the range of activities or area dealt with thereby reduced in scope, the said provision shall apply with such modifications as may be necessary to make it valid and effective without affecting the legality, validity and enforceability of the remainder of this Agreement.

SIGNED AS AN AGREEMENT

For and on behalf of the **Adoption Authority of Ireland:**

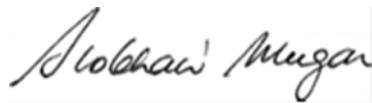


Name: Patricia Carey

Title: Chief Executive Officer (CEO)

Date: 16/12/2022

For and on behalf of **Tusla, the Child and Family Agency:**

Name: 

Title: National Manager of Adoption, Birth and Information Tracing Services.

Date: 16/12/2022

SCHEDULE 1

1. **Contact Preference Register:** Data prescribed and collected and retained pursuant to Section 38 (7) of the Birth Information and Tracing Act 2022
- 2.
3. **Adoption Authority/An Bord Uchtála Records:** Data prescribed, collected and retained pursuant to the Authorities powers under the Adoption Acts 1952- 2017 and the following statutory instruments:
 - a) S.I. No. 215/1953 – Short Birth Certificate Regulations 1953
 - b) S.I. No. 019/1965 - Adoption Rules 1965
 - c) S.I. No. 216/1976 - Adoption Rules 1976
 - d) S.I. No. 134/1984 - Adoption Rules 1984
 - e) S.I. No. 234/1987 - Registration of Births, Deaths and Marriages Regulations 1987
 - f) S.I. No. 304/1988 - Adoption Rules 1988
 - g) S.I. No. 170/1990 - Adoption Rules 1990
 - h) S.I. No. 223/1996 - Adoption Rules 1996
 - i) S.I. No. 315/1999 - Adoption Rules 1999
 - j) S.I. No. 770/2005 - Registration of Adoptions and Marriages (Abridged Certificate) Regulations 2005
 - k) S.I. No. 771/2005 - Civil Registration (Short Birth Certificate) Regulations 2005
 - l) S.I. No. 518/2010 - Adoption Act 2010 (Section 85) (Fees) Regulations 2010
 - m) S.I. No. 519/2010 - Adoption Act 2010 (Consent to Adoption Order) (Forms) Regulations 2010
 - n) S.I. No. 520/2010 - Adoption Act 2010 (Pre-Placement Consultation Procedure) Regulations 2010
 - o) S.I. No. 521/2010 - Adoption Act 2010 (Register of Intercountry Adoptions) Regulations 2010
 - p) S.I. No. 597/2010 - Adoption Act 2010 (Section 134) (Forms) Regulations 2010
 - q) S.I. No. 611/2011 - Adoption Act 2010 (Abridged Certificate) Regulations 2011
 - r) S.I. No. 535/2017 - Adoption Act 2010 (Consent to Adoption Order) (Forms) Regulations 2017
 - s) S.I. No. 537/2017 - Adoption Act 2010 (Register of Gender Recognition of Intercountry Adoptions) (Fees) Regulations 2017
 - t) S.I. No. 606/2017 - Adoption Act 2010 (Pre-Placement Consultation Procedure) (Forms) Regulations 2017
 - u) S.I. No. 534/2015 - Adoption Act 2010 (Register of Gender Recognition of Intercountry Adoptions) Regulations 2015
 - v) S.I. No. 536/2017 - Adoption Act 2010 (Section 85) (Fees) Regulations 2017
 - w) S.I. No. 007/2018 - Adoption Act 2010 (Section 85) (Fees) Regulations 2018
 - x) S.I. No. 008/2018 - Adoption Act 2010 (Register of Gender Recognition of Intercountry Adoptions) (Fees) Regulations 2018
 - y) S.I. No. 508/2019 - Adoption Act 2010 (Abridged Certificate) Regulations 2019
4. **Accredited Bodies Records:** Data prescribed, collected and retained pursuant to Section 133 of the Adoption Act 2010

5. **Tusla - Child and Family Agency Records:** Data prescribed, collected and retained pursuant to the Agency's powers under Section 9 of the Child and Family Agency Act 2013
6. **Family Support Agency and National Educational Welfare Board Records:** Data collected and retained pursuant to Section 76 of the Child and Family Agency Act 2013
7. **Health Services Executive Records:** Data collected and retained pursuant to Section 87 of the Child and Family Agency Act 2013
8. **Secondary Information Source:** Data collected and retained pursuant to Sections 44 – 48 and Section 50 of the Birth Information and Tracing Act 2022