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| --- | --- | --- |
|  |  | **Template data sharing agreement** |
| **Amendment History** |  |
|  |  |  |
| Version | Date | Amendment History |
| 0.1 | 30 June | First draft for comment |
|  | 2014 |  |
|  |  |  |
| 1.0 | 29 June | Updated for GDPR compliance |
|  | 2018 |  |
|  |  |  |

**Reviewers**

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Title / Responsibility | Date | Version |
| Richard Sewart | Senior Information Governance Manager | 29 June | 1.0 |
|  |  | 2018 |  |
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**Approval**

**This document must be approved by the following:**

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Title / Responsibility | Date | Version |
|  |  |  |  |
| Michael Goodson | Senior Information Governance Lead | 29 June | 1.0 |
|  |  | 2018 |  |
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NHS England – Information Governance Taskforce Information Sharing Agreement Template – Version1.0 draft Date Approved

This template agreement should be completed by the parties involved in the specific project, with advice and assistance from the Information Governance Lead and/ or Data Protection Officer in each organisation.

Under the GDPR, all public authorities (bodies that are covered by the Freedom of Information Act 2000) must have a data protection officer (DPO). This means that all NHS bodies, local authorities and regulators will have a DPO. It may not always be the case that the DPO can provide all the input that is needed when drafting a data sharing agreement. If you are sharing patient data then you will need to make sure that you comply with the law of confidentiality. This is another area of law separate to GDPR/data protection. The DPO will not necessarily be an expert in the law and practice around patient confidentiality.



[Insert name and version no. of Information Sharing agreement] Page 1

2018-02-28 Data sharing agreement v06 (LW proof read)

HD\_INFDPA\_GDPR Guidance

**[Insert name of Agreement]**



[Insert name and version no. of Information Sharing agreement] Page 2



|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |  |
| **THIS AGREEMENT** is made on | *[insert date]* | 2018 |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
| **1** |  | **Between**: |  |  |  |  |  |  |
|  |  | NHS England *[specify the area/team if not national]* and |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  | *[Insert the names of the organisation(s) party to the agreement. This should include* |  |  |
|  |  | *name and address. If the organisation is a company the address should be the* |  |  |
|  |  | *address of their registered office and their company number should also be included.]* |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
| **2** |  | **Definitions** |  |  |  |  |  |  |
|  |  | See Annex A |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| **3** |  | **Purpose, objectives of the information sharing**: |  |  |  |  |
|  |  | ***Drafting note:*** *Document the detail to explain the purpose and objectives of the* |  |
|  |  | *information sharing. This should be as clear as possible and avoid “catch all” terms to* |  |
|  |  | *ensure that all parties affected by the information sharing are clear about why the* |  |
|  |  | *information may be used. This is to ensure compliance with the GDPR. All the* |  |
|  |  | *purposes of the sharing should be listed. It should be made clear which organisation is* |  |
|  |  | *processing the data and for which purpose.* |  |  |  |  |
|  |  |  |  |  |  |  |
| **4** |  | **Data Protection Impact Assessment (DPIA)** |  |  |  |  |
|  |  | ***Drafting note:*** *Article 35 makes Data Protection Impact Assessments a legal* |  |
|  |  | *requirement for any processing that is likely to result in a high risk to the rights and* |  |
|  |  | *freedoms of natural persons.* |  |  |  |  |  |  |
|  |  | ***If Yes attach the DPIA as an appendix.*** |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  | ***If No attach*** | *[Pre-checklist]* |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| **5** |  | **Legal powers for processing the data/information** |  |  |  |  |
|  |  | ***Drafting note:*** *Under Article 5.1(a) of the GDPR Personal Data must be processed* |  |
|  |  | *“lawfully”.* |  |  |  |  |  |  |
|  |  | *Private sector organisations are able to do anything so long as it is not prohibited by* |  |
|  |  | *legislation. This means that they can share and Process Personal Data, provided this* |  |
|  |  | *does not breach the GDPR and other data protection laws.* |  |  |  |  |
|  |  | *The same is not true for public bodies (like NHS England, local authorities, NHS Trusts,* |  |
|  |  | *NHS Foundation Trusts, CCGs) that have been set up by legislation. Those* |  |
|  |  | *organisations can only do what legislation empowers them to do, and they can only do* |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| [Insert name and version no. of Information Sharing agreement] | Page 3 |

*things for the purpose given to them by legislation. So for the processing of Personal Data to be done “lawfully” by one of these public bodies the public body must:*

* *Have the “power” to Process and share Personal Data.*

*NHS England, CCGs and local authorities have the power under the NHS Act 2006, Schedule 1, paragraph 13(3) to obtain and analyse data.*

*Other public bodies may not have a power that expressly mentions obtaining and analysing data but they often have the power to do anything that is “incidental” or “conducive” to carrying out the tasks given to them by legislation. The processing of Personal Data will usually come within this.*

*The same is true of sharing information. There are some cases where public bodies are expressly given the power to disclose information in particular circumstances but these cases are not the norm. A power to do anything that is*

*“incidental” or “conducive” to carrying out the tasks given to a public body by legislation will usually cover the sharing of Personal Data. Under section 2 of the NHS Act 2006, NHS England has the power to do anything calculated to facilitate, or that is conducive or incidental to the discharge of any of the tasks given to it by the NHS 2006 Act.*

* *Be processing the Personal Data for a purpose authorised by legislation.*

*Where a Party is a public body set up by legislation please specify (1) the powers and*

1. *statutory purpose that enables it to process data in the way set out in this Agreement.*

*For the reasons outlined above, this section does not have to be completed for private sector organisations.*

**Legal powers to receive, share and analyse data** NHS England

* *NHS Act 2006, Schedule 1, paragraph 13(3) to obtain and analyse data.*
* *NHS Act 2006, Section 2 gives NHS England the power to do anything calculated to facilitate, or that is conducive or incidental to the discharge of any of the tasks given to it by the NHS 2006 Act. This includes sharing data when this is done for a proper purpose*

[Insert information for other organisation(s)]

**Statutory purpose**

NHS England:

[Insert relevant duties and functions here.]

***Drafting note:*** *These can include commissioning functions and also duties to work in**an integrated way with the rest of the health and social care system.*

[Insert information for other organisation(s)]



[Insert name and version no. of Information Sharing agreement] Page 4

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **6** |  | **Data Controller(s)** |  |  |  |  |  |  |
|  |  | ***Drafting note:*** *Name the Controller(s) and include any Processors where applicable**–* |  |
|  |  | *this will assist with providing assurance that all parties have been included and will* |  |
|  |  | *assist compliance with the GDPR. Please say if any organisations are together Joint* |  |
|  |  | *Controllers i.e. they do not take decisions about the processing of Personal Data.* |  |
|  |  |  |  |  |  |  |  |
|  |  | Please | [confirm that there is] [OR] [provide] | a written report of the due diligence that |  |
|  |  | has been carried out on any Processors and sub-processors. Please confirm that this |  |
|  |  | is regularly reviewed. |  |  |  |  |  |  |
|  |  | ***Drafting note:*** *You may wish to see a copy of the due diligence report. If so, you can* |  |
|  |  | *request it here.* |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
| **7** |  | **Data items to be processed** |  |  |  |  |  |  |
|  |  | ***Drafting note:*** *Specify the data items or attach as an appendix and explain why they* |  |
|  |  | *are needed to achieve the purposes set out at point 3. N.B. to comply with the Article* |  |
|  |  | *5(1)(c) the items should be adequate, relevant and limited to what is necessary.* |  |
|  |  |  |  |  |  |  |  |  |
|  |  | **Data Item** | **Justification** |  |  |  |  |
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| **8** |  | **Article 6 condition – all Personal Data** |  |  |  |  |  |  |
|  |  | ***Specify which Article 6 condition is met. You can rely on more than one*** |  |
|  |  | ***condition.*** |  |  |  |  |  |  |
|  |  |  |  |  |
|  |  | ***Drafting note:*** *If you are relying on the public task condition (condition 6.1(e)) you will* |  |
|  |  | *need to set out any legislation that you are relying on that gives your organisation that* |  |
|  |  | *task (name of legislation and section number).* |  |  |  |  |
|  |  | *If you are relying on compliance with a legal obligation condition (condition 6.1 (c)) you* |  |
|  |  | *will need to explain the legal obligation.* |  |  |  |  |  |  |
|  |  | *Remember that public bodies cannot rely on the legitimate* | *interests condition* |  |
|  |  |  |  |  |  |  |  |  |  |  |
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| [Insert name and version no. of Information Sharing agreement] | Page 5 |

*(condition 6.1(f)) if they are processing Personal Data to carry out their public task. If the data is being processed for that purpose then condition 6.1(e) should be relied on. If consent is relied on you must attach a copy of the consent form(s) template and procedure as an appendix and specify here, if applicable, any procedure for children or patients who lack capacity. You must also explain how withdrawal of consent will be dealt with.*

1. **Article 9 condition – special categories of Personal Data**

***Drafting note:*** *If the data is a “special category of**Personal Data” specify the Article 9**condition that will be met. The special categories of Personal Data are:*

* + *race*
	+ *ethnic origin*
	+ *political opinion*
	+ *religion or philosophical belief*
	+ *trade union membership*
	+ *genetics*
	+ *biometrics (where used for ID purposes)*
	+ *health (including mental health)*
	+ *sex life*
	+ *sexual orientation*

*Unlike under the DPA 1998 Personal Data relating to criminal convictions and offences are not included but see further below.*

*If consent is relied on you must attach a copy of the consent form(s) template procedure as an appendix and specify here, if applicable, any procedure for children or patients who lack capacity. You must also explain how withdrawal of consent will be dealt with.*

***For many of the Article 9 conditions there will be extra requirements set down in the Data Protection Act 2018,*** *including having a policy document that covers the**processing. Please identify here what extra requirements apply and how they will be met.*

1. **Article 10 – criminal offence data**

***Drafting note:*** *Article 10 applies to Personal Data relating to criminal convictions and**offences, or related security measures. This is referred to as criminal offence data. To Process criminal offence data you must either be Processing the data in an official capacity, or have specific legal authorisation – which in the UK, is likely to mean a condition under the Data Protection Bill and compliance with the additional safeguards*

*set out in the Bill. You can find out more here: https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/criminal-offence-data/*



[Insert name and version no. of Information Sharing agreement] Page 6

***Please identify here whether you are Processing criminal offence data.***

***Please identify here how the requirements of Article 10 and/ or the Data Protection Bill will be met***

1. **Compliance with confidentiality and privacy rights** Common law duty of confidentiality

***Drafting note:*** *This section is not applicable if the data is already de-identified.*

*To comply with the law of confidentiality and assurances provided to patients at national level about how their data will be used, patient identifiable data should only be shared if one of the following criteria is met:*

* + *the sharing is for the purpose of providing health and social care to the Data Subject (often called direct care);*
	+ *the sharing is covered by a section 251 authorisation (you can find out more about section 251 authorisation* [*here;*](https://www.hra.nhs.uk/approvals-amendments/what-approvals-do-i-need/confidentiality-advisory-group/)
	+ *the sharing is done through NHS Digital (i.e. each organisation provides data to NHS Digital, NHS Digital carries out any analysis and provides de-identified data back to each organisation); or*
	+ *the Data Subject has given their informed and express consent in advance. If consent is relied on you must attach a copy of the consent form(s) template and procedure as an appendix and specify here, if applicable, any procedure for children or patients who lack capacity.*

*Note that the act of de-identifying Personal Data itself needs to comply with the law of confidentiality, so if you are de-identifying data then one of the criteria above must be fulfilled.*

*Human Rights Act 1998 - Article 8*

***Drafting note:*** *See Human Rights: Human Lives, Equality and Human Rights**Commission* [*www.equalityhumanrights.com,*](http://www.equalityhumanrights.com/) *A Guide to the Human Rights Act for Public Authorities*

*Where Processing is carried out by a public authority like NHS England, Personal Data is protected by the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights as part of an individual’s private life. In the context of medical records, the European Court of Human Rights has stated:*

*The protection of Personal Data, particularly medical data, is of fundamental importance to a person’s enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. The domestic law must afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the*



[Insert name and version no. of Information Sharing agreement] Page 7

*guarantees in Article 8 of the Convention.*

**Is there any interference with Human Rights Article 8?**

**Yes/No/Not applicable**

**If yes, document why it is necessary and proportionate to do so:**

1. **How will the data sharing be carried out?**

***Drafting note:*** *Document the arrangements for Processing the information. This**should include:*

* + *who in each organisation will have responsibility for overseeing the Processing (name, job title and contact details)*
	+ *which organisation is providing which data*
	+ *the mechanism by which the data will be shared and an explanation, why this is secure and which organisation is responsible for ensuring security*
	+ *how any outputs/ analysis will be shared and an explanation of why this is secure*
	+ *whether any information is being transferred outside the EU (this is to ensure compliance with Article 45 of the GDPR)*
	+ *what record will be kept of what information has been shared and with whom (this is important as organisations may need to update one another about matters concerning the information that has been shared – Article 19)*
1. **Privacy notices – articles 13 & 14 *Drafting note:*** *Set out here:*
	* *who provides information to Data Subjects about the Processing carried out as a result of the data sharing covered by this agreement?*
	* *how is this communicated?*
	* *what is the content of the privacy notice issued by each organisation? Please include web links to any existing notices you are relying on.*
	* *how do you ensure that communications with Data Subjects from different organisations about how their data will be used are consistent?*
	* *are Data Subjects given an easily accessible single point of contact if they have any queries about the data sharing or want to exercise their data protection rights? and*
	* *if you are Processing any Personal Data about children, what have you done to ensure that your privacy notice is accessible to them?*

*If the organisations sharing information are Joint Controllers then (Article 26.1):*

* *this agreement must designate the contact point for Data Subjects. This should be set out in the privacy notice.*



[Insert name and version no. of Information Sharing agreement] Page 8

* *this agreement must cover arrangements for issuing privacy notices (you can do this by setting out the details outlined above)*
* *they must publish a summary of this Agreement. Responsibility for this should be set out in this section.]*
1. **Specify the procedures for dealing with the exercise of subject rights under Chapter III of the GDPR, FOIA access requests, or complaints or queries, from Data Subjects and members of the public**

***Drafting note:*** *This is to ensure compliance with Chapter III of the GDPR. Chapter III**covers subject access requests, right to have inaccurate data amended, right to have Personal Data deleted, right to restrict use of Personal Data, right to data portability, right to object, and the right to prevent automated decision-making/ profiling.*

*If the organisations sharing information are Joint Controllers then this agreement must (under Article 26.1):*

* + *designate the contact point for Data Subjects; and*
	+ *determine the responsibility of each organisation for complying with Chapter III rights.*

**How will the organisations keep each other up to date about the amendment, erasure or restriction of use of Personal Data that has been shared under this agreement?**

*Under the GDPR there is a new obligation on Controllers to pass on information about the amendment, erasure or restriction of use of Personal Data to any organisation with whom that Personal Data has been shared (Article 19).*

1. **Specify the retention period for the information to be shared**

***Drafting note:*** *This is to ensure compliance with Article 5(1)(e) of the GDPR.*

*Insert the retention period(s) for the shared data and any analysis/outputs generated as part of the data sharing.*

*Include the rationale/business need If this information is provided in an organisation’s general document retention policy please supply a copy and indicate the relevant entry in the policy.*

1. **Specify the process for deleting/returning/safely destroying the information when it is no longer required (this should include provision for notification of such deletion/destruction)**

***Drafting note:*** *This is to ensure compliance with Article 5(1)(e) of the GDPR. Again, if**this is to be done in accordance with an organisation’s document retention/ destruction policy you can provide a copy of the policy and say which parts of it apply.*

1. **Specify any particular obligations on all parties to the agreement:**



[Insert name and version no. of Information Sharing agreement] Page 9

***Drafting note:*** *Some obligations will be applicable to**all**parties but where a specific**organisation(s) has a particular task e.g. system security, reporting, this needs setting out in section12. Ensure that, where a contract exists, these obligations do not conflict with it – amend the obligations as necessary. If it is agreed that a particular Party will take responsibility for any particular obligation it should be moved to section 14.*

Each organisation signed up to this Agreement will:

17.1 comply with its obligations under the Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and comply with Data Guidance. The Parties acknowledge that once a Party has received data under this Agreement it will be responsible for ensuring that its own Processing of that data complies with this clause;

17.2 use the information shared solely for the purposes identified and shall not Process the information for any other purposes;

17.3 agree to treat the data received by them under the terms of this Agreement as confidential and shall safeguard it accordingly. Respect for the privacy of individuals will be afforded at all stages of Processing;

17.4 notify the other parties to this Agreement of any breach of this Agreement (in particular paragraph 17.1) connected to the sharing of information under this Agreement within 24 hours of first suspecting the breach. This obligation extends to breaches concerning the systems on which the data shared under this Agreement are held, even if the data shared under this Agreement is not directly affected;

17.5 notify the other parties to this Agreement of any complaint received from any person about the sharing of data under this agreement or any correspondence from the Information Commissioner or other regulator regarding the sharing of data under this Agreement; and

17.6 assist each other, in responding to requests made under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 in relation to the information shared under this Agreement to ensure a co-ordinated and consistent response.

*Amend the above and/or add any further obligations as required*

1. **Specify any particular obligations on any individual Party:**

***Drafting note:*** *E.g. co-ordination of incident reporting, co-ordination of responses to**queries/complaints from individuals affected by the information sharing, conduct of Data Privacy Impact Assessments*

1. **Data Protection Officers**



[Insert name and version no. of Information Sharing agreement] Page 10

Each Party shall notify the other Parties of the name, email address, and direct dial telephone number of any Data Protection Officer and promptly notify the other Parties of any changes to those details.

1. **Commencement of Agreement**

***Drafting note:*** *Specify the date the Agreement will come into force.*

1. **Review of Agreement**

***Drafting note:*** *Specify when the agreement will be reviewed.*

A review of this information sharing agreement shall take place by [insert date] each year [insert review period if different]. All parties to this Agreement agree to take part and fully cooperate in this review.

1. **Persons responsible for the development and review of this Agreement**

***Drafting note:*** *Specify Job Title and Organisation to enable relevant parties to be part**of the review.*

1. **Dispute Resolution**

23.1 In the event of a dispute arising under this Agreement, authorised representatives of the Parties will meet to try to resolve the dispute within five Business Days of being requested in writing by any Party to do so. If the dispute remains unresolved, it will then be referred to a senior manager from each of the Parties who will use all reasonable endeavours to resolve the dispute within a further ten Business Days.

23.2 If the Parties are unable to settle the dispute by negotiation, they must, within 5 Business Days after the end of the ten Business Day period referred to above submit the dispute to an independent body or organisation agreed between the Parties. If the Parties are unable to agree on an independent body or organisation within that period then the dispute shall be submitted to the Centre for Effective Dispute Resolution (CEDR). The mediations will follow the mediation process of the independent body or organisation agreed by the parties or CEDR as appropriate.

**24** **Termination**

24.1 This Agreement shall commence on the date set out at clause 20. Unless terminated in accordance with this clause, this Agreement shall terminate on [insert termination date].

24.2 Any Party may leave this Agreement by giving 20 Business Days’ notice



[Insert name and version no. of Information Sharing agreement] Page 11

in writing to the other Parties.

**[OR]**

Any Party may withdraw from this Agreement at any time by notifying the other Parties in writing that it will no longer be sharing data under this Agreement .

*[****Drafting note:*** *Some data processing agreements are voluntary – they cover any data sharing that takes place but the parties are not obliged to share data. If that is the case for your arrangements you will need to use the second set of wording.]*

24.3 Without affecting any other right or remedy available to it, each Party may immediately terminate this Agreement by notice in writing to the other Parties if any other Party commits a material breach of any provision of this Agreement or any other Party repeatedly breaches any of the provisions of this Agreement.

24.4 On termination of this Agreement:

1. any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination, shall not be affected;
2. the provisions of this Agreement which place obligations on the Parties in respect of the Processing of personal information shall continue in force and effect until such time as the Processing of the personal information received pursuant to this Agreement ceases;
3. without prejudice to the foregoing sub-clause, the provisions of this Agreement that expressly or by implication are intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect; and
4. each Party shall, at the request of any other Party, and promptly following that request, provide the other Parties of confirmation its compliance with sub-clause [(ii)of](#page13) this clause.

**25** **Variation**

25.1 Any proposed changes to this Agreement, including the addition or removal of parties, the purposes of the information sharing, the nature or type of information shared or manner in which the information is to be Processed must be notified promptly to the Information Compliance/Governance leads so that the impact of the proposed changes can be assessed.

25.2 No variation of this Agreement shall be effective unless it is in writing and signed by all of the Parties to this Agreement.



[Insert name and version no. of Information Sharing agreement] Page 12

**26** **Remedies and no waiver**

26.1 Without affecting its liability for breach of any of its obligations under this Contract, a Controller will be liable to the other co-signees for, and must indemnify and keep the other co-signees indemnified against any fine that results from or arises out of the Controllers, or Processors engaged by the Controller, breach of Data Protection Law.

26.2 Each Party (“the Breaching Party”) shall indemnify, defend and hold harmless the other Parties (“the Non-Breaching Parties”) from and against all and any losses, claims, liabilities, costs, charges, expenses, awards and damages of any kind including any fines and legal and other professional fees and expenses (irrespective of whether they were reasonably foreseeable or avoidable) which it/they may suffer or incur as a result of, or arising out of or in connection with, any breach by the Breaching Party of any of its obligations in this Agreement.

26.3 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law or in equity.

26.4 A waiver of any right or remedy under this Agreement or by law or in equity is only effective if given in writing and signed on behalf of the Party giving it and any such waiver so given shall not be deemed a waiver of any similar or subsequent breach or default.

26.5 A failure or delay by a Party in exercising any right or remedy provided under this Agreement or by law or in equity shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law or in equity shall prevent or restrict the further exercise of that or any other right or remedy.

**27** **Notices**

Any notice given to a Party under or in connection with this Agreement shall be in writing in the English language and shall be sent [by email] to the relevant address set out below.

*[Drafting note: We have allowed service of notice by email as this is how things usually operate in practice. Also, it is more likely that the notice will get to the right person if it is sent directly to a nominated email address rather than by post to the organisation’s head office. You will need to make sure that the email address is monitored even when people are on holiday etc. This clause can be amended so that notice by email is not permitted and this is done by post instead.]*

NHS England contact email: [insert]

[Insert a contact email for each other organisation]



[Insert name and version no. of Information Sharing agreement] Page 13

Any notice validly given in accordance with the foregoing clause shall be deemed to have been received the following Business Day.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any mediation or other method of dispute resolution where any service may be made by any means permitted by law.

**28** **General**

28.1 No Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over, or deal in any other manner with any or all of its rights and obligations under this Agreement.

28.2 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

28.3 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

28.4 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), provided that nothing in this clause shall prevent a Party from enforcing any judgement obtained in the court of England and Wales in any other court with jurisdiction over the other Party.



[Insert name and version no. of Information Sharing agreement] Page 14

**Information Sharing Agreement**

***Signatures***

Signed for and on behalf of: NHS England *NB. specify service/area and include the address*

Name:

Position:

Signature:

Date:



[Insert name and version no. of Information Sharing agreement] Page 15

**Information Sharing Agreement**

***Signatures***

Signed for and on behalf of:

*[Insert name and address of organisation]*

Name:

Position:

Signature:

Date:



[Insert name and version no. of Information Sharing agreement] Page 16

**Annex A**

***Definitions***

In this Agreement the following words have the following meanings:

|  |  |  |
| --- | --- | --- |
| **Business Day** | means a day other than a Saturday, Sunday or public holiday |  |
|  | in England when banks in London are open for business; |  |
|  |  |  |
| **Controller** | shall take the meaning given in the Data Protection |  |
|  | Legislation |  |  |  |  |
|  |  |  |
| **Data Guidance** | means any applicable guidance, guidelines, direction or |  |
|  | determination, framework, code of practice, standard or |  |
|  | requirement | regarding | information | governance, |  |
|  | confidentiality, privacy or compliance with the Data Protection |  |
|  | Legislation (whether specifically mentioned in this Agreement |  |
|  | or not) to the extent published and publicly available or their |  |
|  | existence or contents have been notified to the Supplier by |  |
|  | NHS England and/or any relevant Regulatory or Supervisory |  |
|  | Body. This includes but is not limited to guidance issued by |  |
|  | NHS Digital, the National Data Guardian for Health & Care, |  |
|  | the Department of Health, NHS England, the Health |  |
|  | Research Authority, Public Health England, the European |  |
|  | Data Protection Board and the Information Commissioner; |  |
|  |  |  |
| **Data Privacy Impact** | shall take the meaning given in the Data Protection |  |
| **Assessment (DPIA)** | Legislation |  |  |  |  |
|  |  |  |
| **Data Protection** | means (i) the DPA 1998 (ii) the GDPR, the LED and any |  |
| **Legislation** | applicable national Laws implementing them as amended |  |
|  | from time to time (iii) the DPA 2018 (iv) all applicable Law |  |
|  | concerning privacy, confidentiality or the Processing of |  |
|  | Personal Data including but not limited to the Human Rights |  |
|  | Act 1998, the Health and Social Care (Safety and Quality) |  |
|  | Act 2015, the common law duty of confidentiality and the |  |
|  | Privacy and Electronic Communications (EC Directive) |  |
|  | Regulations |  |  |  |  |
|  |  |  |
| **Data Protection Officer** or | shall take the meaning given in the Data Protection |  |
| **DPO** | Legislation |  |  |  |  |
|  |  |  |
| **Data Subject** | shall take the meaning given in the Data Protection |  |
|  | Legislation |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
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| [Insert name and version no. of Information Sharing agreement] |  | Page 17 |

|  |  |  |  |
| --- | --- | --- | --- |
| **Joint Controller** | shall | take the meaning given in the Data Protection |  |
|  | Legislation |  |  |
|  |  |  |  |
| **Personal Data** | shall | take the meaning given in the Data Protection |  |
|  | Legislation |  |  |
|  |  |  |  |
| **Process** (and cognate | A shall take the meaning given in the | Data Protection |  |
| terms) | Legislation |  |  |
|  |  |  |  |
| **Processor** | shall | take the meaning given in the Data Protection |  |
|  | Legislation |  |  |
|  |  |  |  |
| **Party** | A party to this Agreement |  |  |
|  |  |  |
| **Regulatory or** | means any statutory or other body having authority to issue |  |
| **Supervisory Body** | guidance, standards or recommendations | with which the |  |
|  | relevant Party and/or Staff must comply or to which it or they |  |
|  | must have regard, including: |  |  |
|  | (a) | CQC; |  |  |
|  | (b) | NHS Improvement; |  |  |
|  | (c) | NHS England; |  |  |
|  | (d) | the Department of Health; |  |  |
|  | (e) | NICE; |  |  |
|  | (f) | Healthwatch England and Local Healthwatch; |  |
|  | (g) | Public Health England; |  |  |
|  | (h) | the General Pharmaceutical Council; |  |  |
|  | (i) | the Healthcare Safety Investigation Branch; |  |
|  | (j) | Information Commissioner; |  |  |
|  | (k) | European Data Protection Board; |  |  |
|  |  |  |  |
| **Special Categories of** | As defined in Article 9 of the GDPR - | Personal Data |  |
| **Personal Data** | revealing: |  |  |
|  | (a) | racial or ethnic origin |  |  |
|  | (b) | political opinions |  |  |
|  | (c) | religious or philosophical beliefs |  |  |
|  | (d) | trade union membership |  |  |
|  | (e) | genetic data or biometric data identifying a natural |  |
|  |  | person |  |  |
|  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |
| [Insert name and version no. of Information Sharing agreement] | Page 18 |

* 1. data concerning health
	2. data concerning a natural person's sex life or sexual orientation
1. Reference to any legislative provision shall be deemed to include any statutory instrument, bye law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re- enactment, amendment or replacement of the same.
2. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
3. References to clauses and Schedules are to be clauses and Schedules to this Agreement.



[Insert name and version no. of Information Sharing agreement] Page 19