

Network Contract Directed Enhanced Service

**Template Data Sharing Agreement**

**Version 2, 1 April 2024**



## Template Data Sharing Agreement

This Data Sharing Agreement is a template only for the purposes of facilitating discussions within a Primary Care Network in relation to data sharing to support delivery of the Network Contract Directed Enhanced Service. This template has been jointly agreed between NHS England and GPC England.

The use of this template is not mandatory. Primary Care Networks are free to enter into different forms of data sharing agreement at their discretion.

If this template is used, it needs to be developed further between the members of the Primary Care Network. Guidance notes have been prepared to accompany this template. This template is not capable of execution in its current form.

This template and the guidance notes (included at the end of the document) do not constitute legal advice in relation to a Primary Care Network’s data protection obligations and NHS England and GPC England accept no liability in relation to the use of this template.

**DATA SHARING AGREEMENT**

**THIS DEED** is made the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20[ ]

**BETWEEN:**

1. **[PARTY 1]** of [ADDRESS];
2. **[PARTY 2]** of [ADDRESS];
3. **[PARTY 3]** of [ADDRESS]; and
4. **[PARTY 4]** of [ADDRESS],

(each a "**Party**"and together the "**Parties**").

**BACKGROUND:**

1. The Parties are party to the Primary Care Network Agreement and are required by that agreement to share Personal Data with one another in connection with the performance of their obligations under the Primary Care Network Agreement.
2. This Agreement sets out the terms and conditions that shall apply to the sharing of Personal Data between the Parties in connection with the performance of their obligations under the Primary Care Network Agreement where each party acts as a Controller in relation to the Shared Personal Data.

**NOW IT IS HEREBY AGREED** as follows:

# DEFINITIONS AND INTERPRETATION

## In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

|  |  |
| --- | --- |
| “Agreed Sharing Mechanisms” | means the technical measures described in paragraph 6 of Schedule 1 (*Data Sharing Protocol)*, being the means by which the Parties shall transmit Shared Personal Data between each other; |
| “Authorised User”  | means, in relation to each Party, each member of its Staff who (a) falls within any one of the categories specified in (as applicable) the Privacy Notices, and (b) is authorised by that Party to Process the relevant Shared Personal Data for the purposes stated in such Privacy Notices; |
| “Caldicott Principles” | the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997) as updated and supplemented by the Information Governance Review (March 2013), known as Caldicott 2, and available at <https://www.gov.uk/government/publications/the-information-governance-review>, the Review of Data Security, Consent and Opt-Outs (July 2016), known as Caldicott 3, and available at <https://www.gov.uk/government/publications/review-of-data-security-consent-and-opt-outs>, and the Caldicott Principles: A consultation about revising, expanding and upholding the principles (2020) and available at <https://www.gov.uk/government/consultations/caldicott-principles-a-consultation-about-revising-expanding-and-upholding-the-principles>;  |
| “Commencement Date” | [the date of this Agreement]; |
| "Commissioner" | has the meaning given to it in the UK GDPR; |
| "Controller" | has the meaning given to it in the UK GDPR; |
| “Current Parties” | means all of the persons who are at the relevant time the current Party or Parties to this Agreement, and a “**Current Party**” means any of such persons; |
| “Cybersecurity Legislation” | means the Network and Information Systems Regulations 2018; |
| “Data Protection Contact” | means the person appointed by each Party in accordance with clause 3.5 and identified in paragraph 11 of Schedule 1 (*Data Sharing Protocol)*; |
| "Data Protection Legislation" | means all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any guidance or codes of practice issued by the Commissioner from time to time; |
| “Data Security and Protection Toolkit” | means the Data Security and Protection Toolkit (consisting of standards, requirements and assessment resources) as defined and published annually by NHS England during the Term; |
| "Data Subject" | has the meaning given to it in the UKGDPR; |
| “Disclosing Party” | means a Party who makes available any Shared Personal Data to another Party; |
| “Electronic Information Processing Systems” | means the electronic data processing systems operated by a Party (either directly, or via its Processor), being the means by which that Party shall Process the Shared Personal Data for use within its own organisation; |
| [“Exit Date” | means the date on which an Exiting Party ceases to be a Party to the Primary Care Network Agreement;] |
| [“Exiting Party” | means a Party that ceases to be a Party to this Agreement pursuant to clause 8 *(Voluntary Exit)* or clause 9 *(Expulsion)*;] |
| “UK GDPR”  | means the General Data Protection Regulation (Regulation (EU) 2016/679) as incorporated into UK legislation by way of the European Union (Withdrawal Agreement) Act 2020 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; |
| “Governing Body” | means the decision-making body established under the Primary Care Network Agreement, as more particularly specified in Schedule 1 of the Primary Care Network Agreement; |
| “Information Governance Assessment” | means, for each Party, its completed assessment as prepared by it using the Data Security and Protection Toolkit in accordance with clause 4.7 of this Agreement; |
| “Patient” | means, in relation to a Party, any living individual that presents to such Party as a patient or service user; |
| “Patient Personal Data” | means any Personal Data and/or Special Category Personal Data of any Patient(s) that fall(s) within any of the categories of Personal Data specified in paragraph 4.1 (*Categories of Personal Data - Patients*) of Schedule 1 (*Data Sharing Protocol)*) and means in particular such data as any Disclosing Party makes available under this Agreement and that a Receiving Party receives under this Agreement;  |
| “Permitted Purposes” | means the purposes for which Shared Personal Data may be used by the Receiving Party, being the permitted purposes described in paragraph 1 of Schedule 1 *(Data Sharing Protocol)*; |
| “Permitted Third Party Controller” | means any third party Controller permitted by a Party to Process any of the Shared Personal Data; |
| “Personal Data” | has the meaning given to it in the UKGDPR; |
| “Personal Data Breach” | has the meaning given to it in the UK GDPR and includes also any breach of Article 5(1)(f) (the integrity and confidentiality principle) of UK GDPR; |
| “Policies” | means the enforceable policies, measures and procedures of each Party, to ensure that it, its Staff and Processors meet, observe, perform and comply with:1. the then-applicable security standards, security requirements and security guidance defined by the Data Security and Protection Toolkit; and
2. the requirements of Data Protection Legislation, applicable duties of confidence and this Agreement relating to the security of Shared Personal Data;
 |
| “Primary Care Network Agreement” | means the Primary Care Network Agreement dated [DATE] and made between the Parties; |
| “Privacy Notice” | means the fair processing notice(s) (as varied from time to time) that each Party shall prepare and publish to and for Staff and Patients in accordance with this Agreement and the Data Protection Legislation, to inform Staff and Patients, amongst other matters, about the Processing of their Personal Data by the Party and the Processing of their Shared Personal Data by the Parties under this Agreement; |
| "Processing" | has the meaning given to it in the UK GDPR, and the terms “**Process**” and “**Processed**” shall be construed accordingly; |
| “Processor” | has the meaning given to it in the UK GDPR; |
| “Receiving Party” | means Party who receives Shared Personal Data from a Disclosing Party; |
| “Registered Healthcare Professional” | means a fully qualified healthcare professional whose employer (being a Party to this Agreement) has confirmed is registered as a medical practitioner who holds the qualifications necessary for the person to provide healthcare of the type that the person is employed to provide and to do so lawfully under the laws of England; |
| [“Remaining Parties” | means, in circumstances where the Primary Care Network Agreement and this Agreement shall terminate pursuant to clause 8 (*Voluntary Exit*) or clause 9 (*Expulsion*) in relation to any particular Current Party or Current Parties, the other Current Parties in relation to whom the Primary Care Network Agreement and this Agreement shall continue;] |
| “Security Breach” | means any Personal Data Breach and any incident that constitutes a breach of the security-related requirements of, or is notifiable or subject to sanctions under, the Cybersecurity Legislation; |
| “Shared Personal Data” | means the Staff Personal Data and Patient Personal Data; |
| **“Special Category Personal Data”** | means Personal Data that falls within the scope of the special categories of Personal Data specified in Article 9 of the UK GDPR; |
| **“Staff”** | means any employees, partners, members, directors and officers of a Party, and any workers who are retained by a Party under contract and who are line managed by that Party; |
| **“Staff Personal Data”** | means Personal Data and/or Special Category Personal Data of any Staff that fall(s) within any of the categories of Personal Data specified in paragraph 4.2 (*Categories of Personal Data - Staff*) of Schedule 1 (*Data Sharing Protocol*) and means in particular such data as any Disclosing Party makes available under this Agreement and that a Receiving Party receives under this Agreement;  |
| **“Term”** | means the period during which this Agreement is in force, starting on the Commencement Date. |

## Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

## 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.

## Unless the context otherwise, requires, words in the singular shall include the plural and in the plural shall include the singular.

## A reference to a person shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision, and such statute, statutory provision and subordinate legislation as amended, updated or re-enacted from time to time during the Term.

## References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## Any words following the terms “including”, “include”, “in particular”, “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## In the case of any ambiguity between any provision contained in the main body of this Agreement and any provision contained in the Schedules, the provision in the main body of this Agreement shall take precedence.

## A reference to writing or written [excludes fax but includes email].

# COMMENCEMENT AND DURATION

## This Agreement shall commence on the Commencement Date and shall [, unless terminated in relation to any Current Party in accordance with clause 8 (*Voluntary Exit*) or clause 9 (*Expulsion*),] continue in force until the termination or expiry of the Primary Care Network Agreement at which point this Agreement shall terminate with immediate effect.

## DATA SHARING

## In this clause 3, reference to a “Party” means, unless stated otherwise, a Current Party.

## The Parties agree that Article 26 (Joint Controllers) of the UK GDPR applies to their sharing of Shared Personal Data under this Agreement. In order to comply with the requirements of Article 26, each Party shall Process the Shared Personal Data in accordance with this Agreement (subject always to clause 18.2), and each Party shall comply with the exercise by Data Subjects of their rights under Data Protection Legislation in accordance with this Agreement. Each Party shall be responsible and liable for its own acts and there shall be no joint and several liability between the Parties.

## Each Party shall comply with its obligations as a Controller under the Data Protection Legislation in relation to Processing by it or on its behalf of the Shared Personal Data, and each Party’s obligations under this Agreement are in addition to, and do not relieve, remove or replace, its obligations under the Data Protection Legislation.

## Schedule 1 (*Data Sharing Protocol)* of this Agreement describes (or refers to) the limited purposes of the Processing of Shared Personal Data, the duration of such Processing, the types of Personal Data that may be Processed, and the categories of Data Subjects to whom the Shared Personal Data relate. For the avoidance of doubt, the limitations imposed by this Agreement on the Processing of Staff Personal Data apply to each Party’s Processing of Personal Data of the Staff of the other Parties, and nothing in this Agreement shall limit a Party’s permission to Process Personal Data of its own Staff.

## Each Party will (if it has not already done so, and if it is required by the Data Protection Legislation to do so) appoint a Data Protection Officer and will nominate such person (or an appropriate alternative member of Staff of such Party) as a lead contact for the purposes of this Agreement (“Data Protection Contact”). Each Party’s Data Protection Contact as at the Commencement Date is identified in paragraph 11 of Schedule 1 (*Data Sharing Protocol)* and each Party shall notify the other Parties, as soon as reasonably possible, of any changes in the Data Protection Contact or his or her details.

## Each Party shall only Process the Shared Personal Data that it receives (in its capacity as a Receiving Party) from another Party (in its capacity as a Disclosing Party) in accordance with this Agreement, the Caldicott Principles, its legal and applicable professional duties of confidence and Data Protection Legislation. Each Party shall comply with Cybersecurity Legislation to the extent that Cybersecurity Legislation applies to it.

## Without limitation to Clause 3.6, each Party shall:

### ensure that, within its own organisation, Patient Personal Data is not Processed or used by any Staff or other person other than:

### an Authorised User for the Permitted Purposes; and

### Processors appointed by any Party in accordance with clause 5;

### maintain a written record of all categories of Processing activities carried out by it or on its behalf in accordance with the Data Protection Legislation (and in particular Article 30 of the UK GDPR) and ensure that such record fully takes account of this Agreement and the Processing of Shared Personal Data that is contemplated by this Agreement and is in fact carried on;

### provide each of the other Parties, on request by such other Party, with a copy of the records referred to in clause 3.7.2;

### make the records referred to in clause 3.7.2 available to the Commissioner on request and will, as soon as reasonably possible, notify the other Parties that it has done so;

### ensure that its officers, employees, agents, consultants and contractors who have access to Personal Data have undergone training in the Data Protection Legislation and in the care and handling of Personal Data; and

### notify any other affected Parties promptly of any Security Breach which affects or could have affected any Shared Personal Data.

## Without prejudice to clause 3.6, each Party will take (and procure that its Processors and Permitted Third Party Controllers take) appropriate technical and organisational measures, and will support and co-operate with each other Party’s appropriate technical and organisational measures:

### in such a way that its Processing of the Shared Personal Data will meet the requirements of the Data Protection Legislation (and in particular Article 32 of the UK GDPR) and (to the extent applicable) Cybersecurity Legislation and will ensure the protection of the rights of Data Subjects and allow it and the other Parties to fulfil its obligations to Data Subjects and its obligations under the Cybersecurity Legislation;

### to ensure the security of the Shared Personal Data and the reliability of its and its Processors’ personnel who may have access to, or be involved in, the Processing of the Shared Personal Data, including by carrying out appropriate pre-Processing verification checks, maintaining logs of Processing carried out by such personnel, and carrying out appropriate post-Processing checks and audits.

## Without prejudice to the provisions of clause 3.6, each Party will keep all of the Shared Personal Data protected from any Security Breach.

## Each Party shall ensure, within its own organisation, that there is no disclosure of Patient Personal Data to any person (including the Party’s own Staff who are not Authorised Users, and including other Parties as well as third parties) where such disclosure would be in breach of any duty of confidence. Each Party shall comply with the requirements specified in paragraph 8 (Confidentiality compliance) of Schedule 1 (*Data Sharing Protocol)*.

## Where a Disclosing Party relies upon consent for the purposes of Article 6 or Articles 6 and 9 of the UK GDPR, such Disclosing Party shall keep a record (and shall procure that, as applicable, each of its Processors and Permitted Third Party Controllers keeps a record) of each refusal of consent or withdrawal of consent communicated to the Disclosing Party or any of its Authorised Users, Processors or Permitted Third Party Controllers by or (to the extent it is lawful to act on such refusal or withdrawal of consent) on behalf of any Patient.

## Each Disclosing Party shall retain and not disclose under this Agreement to any other person (including each Receiving Party) its Patient Personal Data to the extent that the Patient refuses consent or withdraws consent for its Patient Personal Data to be so disclosed, where such refusal or withdrawal means it is unlawful for the Disclosing Party to disclose such Patient Personal Data to the Receiving Parties under this Agreement. It shall be the relevant Disclosing Party’s responsibility to ensure that the Patient Personal Data relating to each relevant Patient is unavailable to Receiving Parties. Each Disclosing Party shall procure that such Patient Personal Data shall not be disclosed by or on behalf of Disclosing Party including by its Processors or Permitted Third Party Controllers.

## Nothing in the foregoing provisions of this clause 3 shall prevent a Receiving Party from:

### obtaining from the relevant Patient or any lawful source (including a source other than a Party) and Processing; or

### recording on its own Electronic Information Processing Systems, and retaining and Processing,

## any Patient Personal Data, provided that such Patient Personal Data is obtained, recorded, retained and Processed in accordance with Data Protection Legislation and applicable legal and professional duties of confidence that the Receiving Party is (or its Staff are) subject to.

## Each Party will, on the request of any other Party:

### comply with (and ensure that its Processors and Permitted Third Party Controllers comply with) any request from that other Party to amend, rectify, transfer, block or destroy the Shared Personal Data (or any of it) in order to comply with the relevant Data Subject’s exercise of his or her rights under the Data Protection Legislation;

### provide each other Party with such information about its Processing of the Shared Personal Data (and the Processing of Shared Personal Data by its Processors and by Permitted Third Party Controllers) and such assistance as such other Party may reasonably request from time to time to allow such other Party to meet its obligations under the Data Protection Legislation and particularly Article 15 (to the extent that such compliance is dependent upon the Party) of the UK GDPR, including each such other Party’s obligations to Data Subjects and in relation to data security and Data Protection Impact Assessments, and to allow each such other Party to be able to demonstrate compliance with the Data Protection Legislation;

### take such other action or refrain from taking any action necessary to comply with, or to allow each such other Party to comply with, the Data Protection Legislation or the instruction of the Commissioner or the order of court of competent jurisdiction; and

### co-operate with the Commissioner.

## Each Party will notify the other Parties who are or foreseeably may be affected or implicated as soon as reasonably possible if it becomes aware of any breach of this Agreement, any breach of any of the Data Protection Legislation regarding the Shared Personal Data, or any Security Breach affecting any Shared Personal Data. Any Party that gives such notification shall provide the other Parties as soon as reasonably possible with such information regarding such breach as may be reasonably requested by any of the other Parties.

## Each Party (the “Originating Party”) will give written notice to the other Parties who are or foreseeably may be affected or implicated (the “Relevant Parties”), as soon as reasonably possible, if the Originating Party or any of its Processors or Permitted Third Party Controllers receive(s) any request, complaint, notice, order or communication which relates directly or indirectly to the Processing of any Shared Personal Data or to compliance with the Data Protection Legislation or Cybersecurity Legislation and, at the same time, will forward a copy of that request, complaint, notice, order or communication to all Relevant Parties. The Originating Party and each of the Relevant Parties will co-operate with each other and give each other such information and assistance as any other such Party may reasonably require in relation to that request, complaint, notice or communication to enable the other such Parties to respond to the same in accordance with any deadline and any requirement to provide information.

## Each Party will allow any other Party (or its representatives) at reasonable times and from time to time, to inspect, review and/or audit its compliance (and the compliance of its Processors and Permitted Third Party Controllers) with this Agreement and/or the Data Protection Legislation and/or the Cybersecurity Legislation, and will give each other Party any assistance which it may reasonably require in connection with each such inspection, review and/or audit. Each Party will, and will ensure that its Processors (and Permitted Third Party Controllers) will, give each other Party any assistance the other Party reasonably requires to carry out such inspection, review and/or audit.

## If any event occurs that materially affects or materially interrupts any Party’s ability to Process the Shared Personal Data in accordance with Agreement, including any storm, fire, flood, telecommunications failures and IT system failures, that Party will immediately notify the other Parties of such event and its impact, will invoke and implement a recovery plan so that it resumes being able to provide and does Process the Shared Personal Data in accordance with this Agreement, and shall notify the other Parties once it is again able to provide and Process the Shared Personal Data in accordance with this Agreement. For the purpose of this Clauses 3.18, “materially interrupts” includes any interruption to the availability of Shared Personal Data from any Disclosing Party.

## The Parties will bear their own costs incurred in providing the assistance set out in Clauses 3.14 to 3.18 (inclusive).

## Subject to the second sentence of this clause 3.20, and without prejudice to clause 3.13, each Receiving Party shall not transfer Personal Data transferred under this Agreement outside of the United Kingdom without the Disclosing Party’s prior written consent.

# SECURITY

## In this clause 4, reference to a “Party” means, unless stated otherwise, a Current Party.

## For the purposes of this Agreement each Disclosing Party shall disclose the Shared Personal Data to each Receiving Party solely via the Agreed Sharing Mechanisms, and each Receiving Party shall receive such disclosures solely via the Agreed Sharing Mechanisms.

## Without prejudice to clause 4.6, each Party shall implement the security measures specified in paragraph 7 of Schedule 1 (Security) and such other security measures as are at any time approved and mandated by the Governing Body during the Term.

## Each Party shall ensure that the Processing of the Shared Personal Data is only performed by that Party’s Authorised Users and that such Authorised Users have received appropriate training.

## Each Party shall ensure that it, and its Staff and its Processors shall not by any act or omission compromise any of the security or continuity measures that is:

### implemented by or on behalf of such Party or any other Party and is required by this Agreement or Data Protection Legislation or Cybersecurity Legislation; or

### specified in the written specifications of and/or instructions and/or guidance provided by the third party provider of the Electronic Information Processing System used by such Party.

## Each Party shall, as a condition of this Agreement, ensure that its Policies, Privacy Notice(s) and Information Governance Assessment each:

### fully takes account of Shared Personal Data and the Processing of it by each Party as contemplated in this Agreement, including Processing by its Processors, and transmission of Shared Personal Data, as well as Processing by Authorised Users in the Party’s capacity as a Disclosing Party and as a Receiving Party; and

### is made available to the Governing Body and each other Party, before being submitted for internal approval and (where applicable) for any external approval, with sufficient time for the Governing Body and each such other Party to review and provide comment and for the Party to address each such comment.

## Each Party shall, as a condition of this Agreement, ensure that its Information Governance Assessment is completed annually and is (if and to the extent required by law or any instruction or guidance from any Government department during the Term) submitted for review and/or approval to any person (such as to the Department of Health and Social Care, or NHS England).

## Each Party shall comply with its obligations in this Agreement in relation to Information Governance Assessment, whether or not the Party is required by law or any instruction or guidance from any Government department to complete any Information Governance Assessment.

## Each Party will comply with and enforce its Policies and its Privacy Notice(s), and will ensure that its Staff and Processors so comply.

# PROCESSORS

## In this clause 5, reference to a “Party” means, unless stated otherwise, a Current Party.

## Each Party shall ensure that each of its Processors is appointed by the Party as a Processor under an enforceable contract, in compliance with Data Protection Legislation and this Agreement, and so as to ensure compliance with Cybersecurity Legislation (to the extent it is applicable to the Party).

## Each Party shall ensure that each of its Processors is appointed on terms and conditions that are no less onerous than the terms and conditions set out in this Agreement.

## At the written request of any Party, each Party shall within ten (10) days of such request:

### provide the requesting Party in writing with a list of the Party’s then-current Processors of Shared Personal Data; and

### permit the requesting Party (or an auditor mandated by the requesting Party) to inspect and audit the facilities, equipment, staff, documents and electronic data relating to data Processing activities carried out under or in connection with this Agreement by each Processor of Shared Personal Data appointed by the Party to whom such request is made.

# PRIVACY NOTICES

## In this clause 6, reference to a “Party” means, unless stated otherwise, a Current Party.

## Each Party shall ensure that each Patient and each relevant member of Staff, including each Authorised User, is provided with clear and sufficient information, in accordance with Data Protection Legislation, as to the Processing of Personal Data contemplated by this Agreement, including the Permitted Purposes, the legal basis for such Processing, and such other information as is required by the Data Protection Legislation.

## Each Party shall review and (as necessary to comply with Data Protection Legislation and this Agreement), update and re-issue its Privacy Notices during the Term, as necessary to ensure that the information requirements stated in clause 6.2 are met, changes (including changes in the Parties and their Processors) are promptly communicated to Patients, and that all instructions given by (including templates of Privacy Notices approved by) the Governing Body are complied with within the time-frames set by the Governing Body.

# ACCESSION OF NEW PARTY

##

# VOLUNTARY EXIT

# EXPULSION

# CONSEQUENCES OF TERMINATION

## [Prior to any Exit Date, the Remaining Parties and any relevant Exiting Party shall determine a detailed plan of prerequisites and actions or omissions that must be effected by the Remaining Parties and such Exiting Party. Such plan shall, amongst other matters, address:

### the communication of such changes to Data Subjects;

### the amendment or replacement of the Privacy Notices of each Party and the publication of the amended or replaced notices to Data Subjects;

### the cessation of (a) the relevant Exiting Party’s disclosure in its capacity as a Disclosing Party and its Shared Data Processors of its Shared Personal Data under this Agreement, and (b) the cessation of the access to and Processing of such Shared Personal Data, in its capacity as a Receiving Party, by each of the Remaining Parties (including their permitted Staff) and their Processors;

### the removal of the interfaces and other means by which the relevant Exiting Party’s Electronic Information Processing Systems are connected with the Remaining Parties’ Electronic Information Processing Systems (and each of them); and

### the timescales within which such actions or omissions will be effected,

### but shall not require any Exiting Party to delete any Personal Data (including Shared Personal Data that the Exiting Party has acquired by virtue of being a Receiving Party under this Agreement) in relation to which it is a Controller.

## The obligations of each Remaining Party’s and of each Exiting Party under the plan formulated pursuant to clause 10.1 above shall survive the termination of this Agreement in relation to the Exiting Party. Each Remaining Party and each Exiting Party shall perform its obligations under the plan formulated pursuant to clause 10.1 above, whether such obligations are required to be performed before or after the date on which this Agreement terminates in relation to the relevant Exiting Party.

## No plan formulated pursuant to clause 10.1 shall take effect unless and until it is formally agreed by all of the Remaining Parties and the Exiting Party. In the event of a plan formulated pursuant to clause 10.1 being formally approved by the Remaining Parties and the Exiting Party, it will take effect on the date specified in the plan.]

## Each Disclosing Party shall, on the termination of this Agreement in relation to such person, cease to disclose Shared Personal Data under or in connection with the Primary Care Network Agreement or this Agreement (and shall procure that its Shared Data Processors shall cease to so disclose Shared Personal Data).

## Each Receiving Party shall, on the termination of this Agreement in relation to such person, cease to store, access and otherwise Process the Shared Personal Data that was made available to it by any Disclosing Party under or in connection with the Primary Care Network Agreement or this Agreement (and shall procure that its Shared Data Processors shall cease to so disclose Shared Personal Data).

# ADDITIONAL TERMS

## Each Party agrees that any additional terms set out in paragraph 10 of Schedule 1 (*Data Sharing Protocol)* shall be incorporated into this Agreement, and, insofar as they apply to a particular Party, that Party shall comply with those obligations.

# REVIEW OF CONTRACT

## The Parties shall review this Agreement (and the Parties’ activities under and in connection with this Agreement) on the date and frequency specified in paragraph 12 of Schedule 1 (*Data Sharing Protocol)*.

# DISPUTE RESOLUTION

## The Current Parties [(and each Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2)] intend for the dispute resolution procedures set out in the Primary Care Network Agreement to apply to this Agreement.

# NOTICES

## Any notice or other communication given to a Current Party [(or given to an Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2)] under or in connection with this Agreement shall be in writing and shall be:

### delivered by hand, courier or by recorded post or other next working day recorded delivery service at its registered office (if a company) or its principal place of business (in any other case) [; or

### sent by email to the following addresses: [Party 1 address], [Party 2 address], [Party 3 address] and [Party 4 address]].

## Any notice or communication shall be deemed to have been received:

### if delivered by hand or courier, on the date on which the delivery receipt is signed;

### if sent by recorded post or other next working day recorded delivery service, at the time recorded by the delivery service; and

### if delivered by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume,

### and in this clause 15.2.3 “business hours” means 9.00am to 5.00pm Monday to Friday on a working day, and in this clause 15 “working day” means a day that is not a weekend or public holiday in the place of receipt.

## This clause 15 shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution except for notices given under the dispute resolution procedure referred to in clause 13 (*Dispute resolution*).

# VARIATION

## Any amendment or variation to this Agreement shall be in writing and signed by duly authorised representatives of each of the Current Parties.

# SEVERABILITY

## If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

## If any provision or part-provision of this Agreement is deemed deleted under clause 17.1, the Current Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

# WAIVER

## No failure or delay by any Current Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy.

# THIRD PARTY RIGHTS AND INDEPENDENCE

## A person who is not a Current Party to this Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## Each Party enters into this Agreement as an independent Party, at arm’s length. Without prejudice to Article 82 of the UK GDPR, where applicable, each Party shall be responsible and liable for its own acts and omissions, and there shall be no joint and several liability.

# ENTIRE AGREEMENT

## This Agreement supersedes all prior representations and agreements between the Current Parties (whether written or oral) relating to the subject matter of the Agreement and sets forth the entire agreement and understanding between the Current Parties.

## Each Current Party [(and each Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2)] warrants to the other that it has not relied on any representation or agreement (whether written or oral) not expressly set out or referred to in the Agreement.

# COUNTERPARTS

## This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Agreement for all purposes.

# GOVERNING LAW AND JURISDICTION

## Each Current Party [(and each Exiting Party in relation to whom clause 10 continues to apply by virtue of clause 10.2)] submits to the non-exclusive jurisdiction of the English courts and agrees that the Agreement is to be governed and construed according to English law.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule** 1 – Data Sharing Protocol

|  |  |  |
| --- | --- | --- |
| **1.** | **Permitted Purposes** |  |
| **2.** | **Authorised Users** | No person shall be an Authorised User other than Staff within the following categories, and such persons may use Shared Personal Data only to the extent necessary for them to perform the roles they are employed by a Party to perform in relation to the relevant Patient: |
| **3.** | **Duration of the Processing (Retention Periods)** |  |
| **4.** | **Categories of Personal Data** | 4.1 Categories of Personal Data (Patients):4.2 Categories of Personal Data (Staff): |
| **5.** | **[Legal Bases for Processing]** |  |
| **6.** | **Agreed Methods of Sharing Personal Data** |  |
| **7.** | **Security** |  |
| **8.** | **Confidentiality Compliance** |  |
| **9.** | **Shared Processors** |

|  |  |  |
| --- | --- | --- |
| **Shared Processor** | **Shared Processor Data** | **Shared Processor Purpose(s)** |
|  |  |  |

 |
| **10.** | **Additional Terms** |  |
| **11.** | **Data Protection Contacts** |  |
| **12.** | **Review Date/Frequency** |  |

**Signature Page**

## Template Data Sharing Agreement: Guidance Notes

|  |  |
| --- | --- |
| **Provision** | **Comment** |
| **General** | Clause 37 of the Primary Care Network Agreement (“the Network Agreement”) provides that, before any personal data is shared between any members of the Network Agreement, the relevant members are required to enter into a data sharing agreement. The template Data Sharing Agreement (“DSA”) has been prepared for this purpose. The DSA is for guidance only and it is not mandatory to use the DSA. Members are free to enter into different forms of data sharing agreement at their discretion.The parties should each obtain independent legal advice on the DSA before entering into it.If the DSA is used, it will need to be amended to reflect the specific controller-to-controller sharing of personal data that is contemplated by the parties. Gaps, including those marked in square brackets, must all be completed before the DSA is signed by the parties. The DSA is a legally binding contract. The DSA has been drafted as a deed to avoid any potential argument that is not legally binding due to lack of mutual consideration.The main body of the DSA sets out the general terms that will apply and can be amended to include any specific terms that are agreed between the parties. Schedule 1 will contain the details of the data sharing that is contemplated, and will need to be completed by the parties before the DSA is entered into.No liability or indemnity provisions have been included in the DSA except to state that the parties will be responsible for their own acts (see clauses 3.2 and 18.2). The parties should each obtain independent legal advice on liability, and include any required liability and indemnity provisions (if any) before entering into the DSA. |
| **Main Body** |
| **Dates and Parties** | The date and details of the parties at the beginning of the DSA must be completed. The date should be added by hand once the DSA has been signed by all parties to the DSA. The DSA has been drafted on the basis that all of the parties to the Primary Care Network Agreement will also be party to this Agreement. If there are more (or fewer) than four members of the Network Agreement, adapt the descriptions of the parties accordingly. If not all of the parties to the DSA are to be members of the Network Agreement, references to the Network Agreement in the DSA should be considered and amended accordingly. |
| **Clause 1Definitions and Interpretation** | The definition of “Commencement Date” can be amended as required. This is the date on which the DSA will commence. The date of the Network Agreement should also be added to the definition of “Primary Care Network Agreement”.Optional definitions have been added for the terms “Exit Date”, “Exiting Party” and “Remaining Parties”, which can be used in relation to clauses 8 and 9 and are used in the optional wording in clause 10 if applicable.Clause 1.10 permits the service of written notices by email. This can be removed if required (and if so, references to email in clause 14 should also be removed).  |
| **Clause 2 Commencement and Duration** | The DSA is drafted on the basis that it is coterminous with the Network Agreement. Clause 2 also includes optional wording to take account of provisions that allow for a party to leave voluntarily or to be expelled.  |
| **Clause 3 Data Sharing** | This clause sets out the key data sharing obligations of the parties, including their obligations under applicable data protection legislation. The details of the data to be shared are to be included in Schedule 1 of the DSA.The DSA is drafted on the basis that the parties will be joint controllers in relation to their sharing of personal data but will be responsible and liable for their own actions (see clause 18.2 also). Parties need to make their own assessment of whether, for the purpose of the data sharing activities under the DSA, they are in fact joint controllers and whether this liability position is appropriate. If not, the DSA needs to be amended appropriately.Clause 3.16 requires parties to notify one another if they receive any requests, complaints, notices, orders or communications relating to the Shared Personal Data, and to co-operate with one another in relation to any response. Parties should consider how any such requests, complaints, notices, orders or communications will be handled between the parties and whether it is necessary for the parties to consult and agree co-ordinated action before any party responds or takes further action. |
| **Clause 4 Security** | This clause sets out the general obligations in relation to the protection of shared personal data and gives the governing body established under the Network Agreement the ability to impose additional security requirements. Note that peer review of security measures also applies, as part of the annual Data Security and Protection Toolkit self-assessment, under clause 4.6.The required headline security measures are to be documented in Schedule 1.  |
| **Clause 5 Processors** | This clause sets out obligations in relation to the appointment of processors by the parties.  |
| **Clause 6 Privacy Notices** | The DSA assumes that all of the parties will use privacy notices for staff and patients that are set by the decision-making arrangements set up under the Network Agreement. If any party fails to provide the appropriate privacy notice, it is likely to mean that both that party and all of the other parties have no legal justification (or impaired justification) for sharing the Shared Personal Data. To ensure the privacy notices are compliant and effective the parties should regularly review these. |
| **Clauses 7 to 9 Accession of New Parties, Voluntary Exit and Expulsion** | Consider inserting provisions allowing for: * a new party to join into the DSA where a new member is admitted to the Network Agreement;
* removing a party from the DSA where it is permitted, under the Network Agreement, to leave voluntarily; and
* removing a party from the DSA where it is expelled under the Network Agreement.

If clauses 8 or 9 are not completed, all references to “Exiting Parties” and “Remaining Parties” should be removed throughout the DSA and clauses 10.1 to 10.3 should be reviewed. |
| **Clause 13 Dispute Resolution** | No specific dispute resolution provisions have been included in the DSA and it has been drafted on the basis that the dispute resolution provisions of the Network Agreement shall apply. There is also optional wording here which is subject to clauses 8 and 9 being completed. |
| **Clause 14 Notices** | If written notices may be served by email (see clause 1.10), enter the relevant email addresses in clause 14.1.2. If written notices are not to be served by email, all references to email should be removed from this clause.  |
| **Schedule 1** |
| **Paragraph 1 Permitted Purposes** | Insert the purposes for which the parties are permitted to use shared personal data. These should be within the scope of the legal bases that are available under the UK GDPR, and within the scope of any permissions actually obtained by the parties using the legal bases, e.g. permissions based on consent or legitimate interests.  |
| **Paragraph 2 Authorised Users** | Insert the list of staff roles within each of the parties who will be permitted to use shared personal data. |
| **Paragraph 3 Duration of the Processing** | Insert details of any retention periods and policies here. Retention periods should already be specified in detail in each party’s existing retention policies, as well as in the privacy notice. |
| **Paragraph 4 Categories of Personal Data** | List all categories of patient personal data and staff personal data (if applicable) that are to be shared under the DSA. There may be a lot of fields of data to insert: this could be done by way of an annex to Schedule 1. |
| **Paragraph 5 Legal Bases for Processing** | The legal bases (legal justification) that the parties intend to rely on can, optionally, be set out here. It is mandatory for the parties to have legal bases for disclosing shared personal data to each other, and for receiving and using shared personal data from each other, but there are alternative ways of documenting the legal bases. The parties should take advice on this. |
| **Paragraph 6 Agreed Methods of Sharing Personal Data** | Insert details of how the shared personal data will be transmitted from one party to the others. |
| **Paragraph 7 Security** | Set out the key security measures that, as a minimum, each of the parties must implement during the term of the DSA. |
| **Paragraph 8 Confidentiality Compliance** | Set out how each party, before disclosing shared personal data to the other parties, will ensure that the disclosure does not breach confidentiality.  |
| **Paragraph 9 Shared Processors** | Details of any shared processors should be added here along with a description of the shared processor data and shared processor purposes. A shared processor will be a processor who processes the shared personal data on behalf of all of the parties (not just for one of the parties). |
| **Paragraph 10 Additional Terms** | Insert any additional obligations for all parties or a particular party here. |
| **Paragraph 11 Data Protection Contact** | Insert each party’s data protection contact, as at the commencement date, here. |
| **Paragraph 12 Review Date/Frequency** | Insert fixed dates or intervals at which the parties will meet to review the DSA. |
| **Signature Page** | This is where the signature clauses for the original parties to the DSA must be set out. |