NHS Federated Data Platform (FDP): UK GDPR requirements

The table below transparently sets out each party’s respective obligations and responsibilities as joint controllers in relation to the Federated Data Platform and NHS-PET.

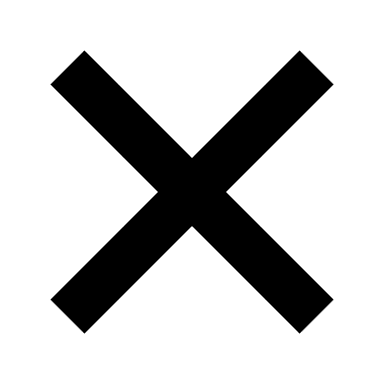
In accordance with Article 26 of the of the UKGDPR this table sets out the roles and responsibilities of the following parties:

* NHS England
* Local FDP user organisations

(together referred to as the FDP user organisations), in relation to the processing of personal data in the data platform and, when processing of personal data commences, in the NHS-PET.

**Key to roles and responsibilities in the table below.**

To assist, where a party:

* has compliance responsibilities this has been identified with a 
* does not have compliance responsibilities, this has been identified with a 

| **UK GDPR Requirement** | **NHS England** | | **Local FDP User Organisation** | |
| --- | --- | --- | --- | --- |
| **The Controllers** | NHS England  7 Wellington Place  Whitehall Road  Leeds  LS14AP  ICO Registration No: Z2950066   1. The legal basis for NHS England’s role as a joint controller in relation to the Local FDP User Organisation’s local Instances of the Data Platform and the NHS-PET Solution, for the design, governance, and service management of the Data Platform and the NHS-PET Solution is based on its statutory functions including: 2. the provision of FDP arrangements as a service pursuant to Section 270 of the Health and Social Care Act 2012 (the **2012 Act**); 3. the duty as to effectiveness and efficiency under Section 13D of the National Health Service Act 2006 and the duty to promote innovation under Section 13K of the National Health Service Act 2006 (the **2006 Act**); 4. The duty to promote a comprehensive health service under Section 1(1) applicable to NHS England by virtue of Section 1H(2) of the 2006 Act; 5. The duty to have regard to the need to respect and promote the privacy of recipients of the health services and of adult social care in England under S253(1) ca of the 2012 Act; 6. The powers under Section 2(2) of the 2006 Act to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. 7. The Legal basis under UK GDPR is therefore Art 6(1)(e) (Public Task) and additionally, for special category data is Art 9(2)(g) (Public Interest) together with paragraph 6 condition (Statutory Purpose) in Part 2 of Schedule 1 of the Data Protection Act 2018. 8. In addition to the legal basis for NHS England's role in determining the design, governance and service management arrangements for the Data Platform and the NHS-PET Solution, the legal basis for NHS England's role as Controller of the Processing within the national Instance and for the NHS–PET Contractor Processing of Personal Data prior to it entering or on leaving the national Instance shall be determined at a Product level and reflected in the national Product DPIA and in the transparency information for the national Product. | | [*Add name*  *Add address*  *ICO Registration No*:]  The legal basis for the Local FDP User Organisation to be a Controller of the Processing in their local Instance and for the NHS–PET Contractor Processing of Personal Data prior to it entering or on leaving their local Instance shall be determined at a Product level and reflected in the local Product DPIA and in the transparency information for the local Product. This will be dependent on the statutory functions of the Local FDP User Organisation. | |
| **Data Protection Officers** (**DPO**) | Jon Moore  Email: england.dpo@nhs.net  Address: Data Protection Officer, NHS England, 7 Wellington Place, Whitehall Road, Leeds LS1 4AP | | *[Add name of the Local FDP User DPO]*  Email: [ ]  Address: [ ] | |
| **Accountability Requirements** | | | | |
| **Accountability** |  | NHS England is a Controller responsible for jointly determining with the Local FDP User Organisation the purposes and means of Processing Personal Data in relation to the local Instance and the Local FDP User Organisation Processing of Personal Data in the NHS-PET Solution. In particular, NHS England broadly provides the parameters for the use of the Data Platform and the NHS-PET Solution and sets the design, governance arrangements and service management of the Data Platform and the NHS PET Solution.  Additionally, NHS England is a Controller solely responsible for determining the purposes and means of Processing Personal Data in relation to the national Instance and the Processing of Personal Data in the NHS-PET prior to the data being included in or on leaving the national Instance.  NHS England is the Controller responsible for determining the purpose and means of Processing of Personal Data in relation to the NHS–PET Contractor Processing of Personal Data prior to it entering or on leaving the national Instance.  NHS England is therefore responsible for complying with the following provisions of UK GDPR in relation to the joint controllership with the Local FDP User Organisation:   * Article 5(2) (Accountability) * Article 24 (Responsibility of the Controller) * Article 25 (Data protection by design and default) * Article 28 (Processors) * Article 30 (Records of Processing activities) * Article 31 (Co-operation with the supervisory authority) * Article 32 (Security of Processing) * Article 33 (Personal data breach reporting to the ICO) * Article 34 (Personal data breach notification to data subjects) * Article 35 (Data protection impact assessment) * Article 36 (Prior consultation) * Articles 37-39 (DPO) * Articles 44 – 49 (Transfers of Personal Data to third countries or international organisations) |  | The Local FDP User Organisation is a Controller responsible for jointly determining with NHS England the purposes and means of Processing Personal Data in relation to the local Instance and the Local FDP User Organisation Processing of Personal Data through the NHS-PET Solution. In particular, the Local FDP User Organisation decides whether to use the Data Platform, what data to commit to the Data Platform and how to use it within the parameters set by NHS England.  The Local FDP User Organisation is therefore responsible for complying with the following provisions of UK GDPR in relation to the Processing of Personal Data in their local Instance and Processing of Personal Data in the NHS-PET prior to data being added to or on leaving their local Instance:   * Article 5(2) (Accountability) * Article 24 (Responsibility of the Controller) * Article 25 (Data protection by design and default) * Article 28 (Processors) * Article 30 (Records of Processing activities) * Article 31 (Co-operation with the supervisory authority) * Article 32 (Security of Processing) * Article 33 (Personal data breach reporting to the ICO) * Article 34 (Personal data breach notification to data subjects) * Article 35 (Data protection impact assessment) * Article 36 (Prior consultation) * Articles 37-39 (DPO) * Articles 44 – 49 (Transfers of Personal Data to third countries or international organisations |
| **Compliance with Data Protection Principles** | | | | |
| **Article 5 (1)(a) Lawfulness** - **Personal Data** is Processed lawfully in relation to the data subject |  | NHS England is responsible for determining the purposes and means of the design, governance and service management of the Data Platform and the NHS-PET (**Joint Controller Purposes**).  The lawful basis for NHS England to Process Personal Data under Article 6 of the UK GDPR for the Joint Controller Purposes is Article 6(1)(e) (public task).  NHS England is responsible for ensuring that it has a legal basis under UK GDPR for any FDP Product it uses within the national Instance.  NHS England is also responsible for ensuring that it has a legal basis under the Common Law Duty of Confidentiality for the Processing of confidential patient information:   * in the NHS-PET prior to it entering or on leaving the national Instance; and * in the national Instance. |  | The Local FDP User Organisation is responsible for determining whether to use the Data Platform, what data to commit to it, and how to use it within the parameters set by NHS England.  The lawful basis for the Local FDP User Organisation to Process Personal Data is determined by the Local FDP User Organisation.  The Local FDP User Organisation is responsible for ensuring that it has a legal basis under UKGDPR for any FDP Product that it selects for use within their local Instance.  The Local FDP User Organisation is responsible for ensuring that it has a legal basis under the Common Law Duty of Confidentiality for the Processing of confidential patient information:   * in the NHS-PET prior to it entering or on leaving their local Instance; and * in their local Instance. |
| **Article 5(1)(a) Lawfulness** – **special categories of Personal Data[[1]](#footnote-1)** are Processed lawfully in relation to the data subject |  | The lawful basis for NHS England, within the national Instance or in the NHS-PET prior to transfer to or on leaving of the national Instance, to Process special categories of Personal Data for the Joint Controller Purposes is:  Article 9(2)(g) (substantial public interest) of UK GDPR, supplemented by paragraph 6(2)(a) of Part 2, Schedule 1 to the Data Protection Act 2018.  NHS England is responsible for ensuring that it has a legal basis under UK GDPR to Process any special categories of Personal Data for any FDP Product it uses within the national Instance. |  | The lawful basis for the Local FDP User Organisation, within the local Instance or in the NHS-PET prior to transfer to or on leaving the local Instance to Process special categories of Personal Data in is determined by the Local FDP User Organisation. |
| **Article 5(1)(a) and Articles 12-14 - Fairness and transparency** - Personal Data is Processed fairly and in a transparent manner in relation to the data subject |  | NHS England is responsible for producing: -   1. The General FDP Privacy Notice about the Data Platform and NHS-PET; 2. Transparency Information required by Article 14 for Processing of Personal Data Processed in the national Instance and by NHS-PET prior to Processing in the national Instance or on leaving the national Instance; 3. Template transparency information for each Product in the national and local Instance of FDP;   Transparency Information in respect of the Personal Data is published on the NHS England website at: [add link] |  | The Local FDP User Organisation must provide transparency materials as required by UK GDPR. In doing so, they may use the General FDP.Privacy Notice and template transparency materials provided by NHS England together with any additional materials as they consider necessary or appropriate.  Transparency Information in respect of the Personal Data is published at: [add link to Local FDP Transparency Information] |
| **Article 5(1)(b) – Purpose limitation** – Personal Data is collected for specified, explicit and legitimate purposes and is not further Processed in a manner incompatible with those purposes |  | NHS England determines the overall purpose(s) for which the Data Platform and NHS-PET could be used.  NHS England is responsible for ensuring that it does not use Products in the national Instance of FDP for any purposes not covered within the Approved Use Cases.  NHS England is responsible for determining the initial five overarching Use Cases. NHS England and Local FDP User. Organisations may submit subsequent Use Cases for approval to the FDP Data Governance Group for any new Use Case or changes to Use Cases, subject to consultation with relevant Stakeholders. |  | The Local FDP User Organisation is responsible for ensuring that it does not use the Products in their local Instance of FDP for any purposes not covered within the Approved Use Cases. |
| **Article 5(1)(c) – Data minimisation** - Personal Data must be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are Processed |  | NHS England is responsible for ensuring that Personal Data it Processes in relation to the national Instance are adequate, relevant, and limited to what is necessary in relation to the purposes for which they are Processed. |  | The Local FDP User Organisation is responsible for ensuring that Personal Data it Processes in relation to its local Instance are adequate, relevant, and limited to what is necessary in relation to the purposes for which they are Processed. |
| **Article 5(1)d) - Accuracy** - Personal Data must be accurate and where necessary kept up to date; reasonable steps must be taken to rectify or erase inaccurate Personal Data without delay |  | NHS England is responsible for ensuring that Personal Data it Processes in relation to the national Instance are accurate and where necessary kept up to date and for taking reasonable steps to rectify or erase inaccurate Personal Data without delay. |  | The Local FDP User Organisation is responsible for ensuring that Personal Data it Processes in relation to its local Instance are accurate and where necessary kept up to date and for taking reasonable steps to rectify or erase inaccurate Personal Data without delay. |
| **Article 5(1)(e) - Storage limitation** - Personal Data must be kept in form which permits identification for no longer than necessary for the purpose for which the Personal Data are Processed |  | NHS England is responsible for ensuring that Personal Data it Processes in relation to the national Instance are kept in a form which permits identification for no longer than necessary for the purpose for which the Personal Data are Processed. |  | The Local FDP User Organisation is responsible for ensuring that Personal Data it Processes in relation to its local Instance are kept in a form which permits identification for no longer than necessary for the purpose for which the Personal Data are Processed. |
| **Article 5(1)(f) - (Integrity and confidentiality** - Personal Data must be Processed in a manner that ensures appropriate security including protection against unauthorised or unlawful Processing and against accidental loss, destruction, or damage |  | NHS England is responsible for ensuring that Personal Data it Processes in relation to the national Instance is Processed in a manner that ensures appropriate security including protection against unauthorised or unlawful Processing and against accidental loss, destruction, or damage.  NHS England is responsible for the security arrangements in place across the FDP and NHS-PET, the contractual arrangements, underpinning such security arrangements and the oversight of data security arrangements.  NHS England must report any Incident to NHS England’s National Service Desk.  NHS England must demonstrate compliance to the Data Security and Protection Toolkit (DSPT) to standards met.  NHS England is responsible for ensuring appropriate technical and organizational measures are in place for the security of Personal Data in transit to and from the NHS-PET and to and from the Data Platform in relation to the national Instance. |  | The Local FDP User Organisation is responsible for ensuring that Personal Data it Processes in relation to its local Instance is Processed in a manner that ensures appropriate security including protection against unauthorised or unlawful Processing and against accidental loss, destruction, or damage.  The Local FDP User Organisation must report any Incident to NHS England’s National Service Desk.  The Local FDP User Organisation must demonstrate compliance to the Data Security and Protection Toolkit (DSPT) to standards met.  The Local FDP User Organisation is responsible for ensuring appropriate technical and organizational measures are in place for the security of Personal Data in transit to and from the NHS-PET and to and from the Data Platform in relation to its local Instance. |
| **Data Subjects’ Rights and Contact Details** | | | | |
| **Article 12 – Transparent information, communication, and modalities for the exercise of the rights of the data subject** |  | NHS England is responsible for compliance with the obligations in Article 12 in relation to the Processing of Personal Data in the national Instance and for the Processing of data by the NHS-PET prior to being Processed in or on leaving from the national Instance.  NHS England is responsible for addressing complaints and the exercise of individual data subject rights for Processing of Personal Data in the NHS-PET prior to it being Processed in or leaving from the national Instance and in the national Instance.  NHS England is responsible for responding to complaints or enquiries from individuals about Processing of Personal Data in the Data Platform and the NHS-PET except for such complaints and enquiries that relate to Processing of Personal Data of an individual in a particular local Instance of FDP.    Through its Transparency Information, NHS England is responsible for setting out what rights under UK GDPR are available in relation to its Processing of the Personal Data in the national Instance and in the NHS-PET prior to or on leaving the national Instance and how data subjects may exercise those rights. [insert link] |  | The Local FDP User Organisation is responsible for compliance with the obligations in Article 12 in relation to the Processing of Personal Data in its local Instance and for the Processing of data by the NHS-PET prior to being Processed in or on leaving from its local Instance.  The Local FDP User Organisation is responsible for addressing complaints and the exercise of individual data subject rights for Processing of Personal Data in the NHS-PET prior to it being Processed in or leaving from its local Instance and in the local Instance.  The Local FDP User Organisation is responsible for responding to complaints or enquiries from individuals about Processing of Personal Data in the Data Platform and the NHS-PET where such complaints and enquiries relate to Processing of Personal Data of an individual in its local Instance of FDP.  Through its Transparency Information, the Local FDP User Organisation is responsible for setting out what rights under UK GDPR are available in relation to its Processing of the Personal Data in its local Instance and in the NHS-PET prior to or on leaving its local Instance and how data subjects may exercise those rights. [insert link] |
| **Article 13 – Information to be provided where Personal Data are collected from the data subject** | X | Not applicable as NHS England will not collect Personal Data directly from data subjects in connection with the Data Platform or NHS-PET. |  | The Local FDP User Organisation is responsible for providing information about Processing of its Personal Data that may take place within the NHS-PET or their local Instance when the Personal Data is collected from data subjects, in accordance with Article 13. |
| **Article 14 – Information to be provided where Personal Data have not been obtained from the data subject** |  | NHS England is responsible for providing data subjects with the information required in Article 14 in relation to its Processing of Personal Data in the national Instance and Processing in the NHS-PET prior to Processing in or on leaving the national Instance. |  | The Local FDP User Organisation is responsible for providing data subjects with the information required in Article 14 in relation to its Processing of Personal Data in its local Instance and Processing in the NHS-PET prior to Processing in or on leaving its local Instance. |
| **Article 15 - Data subject access request** |  | NHS England is responsible for complying with data subject access requests regarding its Processing of Personal Data in relation to the national Instance and Processing in the NHS-PET prior to or on leaving the national Instance. |  | The Local FDP User Organisation is responsible for complying with data subject access requests regarding its Processing of Personal Data in relation to its local Instance and Processing in the NHS-PET prior to or on leaving its local Instance. |
| **Articles 16 – 22 - Other applicable data subject rights** |  | NHS England is responsible for complying with the exercise of any other data subject rights regarding its Processing of Personal Data in relation to the national Instance and Processing in the NHS PET prior to or leaving the national Instance. |  | The Local FDP User Organisation is responsible for complying with the exercise of any other data subject rights regarding its Processing of Personal Data in relation to its local Instance and Processing in the NHS PET prior to or on leaving its local Instance. |
| **Complaints** |  | NHS England is responsible for investigating any complaints regarding its Processing of Personal Data in relation to the national Instance and Processing in the NHS PET prior to or on leaving the national Instance. |  | The Local FDP User Organisation is responsible for investigating any complaints regarding its Processing of Personal Data in relation to the local Instance and Processing in the NHS PET prior to or on leaving its local Instance. |
| **Contact Point for Data Subjects** |  | NHS England is a contact point for Data Subjects referred to in its Transparency Information regarding its Processing of Personal Data in relation to the national Instance or Processing in the NHS-PET prior to or on leaving the national Instance.  NHS England is a contact point for Data Subjects with queries about the Data Platform and NHS-PET that are not concerned with Processing in a particular Instance. |  | The Local FDP User Organisation is a contact point for Data Subjects referred to in its Transparency Information regarding its Processing of Personal Data in relation to their local Instance or Processing in the NHS-PET prior to or on leaving its local Instance. |
| **Article 28 Processors** |  | NHS England is responsible for engaging the FDP Contractors on Article 28 UK GDPR-compliant terms which govern the design, governance and service management elements of the Products which may be made available to Local FDP User Organisations.  NHS England is also responsible for engaging the FDP Contractors on Article 28 UK GDPR compliant terms which specifically reflect the manner in which it intends to instruct the FDP Contractors by particular reference to the Use Cases, Approved Products and Personal Data to be Processed on behalf of NHS England in relation to the national Instance. |  | The Local FDP User Organisation is responsible for engaging the FDP Contractors on Article 28 UK GDPR-complaint terms which specifically reflect the manner in which the Local FDP User Organisation intends to instruct the FDP Contractors, by particular reference to the Use Cases, Approved Products and Personal Data to be Processed on behalf of the relevant Local FDP User Organisation in relation to the local Instance. |
| **Personal Data Breach and notifications** | | | | |
| **Articles 33 and 34 – Notification of Personal Data breach to supervisory authority/data subject** |  | NHS England is responsible for putting in place appropriate policies for detecting, preventing, and reporting actual and potential Personal Data Breaches where those breaches result in (or could result in) a risk to the rights and freedoms of natural persons in relation to the NHS-PET and the Data Platform.  NHS England has internal operational Processes in place for dealing with Personal Data Breaches, with support from its internal Data Protection Office Team and Cyber Security Operations Centre, which will be invoked in the event of a Personal Data Breach.  NHS England will notify the Local FDP User Organisation on behalf of the FDP Contractor in relation to any Incidents reported to NHS England which impact on its local Instance.  NHS England will notify the ICO and Data Subjects affected where required in accordance with Articles 33 and 34 of UK GDPR in relation to Personal Data Breaches affecting the national Instance or Processing of Personal Data in the NHS-PET prior to Processing in or on leaving the national Instance.  NHS England will notify the ICO and Data Subjects affected where required in accordance with Article 33 and 34 of UK GDPR in relation to Personal Data Breaches affecting local Instances or Processing in the NHS-PET prior to Processing in or leaving local Instances where the Personal Data Breach is considered to have arisen due to the design, governance or service management of the Data Platform or NHS-PET.  Where there is a Personal Data Breach in one or more local Instance that may be reportable to the ICO or to Data Subjects under Articles 33 and 34 then NHS England and the Local FDP User Organisations whose local Instances are affected will liaise with each other to determine whether the incident arose as a consequence of the design, governance and service management of the Data Platform or NHS-PET or as a result of the use of the local Instance or NHS PET by the Local FDP User Organisations. |  | The Local FDP User Organisation, on becoming aware of an Incident concerning the NHS-PET or the Data Platform shall immediately notify NHS England’s National Service Desk and provide as much information as they can at the time of notification.  The Local FDP User Organisation will notify the ICO and Data Subjects affected where required in accordance with Articles 33 and 34 of UK GDPR in relation to Personal Data Breaches affecting its local Instance or Processing of Personal Data in the NHS-PET prior to Processing in or on leaving its local Instance except where the Personal Data Breach arose due to the design, governance or service management of the Data Platform or NHS-PET.  Where there is a Personal Data Breach in one or more local Instance that may be reportable to the ICO or to Data Subjects under Articles 33 and 34 then NHS England and the Local FDP User Organisations whose local Instances are affected will liaise with each other to determine whether the Personal Data Breach arose as a consequence of the design, governance and service management of the Data Platform and NHS-PET or as a result of the use of the local Instance or NHS PET by the Local FDP User Organisations. |
| **Data Protection Impact Assessment** | | | | |
| **Articles 35-36 – Data Protection Impact Assessment and prior consultation.** |  | NHS England is responsible for producing an overarching DPIA for each of the Data Platform and NHS-PET and for consulting, as appropriate regarding Processing of Personal Data in relation to the Data Platform and NHS-PET. These overarching DPIAs will be made available to the Local FDP User Organisations.  NHS England is responsible for producing an Ontology DPIA for the use of Personal Data within the Products in the national Instances of the Data Platform and for consulting, as appropriate regarding Processing of Personal Data in relation to the national Instance.  NHS England will produce National Product DPIAs for Products in the national Instance and DPIA Templates for Products to be deployed in local Instances. The template DPIAs will be made available to Local FDP User Organisations to help create their own Product DPIAs relating to their use in their local Instances. |  | Making use of the templates provided by NHS England, the Local FDP User Organisation shall adopt, adapt, or create an overarching DPIA for each of the Data Platform and NHS-PET and a DPIA for each Product that is deployed in their local Instance. |

1. If there is no SCPD then state N/A [↑](#footnote-ref-1)