|  |  |
| --- | --- |
| **Contract Reference** | CON-NCCID-0000 Version 1.0 |

# Part 1: Front Sheet

## Introduction

1. Any party wishing to access and use NHS England's data must first enter into this Contract. This Contract is a framework agreement. It creates a framework of legally binding terms and conditions that will apply on each and every occasion NHS England agrees to provide data access to the Data User (as defined in Clause 1.2, Part 1 below). NHS England will not provide data access to any party that has not entered into this Contract.
2. Entering into this Contract does not guarantee that NHS England will agree to provide access to any data with the Data User, on any particular occasion, or for any particular purpose. Access to data by NHS England is at the absolute discretion of NHS England and subject to such terms and conditions as NHS England may impose. The terms and conditions on which NHS England will permit the Data User to access and use data on a particular occasion and for a particular purpose will be set out in a separate Data Access Agreement entered into between NHS England and the Data User. Each Data Access Agreement will be subject to the terms and conditions of this Contract and will identify the specific data in question and will set out any specific terms that will apply to the access and use of the data by the Data User on that occasion and for that particular purpose.

## Parties

* 1. **NHS England,**  a non-departmental public body established pursuant to section 1H of the Health and Social Care Act 2012 whose address is Skipton House London SE1 6LH; and
  2. The party whose details are set out below (the “**Data User**”)**:**

## Contract Term

* 1. The term of this Contract shall be:

|  |  |  |  |
| --- | --- | --- | --- |
| **Start Date** | 07/05/2020 | End | 06/05/2021 |
| **Term:** | 12 months |  |  |

## Status of this Contract

* 1. This Data Access Framework Contract comprises this Part 1 (Front Sheet), Part 2 (Terms and Conditions), the Schedules and any DAA entered into between the parties from time to time (collectively the "**Contract**"). It sets out the terms on which NHS England agrees to provide access to the Data to the Data User.
  2. The purpose of this Contract is to:

clarify the responsibilities and commitments of the parties in relation to the Data;

impose confidentiality requirements on the Data User

outline the data security principles and requirements with which the Data User;

set out the audit rights of NHS England; and

detail arrangements for termination or expiry of this Contract

* 1. If there is a conflict or inconsistency between any provision contained in (i) Part 1 (Front Sheet), (ii) Part 2 (Terms and Conditions), (iii) the Schedules, (iv) the provisions of a DAA, (v) the Annexes of the DAA, and (vi) any Special Conditions, then:

the provisions of the Special Conditions shall prevail, followed by,

this Part 1, followed by,

Part 2, followed by,

the Schedules. Followed by,

the remainder of the terms of the DAA (other than the Annexes to the DAA), followed by,

the other Annexes to the DAA

* 1. From time to time, the Data User may wish to request access to Data under this Contract. A Data Access Agreement (“**DAA**”) will be entered into by the parties to document and agree the terms on which the relevant Data will be shared. A DAA will be entered into between the parties when the Data User signs the relevant DAA. Signing of the DAA may be performed electronically. Each DAA which is entered into between the parties will form part of this Contract and will be subject to the terms and conditions of this Contract (or any New Contract). In no circumstances will a DAA be entered into without the parties first entering into this Contract (or any New Contract).
  2. Each DAA will detail:

the Data to be provided;

the legal basis for sharing Data;

the Purpose of the sharing and use of the Data;

the expected benefits to health and/or social care by sharing the Data

the data transfer method

any Associated DAAs;

any special terms and conditions for the use or reuse of the Data; and

any Charges payable for the provision of the Data

* 1. Where the Data to be accessed in accordance with the terms of this Contract and a DAA is Personal Data, the parties acknowledge and agree that:

The access of such Personal Data will involve NHS England permitting access as a Data Controller to the Data User as a Data Processor.

**By signing this Part 1, the parties agree to be bound by the terms of this Contract.**

|  |  |
| --- | --- |
| **Signed for and on behalf of the Data User:** | |
| **Organisation Name:** |  |
| **Signature** |  |
| **Name:** |  |
| **Role:** |  |
| **Date:** |  |

|  |  |
| --- | --- |
| **Signed for and on behalf of NHS England:** | |
| **Name:** |  |
| **Signature** |  |
| **Role:** |  |
| **Date:** |  |

# Part 2: Terms and Conditions

## Interpretation

* 1. Capitalised words and expressions used in this Contract shall bear the meanings given to them in Schedule 1. The rules of interpretation set out in Schedule 1 shall apply to this Contract.

## NHS England Responsibilities

* 1. NHS England will provide access to the Data to the Data User using the data access method as set out in the relevant DAA.
  2. NHS England will be a Data Controller, or will act on behalf of the Data Controller, for the Data prior to access of the Data insofar as the Data constitutes Personal Data.

## License and intellectual Property

* 1. NHS England grants to the Data User a non-exclusive, non-transferable, suspendable (in whole or in part), revocable licence in the Territory for the duration of the Term of the relevant DAA solely for the Purpose and only in accordance with the terms of this Contract and the relevant DAA, to:

access, view, process, copy, and Manipulate (but not modify) the Data; and/or

create only Manipulated Data and Derived Data.

* 1. **Not Used**
  2. **Not Used**
  3. The Data User acknowledges that:

any and all Intellectual Property Rights in the Data are and shall remain at all times the property of NHS England or its licensors, as the case may be;

it shall have no rights in or to the Data other than the right to use the Data in accordance with the express terms of this Contract and the relevant DAA; and

NHS England has and/or its licensors have made and will continue to make substantial investment in obtaining, verifying, selecting, co-ordinating, developing, presenting and supplying the Data.

* 1. The Data User hereby assigns to NHS England absolutely with full title guarantee any and all Intellectual Property Risks (including but not limited to copyright and database rights) in any Manipulated Data and creation.
  2. For the avoidance of doubt, the Manipulated Data to which the Intellectual Property Rights assigned to NHS England under Clause 3.5 shall be deemed to be included in the licence from the date when such rights arise.
  3. All Derived Data and any and all Intellectual Property Rights in Derived Data shall be owned exclusively by the Data User. In consideration for the grant of the licence set out in Clause 3.1, the Data User agrees to be bound by any terms set out in the Special Conditions regarding the copying, processing, Distributing, Manipulating, creating, storing and any other use of the Derived Data.
  4. On demand by NHS England, the Data User shall make a declaration (the form and content of which will be notified to the Data User by NHS England at the relevant time) of any data created under the relevant DAA which it believes is Derived Data to NHS England. The Data User will make available to NHS England, upon request, copies of any data declared to be Derived Data under Clause 3.8.
  5. Where the Data User has made a declaration upon the request of NHS England Clause 3.8, NHS England shall verify whether the data declared is Derived Data and inform the Data User of the outcome of its verification. The Data User hereby agrees that NHS England’s verification is final and binding on whether data is classed as Derived Data or otherwise.
  6. NHS England may call upon the Data User at any time to execute such documents and perform such acts as may be required for the purpose of giving full effect to this Clause 3, in particular Clause 3.8. The Data User shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at its own costs, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Clause 3, in particular Clause 3.8.
  7. In any display of the Data, wherever possible, the Data User must cite the copyright of NHS England and/or any licensor of NHS England as appropriate as follows:

*"Copyright © (year), NHS England. Re-used with the permission of the* *NHS England [and/or [name of licensor]]. All rights reserved."*

## Data User general responsibilities in relation to Data

* 1. The Data User shall:

use the Data only in accordance with the Purpose;

process the Data only in accordance with the terms of this Contract, the relevant DAA, and Special Conditions

maintain good information governance standards and practices, meeting or exceeding the IG Toolkit standards required of its organisation type;

not share the Data with any third party (other than any third-party Data User permitted under the terms of the relevant DAA and only in relation to Data provided under that DAA) without the prior written consent of NHS England;

ensure that Personnel processing the Data are suitably trained and made aware of their responsibilities in handling the Data;

ensure that all Personnel, prior to accessing or using Data, are made fully aware of, and comply with the terms and conditions set out in this Contract and the relevant DAA;

subject to any New Contract being entered into as set out in Clause 13.10, promptly and in any event within 28 days of the applicable date, the applicable date being the earlier of:

* + - 1. the expiry or termination of this Contract; and
      2. the expiry or termination of the relevant DAA, permanently destroy or erase the Data, together with all hard and soft copies of the same and provide NHS England with a Certification of Destruction;

immediately notify any Data Breach to NHS England as soon as the Data User discovers such Data Breach; and:

1. where the Data User is obliged to complete the IG Toolkit, the Data User shall assess whether a "Serious Incident Requiring Investigation" (as defined in the IG Toolkit) report needs to be made; or
2. where the Data User is not obliged to comply with the IG Toolkit, the Data User shall assess whether to notify the ICO of the Data Breach, in accordance with Applicable Law and the ICO's guidance on breach notification; and

immediately notify NHS England if it no longer has a legal basis on which to process Data.

* 1. Unless specified in the Purpose, (or as otherwise authorised by an NHS England director in writing), the Data User must not combine the Data with any other data held by the Data User and must not attempt to identify any individual from the Data, or use or manipulate the Data in any way that re-identifies any individual from the Data.
  2. The Data User shall when using and processing the Data comply with and have regard at all times to:

all Applicable Law;

Good Industry Practice;

Guidance; and

the data security requirements set out in the DAA and Schedule 2.

* 1. In the event of any change in Applicable Law subsequent to the date of signature of this Contract, the Data User shall take such steps (including, agreeing to additional obligations and/or executing additional documents) as may be requested by NHS England to ensure that the processing and use by the Data User, of the Data complies with such amended Applicable Law.
  2. Before undertaking any Publishing activity using the Data or any derived information, the Data User must ensure it has complied with the terms of this Contract and the relevant DAA.
  3. The Data User must not contact any individual that could be identified from the Data, except where:

such contact is expressly permitted as part of the Purpose; and

either:

* + - 1. the individual concerned has already consented in writing to such contact; or
      2. there is legal authority for the Data to be used to contact the individual concerned without such consent.
  1. Without prejudice to its rights under Clause 12 of this Contract, NHS England shall be entitled to suspend the supply of Data to the Data User under this Contract and/or any DAA without incurring any liability to the Data User if, in the reasonable opinion of NHS England, the Data User may be in breach of any of its obligations under this Contract or any DAA .

## Data Protection

* 1. To the extent that any of the Data constitutes Personal Data (or constitutes Annoymised Data, but then the Data becomes Personal Data in the hands of the Data User), the Data User shall hold and process such Data at all times:

as Data Controller of the Personal Data;

in accordance with Data Protection Law; and

using appropriate technical and organisational security measures against unauthorised or unlawful processing of Data and against accidental loss or destruction of, or damage to, the Data.

* 1. Nothing in this Contract or in any DAA is intended to construe either party to this Contract as:

the Data Processor of the other party; or

a Joint Data Controller or a Data Controller in Common with the other party.

with respect to the Personal Data processed in connection with this Contract or any DAA

* 1. Where the Data includes Personal Data, the Data User shall:

process such Personal Data securely, and permanently destroy or erase it when it is no longer needed for the Purpose;

not Publish such Personal Data without the prior written consent of NHS England. Such consent may (at NHS England's sole discretion) be conditional upon such Personal Data being de- identified to a standard suitable for subsequent release in compliance with the Anonymisation Standard for Publishing Health and Social Care Data (ISB 1523) and the ICO Anonymisation: managing data protection risk code of practice;

not disseminate such Personal Data, or a subset of such Personal Data, to any third party other than a those approved under the relevant DAA (and only in relation to Data provided under that DAA) without prior written consent from NHS England;

take reasonable steps to ensure the reliability of each of its Personnel who have access to such Personal Data;

inform NHS England immediately if it receives any communication from the ICO which relates to such Personal Data, unless explicitly prohibited from doing so by the ICO;

ensure access to such Personal Data by Personnel is managed, auditable and restricted to those needing to process such Personal Data;

only be entitled to appoint a Third Party Contractor to process such Personal Data on behalf of the Data User where permitted under the terms of the relevant DAA (and only in relation to Data provided under that DAA) or with the prior written consent of NHS England and shall remain fully responsible to NHS England under the terms of this Contract and the relevant DAA for the actions of its Data Users; and

not process such Personal Data outside the European Economic Area except with the express prior written consent of NHS England and only in circumstances when such transfer is permitted under, and complies with the requirements of, Data Protection Law and Applicable Law.

## Confidentiality

* 1. The Data User must:

keep the Data confidential, and shall not disclose it to any third party save where expressly permitted to do so in accordance with the terms of this Contract and the relevant DAA; and

use the Data only in so far as is necessary to perform its obligations and exercise its rights under this Contract and the relevant DAA.

* 1. The restrictions on disclosure and use contained in this Clause 6 shall not apply to the Data to the extent that it:

is or was already in the possession of or becomes available to the Data User in either case free of any obligation of confidentiality;

is required to be disclosed by the Data User by Applicable Law, or Parliamentary obligation, or the rules of any stock exchange or governmental or regulatory authority having the force of law;

is required to be disclosed to the Data User’s professional advisers; or

at the time of receipt by the Data User, is in the public domain or after such receipt comes into the public domain other than as a result of breach by the Data User of this Clause 6.

* 1. The Data User shall be responsible for any unauthorised disclosure or use of the Data made by any of its Personnel and shall take all reasonable precautions to prevent such unauthorised disclosure or use.
  2. If the Data User is obliged to respond to requests under the Freedom of Information Act 2000 ("**FOIA**") and a request is received regarding the Data, the Data User must consult with NHS England prior to any release of the Data and shall take into account NHS England’s views before responding to any request. Notwithstanding this Clause 6.4, NHS England acknowledges and the Data User accepts that the Data User is responsible in its absolute discretion for determining whether information regarding the Data is exempt from disclosure under FOIA.
  3. Without prejudice to any other rights or remedies that NHS England may have, the Data User acknowledges and agrees that damages alone would not be an adequate remedy for any breach of confidentiality and that accordingly, NHS England would be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of confidentiality by the Data User.

## Audit and specific rights

* 1. NHS England (and any auditors of or other advisers to NHS England) shall be entitled at any time during the Contract Term and for a period of 12 (twelve) months after the termination or expiry of this Contract, to audit the Data User’s compliance with the requirements of this Contract.
  2. NHS England (and any auditors of or other advisers to NHS England) shall be entitled to audit the Data User’s use of the Data which may include the auditing of the hosting and IT infrastructure, security, processes and procedures. The rights of NHS England (and any auditors of or other advisers to NHS England) under this Clause 7 to audit the Data User's use of the Data includes the right for NHS England (and any auditors of or other advisers to NHS England) to audit the use of the Data by any person to whom the Data User has transferred or given access to the Data whether as a sub-contractor, Data User or otherwise (each being a "**Third Party Contractor**"). The Data User must include such provisions as are necessary to give NHS England (and any auditors of or other advisers to NHS England) that right in any sub-contract or other agreement or arrangement under which the Data User permits such Third Party Contractor to have access to the Data and must use its best endeavours to procure that NHS England (and any auditors of or other advisers to NHS England) shall have access to the sites used by any such person to access the Data as if that person were the Data User.
  3. Subject to Clause 7.4, NHS England will give the Data User or Third-Party Contractor not less than 10 (ten) Working Days' notice of any proposed audit and will not carry out more than 2 (two) audits within any 12 (twelve) month period.
  4. If NHS England, acting reasonably, has any concerns that:

the terms of this Contract and/or any DAA are not being adhered to by the Data User and/or any Third Party Contractor; or

the terms of any Associated DAA are not being adhered to by the relevant Data User under that Associated DAA NHS England (and any auditors of or other advisers to NHS England) shall be entitled to carry out one or more audits on the Data User and/or the Third Party Contractor, including making unannounced visits and carrying out spot checks of the Data User's sites and Third Party Contractor's Sites. There shall be no restriction on the number of audits NHS England (and any auditors of or other advisers to NHS England) may carry out under this Clause 7.4, and the restriction on the number of audits that NHS England (and any auditors of or other advisers to NHS England) may carry out within a 12 (twelve) month period shall not apply to any audits carried out under this Clause 7.4, and the restriction on the number of audits that NHS England (and any auditors of or other advisers to NHS England) may carry out within a 12 (twelve) month period shall not apply to any audits carried out under this Clause 7.4.

* 1. The Data User shall, for the purpose of any audit carried out under this Clause 7, provide or procure the access to the Data User’s and relevant Third Party Contractor’s sites, systems, procedures, documents and staff as may be necessary or desirable in connection with the audit and shall permit or procure that NHS England (and any auditors of or other advisers to NHS England) are permitted to take copies of relevant documents and data pursuant to such audit.
  2. The Data User shall provide and shall procure that its Third Party Contractor provides such information as NHS England (and any auditors of or other advisers to NHS England) reasonably requests in order to verify the Data User’s compliance with the terms of this Contract and/or any DAA.
  3. The cost of any audit carried out under this Clause 7 shall be borne by NHS England unless, in NHS England's reasonable opinion, the audit reveals that the Data User or Third Party Contractor either has not complied, or is not complying, with any of the Data User's obligations under this Contract, or any DAA, in which case the Data User shall promptly reimburse NHS England for all reasonable costs of the audit and the full cost of any investigation which NHS England may commence prior to an audit taking place.
  4. Subject to Clauses 7.9, 7.10, 7.11 and 7.12, NHS England agrees not to disclose to any third party any confidential information relating to the Data User received or obtained by NHS England (i) under Clause 3.10 with respect to the Data User’s Derived Data, and (ii) in the course of carrying out any audit under this Clause 7.
  5. The restrictions on disclosure and use of the Data User's confidential information contained in Clause 7.8 shall not apply to information to the extent that it is or was:

already in the possession of or becomes available to NHS England in either case free of any obligation of confidentiality;

required to be disclosed by NHS England by law, regulation or pursuant to an order of a regulatory or supervisory body, or by any other competent authority, or to a professional adviser; or

at the time of receipt by NHS England, is in the public domain or after such receipt comes into the public domain other than as a result of breach by NHS England of this Clause 7.

* 1. NHS England shall be entitled to share confidential information received or obtained by NHS England in the course of carrying out any audit under this Clause 7 with government organisations in accordance with its performance of its functions including NHS England, the Department of Health, Government Legal Department, National Audit Office and any auditors or advisors to NHS England.
  2. NHS England shall be entitled to publish the auditor’s findings and any audit report.
  3. NHS England is obliged to respond to requests under FOIA. NHS England must consult with the Data User prior to any release of confidential information received under this Clause 7, and shall take into account the Data User’s views before responding to any request. Notwithstanding this Clause 7.12, Data User acknowledges and accepts that NHS England is responsible in its absolute discretion for determining whether the information is exempt from disclosure under FOIA.

## Remediation Process

* 1. Without limitation to Clause 7, Clause 13.6 and NHS England’s other rights and remedies under this Contract, where: (i) the Data User is in breach of this Contract or any DAA ; or (ii) there is a breach of any Associated DAA; or (iii) (in NHS England's reasonable opinion) there has been or is likely to be a breach of any Associated DAA, NHS England may:

suspend provision of all or part of the Data to the Data User until the breach or suspected breach is resolved to NHS England’s reasonable satisfaction;

suspend the licence(s) granted to the Data User under Clause 3.1 in relation to all or part of the Data until the breach or suspected breach is resolved to NHS England’s reasonable satisfaction; and/or

require (without limitation) the Data User to:

* + - 1. destroy or erase all or part of the Data received by the Data User in accordance with Applicable Law, and Guidance, and produce a Certificate of Destruction; and/or
      2. produce, or cooperate with any Data User who is a party to an Associated DAA to produce, a remediation plan detailing how the Data User (and, if applicable, any Data User who is a party to an Associated DAA) will resolve the breach or suspected breach to NHS England’s reasonable satisfaction, together with a project plan.
  1. Without prejudice to NHS England’s rights and remedies under this Contract (including under Clause 12) where in NHS England’s reasonable opinion the Data User has not complied, or is not complying, with any of the Data User's obligations under this Contract, or any DAA, the Data User shall be liable to promptly reimburse NHS England for its reasonable costs and expenses incurred in connection with such breach. For the avoidance of doubt, such reasonable costs may include costs associated with any additional NHS England activity due to any resulting ICO investigation and any additional media and communication activity and costs.

## Warranties

* 1. The Data User warrants that:

it has the full right and authority to enter into this Contract; and

it shall use the Data in accordance with all Applicable Laws.

* 1. The Data is provided to the Data User by NHS England on an 'as is' basis and NHS England does not warrant the accuracy or completeness of the Data, nor that the Data does not infringe the Intellectual Property Rights of any third party, nor does it undertake that the Data will meet the requirements of, or be fit for any purpose of, the Data User.

## Charges

* 1. In consideration of the provision of the Data by NHS England, the Data User agrees to pay the Charges as set out in the relevant DAA.
  2. The Charges set out in the relevant DAA are payable by the Data User thirty (30) days from the date of receipt by the Data User of an invoice for any Charges from NHS England (the "**Due Date**").
  3. All Charges (or appropriate portions thereof) shall be paid by the Data User to NHS England to its nominated bank account by the Due Date(s), in cleared funds, without withholding, set-off or deduction, and time for payment is of the essence.
  4. All Charges payable shall be paid in pounds (£) sterling and are exclusive of VAT, which shall be paid in addition at the appropriate rate, where VAT applies.
  5. Where the Data User fails to make payment, NHS England shall be entitled (but shall not be obliged) to charge the Data User interest on all sums overdue at the statutory interest rate as set by the LPCDA (from time to time in force) calculated on a daily basis from the relevant Due Date until payment is made in full by the Data User.
  6. In addition to its right to charge interest on late payment as set out in Clause 10.5, and without prejudice to its other rights under this Contract or any applicable DAA , where the Data User fails to make payment within a further fourteen (14) days from the first date that any sums are overdue, NHS England shall be entitled (but shall not be obliged) to do any, or a combination of, the following on written notice to the Data User:

to immediately suspend provision of Data under any of the DAAs; and/or

to terminate either immediately or by the time specified in the notice, the applicable DAA; and/or

to terminate either immediately or by the time specified in the notice, all other DAAs that are entered into under this Contract; and/or

to immediately suspend any existing applications.

## Liability

* 1. This Clause 11 sets out:

the types of loss for which NHS England shall not in any circumstances be liable to the Data User under or in connection with this Contract or any DAA;

the maximum liability that NHS England shall have to the Data User under or in connection with this Contract or any DAA; and

the types of liability that are not limited by anything in this Contract.

* 1. Except as set out in Clause 11.4, NHS England shall in no circumstances be liable to the Data User for:

any loss of profits, revenue, opportunity, contracts, sales, turnover, anticipated savings, goodwill, reputation, business opportunity, production, or loss to or corruption of data (regardless of whether any of these losses or damages are direct, indirect or consequential); and

any indirect or consequential loss or damage whatsoever (including where such loss or damage is of the type specified in Clause 11.2.1).

* 1. Except as set out in Clause 11.4, NHS England's total aggregate liability for any and all claims arising under or in connection with each DAA regardless of form of action and whether in contract, tort (including negligence and breach of statutory duty) or otherwise is limited to the greater of:

the total Charges paid by the Data User to NHS England under that DAA under which the event or events giving rise to the liability occurred; or

£1,000 (one thousand pounds).

* 1. Nothing in this Contract shall limit either party's liability to the other for:

death or personal injury resulting from the negligence of its employees, agents or subcontractors;

fraud or fraudulent misrepresentation; or

any other liability that cannot be excluded or limited as a matter of law.

* 1. Other than any warranties expressly set out in this Contract, all warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded except to the extent the exclusion is prohibited by law.

## Indemnity

* 1. The Data User shall indemnify NHS England in full for any liabilities, losses, demands, claims, damages, amounts agreed in settlement, costs and expenses incurred which arise from or in connection with:

any loss of the Data by the Data User;

unauthorised or unlawful use of the Data beyond the Purpose(s) by the Data User;

any breach of this Contract by the Data User, whether arising in negligence, contract or otherwise; and

any monetary penalty notice imposed on NHS England by the Information Commissioner under Data Protection Law as a result of the Data User's breach of this Contract.

## Term and termination

* 1. This Contract shall, subject to prior termination in accordance with this Clause 13, continue for the Contract Term. Each DAA shall, subject to prior termination in accordance with this Clause 13, become effective on the relevant start date and shall continue for the Term as set out and defined in the relevant DAA.
  2. If the Data User wishes to retain the Data beyond the end of the Term of any DAA:

it must have submitted an application to NHS England not less than three months prior to the expiry of the Term of the relevant DAA to put in place a new Data Access agreement, and such new Data Access agreement must be executed by the parties to replace the relevant DAA prior to the expiry of the term of the relevant DAA; and

the Data User will be required to ensure that this Contract (or a replacement to this Contract) is in place for the duration to DAA(s). Under no circumstances shall the Data User retain the Data without an extant DAA and Contract (or New Contract) in place which relates to that Data.

* 1. NHS England may terminate this Contract and/or any DAA by giving to the Data User not less than one month's prior written notice.
  2. NHS England may terminate any DAA immediately on written notice to the Data User if any Associated DAA is terminated (for any reason).
  3. On or at any time after the occurrence of an event specified in Clauses 10.6 or 13.6, NHS England shall be entitled to terminate this Contract and/or any DAA, with immediate effect by written notice to the Data User.
  4. NHS England may terminate this Contract and/or any DAA if:

the Data User is in material breach of this Contract and/or any DAA and that breach cannot be remedied;

the Data User is in material breach of this Contract and/or any DAA which can be remedied but the Data User fails to do so within 30 days starting on the day after receipt of written notice from NHS England;

in respect of Data which constitutes Personal Data, the Data User no longer has the legal basis to process this Data;

the Data User stops payment of its debts or is unable to pay its debts as they fall due;

the Data User is dissolved;

the Data User becomes or is declared insolvent or a resolution is passed for the winding up of the Data User, or the Data User convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or a liquidator, an administrative receiver, a receiver, manager, trustee or administrator or analogous officer is appointed in respect of all or any part of its property, undertaking or assets, or the Data User becomes subject to any bankruptcy procedure or analogous insolvency procedure in any jurisdiction, or any person files a notice of intention to appoint an administrator or a notice of appointment of an administrator or applies to court for an administration order in respect of the Data User;

it becomes unlawful for the Data User to perform all or any of its obligations under this Contract and/or any DAA;

there is a change in Applicable Law which materially affects NHS England's powers to provide Data to the Data User; or

the Data User (being a natural person) shall die or become mentally incapacitated.

* 1. Without prejudice to NHS England's rights under Clauses 13.3 and 13.5:

where the Data User commits any breach of this Contract and/or any DAA; or

an event specified in Clause 13.6 occurs; or

if there is a breach of any Associated DAA; or

(in NHS England's reasonable opinion) there has been or is likely to be a breach of any Associated DAA, NHS England shall be entitled to suspend this Contract and/or any DAA (which shall include the suspension of any licence granted to the Data User under Clause 3.1) without incurring any liability to the Data User, with immediate effect by written notice to the Data User.

* 1. The Data User may terminate this Contract or any DAA at any time by notifying NHS England in writing.
  2. Termination and, subject to Clause 13.10, expiry of this Contract will automatically terminate all DAAs that are entered into under this Contract.
  3. If the Data User wishes to renew this Contract beyond the expiry of the Contract Term, it must contact NHS England not less than three months prior to the expiry of the Contract Term to put in place a new Data Access framework contract which shall when executed by the parties replace this Contract (the “**New Contract**”). Where a New Contract is agreed, any DAA which continues beyond the preceding Contract Term, will be subject to the terms and conditions of the New Contract with effect from the expiry of the preceding Contract Term.

## Consequences of termination

* 1. Save where a New Contract is entered into in accordance with Clause 13.10, on or before the effective date of termination or expiry of this Contract the Data User must ensure that all Data is securely and permanently destroyed or erased. On or before the effective date of termination or expiry of any DAA, the Data User must ensure that all Data licensed under that DAA is securely and permanently destroyed or erased, save where agreed in a replacement DAA for the Data to be retained.
  2. On completion of the activity in Clause 14.1, the Data User shall promptly, and in any event within 28 days of the date of termination or expiry of this Contract, or any DAA, provide confirmation of the secure and permanent destruction to NHS England in the form of a Certificate of Destruction.
  3. Any provision of this Contract that expressly or by implication is intended come into or continue in force on or after termination or expiry of this Contract (including Clauses 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18 and 19) shall remain in full force and effect.

## Assignment

* 1. The Data User shall not assign, novate, transfer, charge, dispose of or deal in any other manner with this Contract and/or any DAA, or any of its rights or beneficial interests under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Contract, without the prior written consent of NHS England.
  2. NHS England may assign, transfer, charge, dispose of or deal in any manner with its rights and obligations under this Contract and/or any DAA. Where it does so, NHS England shall notify the Data User of such change in writing.

## Notices

* 1. Except where any provision of this Contract states otherwise, all notices and communications sent pursuant to this Contract shall be in writing and shall be deemed to have been duly given:

when delivered, if delivered by hand; or

on the second Working Day after mailing, first class postage pre-paid; or

when delivered by email, when the User, by an email sent to the email address for the sender, or by a notice delivered by another method in accordance with this clause, acknowledges having received that email, (with an automatic “read receipt” also constituting acknowledgment of an email for purposes of this clause).

* 1. Notices shall be addressed to the addresses provided in Part 1 of this Contract or to such other address as the parties may notify in writing from time to time. Each party shall notify the other party in accordance with this Clause 16 if the address specified in Part 1 of this Contract is no longer an appropriate address for the service of notices and communications.

## Publicity

* 1. NHS England shall be entitled to Publish the terms of this Contract, any DAA and the results of any audit.

## Miscellaneous

* 1. Nothing in this Contract or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party.
  2. NHS England may notify the Data User in writing from time to time of any update(s) that shall apply to this Contract and/or any DAA. Where specified by NHS England, such updates shall be effective from the date specified in such notification.
  3. Without prejudice to Clause 18.2, no amendment or variation of the terms of this Contract or any DAA shall be effective unless made or confirmed in writing, and signed by the parties to this Contract.
  4. If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Contract which shall remain in full force and effect to the extent permitted by law.
  5. The rights and remedies provided by this Contract are cumulative and (unless otherwise provided in this Contract) are not exclusive of any rights or remedies provided by law.
  6. This Contract does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it (except that a person who is a permitted successor to or assignee of the rights of a party to this Contract shall be deemed to be a party to this Contract).
  7. NHS England shall not be liable to the Data User for any delays in performance, non-performance or breach of any of its obligations under this Contract and/or any DAA caused by matters beyond its reasonable control. Such matters shall include (without limitation) industrial disputes, acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts of government or acts or omissions of third parties.

## Governing law and jurisdiction

* 1. This Contract 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 English law.
  2. Each party irrevocably agrees that, for the sole benefit of NHS England and subject to Clause 19.3, the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this Contract and/or any DAA, its subject matter or formation.
  3. Nothing in this Clause 19 shall limit the right of NHS England to take proceedings against the Data User in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## Entire Agreement

* 1. This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract, but without prejudice to the rights and liabilities of the parties accrued before the date of this Contract.
  2. Except in respect of any fraudulent misrepresentation made by a party, the parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied, (other than as set out in this Contract) in entering into this Contract.
  3. Nothing in this Clause 20 shall operate to limit or exclude any liability for fraud.

**SCHEDULE 1**

**Interpretation**

1. In this Contract the following expressions have the following meanings:

|  |  |
| --- | --- |
| **"Anonymised Data"** | Data in a form that does not identify individuals and where identification through its combination with other data is not likely to take place; |
| **"Applicable Law"** | all laws, regulations, orders, directions or determinations that are applicable to the obligations of the Data User under this Contract and/or any DAA, including by way of example but not limited to those identified in Schedule 3; |
| **"Associated DAA "** | any Data Access agreement between NHS England and a third party Data User which is expressly stated in the relevant DAA under this Contract to be an "Associated DAA"; |
| **"Certificate of Destruction"** | a certificate signed by an authorized representative of the Data User, or specialist third party engaged to securely destroy the Data, which assures NHS England that the Data and all hard and soft copies thereof held by the Data  User have been securely and permanently destroyed in accordance with Applicable Law and Guidance (including the NHS England Destruction and Disposal of Sensitive Data Good Practice Guidelines),  and “**Certification of Destruction**” shall be interpreted as the provision of such certificate; |
| **"Charges"** | the charges payable, if any, for the provision of the Data as set out in the relevant DAA(s), and the cost of audit(s) where applicable; |
| **"Contract Term"** | has the meaning given in Clause 2.1 of Part 1; |
| **"Data"** | the health or social care data specified in and that is provided by NHS England to the Data User under a DAA;  and such term shall also be deemed to include **Manipulated Data** unless otherwise specified; |
| **"Data Breach"** | a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Data; |
| **"Data Controller"** | a data controller as defined in Section 1(1) of the Data Protection Act 1998, and, from 25 May 2018, a controller as defined in Article 4 of GDPR; |
| **“Data Controller in Common"** or **“DCIC”** | a data controller in common as envisaged in the definition of data controller in Section 1(1) of the Data Protection Act 1998; |
| **"Data Processor "** | a Data User as defined in Section 1(1) of the Data Protection Act 1998, and, from 25 May 2018, a processor as defined in Article 4 of GDPR; |
| **“Data Protection Law”** | the Data Protection Act 1998 and all other applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of personal data, including, on and from 25 May 2018, GDPR, together with all guidance and codes of practice issued or adopted by a regulator (or group of regulators) with jurisdiction over the data processing arrangements contemplated in this Contract; |
| **"Data User"** | the party named in Clause 1.2 of Part 1 of this Contract who will be a Data Processor of any Personal Data to be accessed under and in accordance with this Contract and any DAA; |

|  |  |
| --- | --- |
| **"Derived Data"** | any Data (wholly or in part) that is Manipulated to such a degree that it:   1. cannot be identified as originating or deriving from the Data and cannot be reverse-engineered such that it can be so identified; and 2. is not capable of use as a substitute for the Data; and 3. has not at any time been verified by NHS England as not fulfilling the criteria (a) and (b) above |
| **"Distribute"** | make accessible (including the provision of access through a database or other application populated, transferring or disclosing) by any means, including any electronic means;  (and "**Distributing**" shall be construed accordingly) |
| **"DAA "** | has the meaning given in Clause 3.4 of Part 1; |
| **"FOIA"** | has the meaning given in Clause 6.4 of Part 2; |
| **“GDPR”** | the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC on and from the  date upon which the Regulation applies (as set out in Article 99); |
| **"Good Industry Practice"** | the degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and  experienced person engaged in the same or similar type of undertaking or carrying out the same or similar type of activities as the Data User; |
| **"Guidance"** | any applicable guidance or standards including codes of practice, standards and guidance issued by the Information Commissioner, the Department for Health, NHS England, the Standardisation Committee for Care Information and NHS  Digital, including by way of example but not limited to those identified in Schedule 3 of this Contract; |
| **"IG Toolkit"** | the Department of Health's information governance toolkit, which includes the policies and standards required by the Department of Health, and which can be accessed from [https://www.igt.hscic.gov.uk,](http://www.igt.hscic.gov.uk/)  and any replacement of the same by the Department of Health; |
| **"Information Asset**  **Owner"** | a senior member of staff who is the nominated owner for one or more identified information assets within the Data User; |
| **"Information Asset**  **Register"** | a list of personal and non-personal information assets held by the Data User; |
| **"Intellectual Property**  **Rights" or "IPR"** | all intellectual property rights including copyright, database rights, trade marks and trade names, patents, topography rights, design rights, trade secrets, know-how and all rights of a similar nature or having similar effect which subsist anywhere in the world, whether or not any of them are registered and applications for registrations of any of them; |
| **"Joint Data Controller(s)"** or **“JDC”** | a joint data controller as envisaged in the definition of data controller in Section 1 (1) of the Data Protection Act 1998 and, from 25 May 2018, a joint controller as defined in Article 26 of GDPR; |
| **"LPCDA"** | the Late Payment of Commercial Debts (Interest) Act 1998 (as amended by The  Late Payment of Commercial Debt Regulations 2002 (SI 1674) and the Late Payment of Commercial Debt Regulations 2013); |
| **"Manipulate"** | means:   * combine (wholly or in part) with other data or information; or * aggregate (wholly or in part) with other data or information; or * adapt (wholly or in part);   (and "**Manipulating**" and "**Manipulated**" shall be construed accordingly) |
| **"Manipulated Data"** | any Data that has been Manipulated, unless and until it qualifies as Derived Data (to be determined at the sole discretion of NHS England); |
| **"New Contract"** | has the meaning given in Clause 13.10 of Part 2; |

|  |  |
| --- | --- |
| **"Personal Data"** | personal data as defined in Section 1(1) of the Data Protection Act 1998, and, from 25 May 2018, in accordance with Article 4 of GDPR; |
| **"Personnel"** | all employees, agents and contractors of the Data User who may have access to the Data; |
| **"process" and**  **"processing"** | have the meaning set out in section 1(1) of the Data Protection Act 1998, and from 25 May 2018, in accordance with Article 4 of GDPR; |
| **"Publish(ing)"** | to make available to third parties in any form, including the production of hard copy materials, soft and/or electronic copies, e-mails and posting online; |
| **"Purpose(s)"** | the purpose(s) for which the Data User is permitted to use the Data, as set out in the relevant DAA; |
| **"Special Conditions"** | the special conditions for processing the Data as set out in the relevant DAA; |
| **"Territory"** | the territory specified in the relevant DAA; |
| **“Term”** | the term for which the Data User is permitted to use the relevant Data as defined in the relevant DAA; |
| **“Third Party Contractor”** | has the meaning given in Clause 7.2 of Part 2; and |
| **"Working Day"** | a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |

1. In this Contract:
   1. any gender includes any other gender and the singular includes the plural and vice versa;
   2. references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
   3. the Schedules form part of this Contract and the expression “this Contract” includes the Schedules;
   4. any reference to a statutory provision includes a reference to any modification, consolidation, replacement or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it; and
   5. any words following or associated with the terms including, include, in particular, for example, by way of example, or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or associated with those terms.

**SCHEDULE 2**

**Data Security Requirements**

**Section A**

1. Without prejudice to the Data User’s other obligations in respect of information security, the Data User shall:
   1. having regard to the state of technological development, provide a level of security (including appropriate technical and organisational measures) appropriate to:
      1. the harm that might result from unauthorised or unlawful processing of Data or accidental loss, destruction or damage of such Data; and
      2. the nature of the Data;
   2. take reasonable steps to ensure the reliability of the Data User’s Personnel who have access to the Data which shall include:
      1. ensuring all such Personnel understand the confidential nature of the Data and the issues which arise if proper care is not taken in the processing of the Data;
      2. ensuring all such Personnel are properly trained in data protection appropriate to their role, and to ensure that all such Personnel have completed such training prior to their use of the Data. Where requested to do the Data User shall provide examples of training materials used, together with the methodologies used to demonstrate that Personnel have understood the training. Training shall be repeated at regular intervals to take account of developments in law on good data protection practice and in any event on an annual basis; and
      3. ensuring all such Personnel are properly vetted, both during the initial recruitment process and throughout their engagement in their processing of the Data, including through the use of procedures to identify changes in personal circumstances which may affect an individual's ability to process the Data in accordance with the terms of this Contract;
   3. provide NHS England with such information, assistance and co-operation as NHS England may require from time to time to establish NHS England’s and/or the Data User's compliance with the Data Protection Law; and
   4. inform NHS England as soon as reasonably practicable of any particular risk to the security of the Data of which it becomes aware, and of the categories of Data and individuals which may be affected.

1. The Data User shall promptly, and in any event not later than reasonably required in order to enable NHS England to fulfil its duties under the Data Protection Law provide such information as NHS England requires relating to the identity of any third parties to whom the Data has been disclosed by the Data User to the extent NHS England requires this information to comply with its duties under the Data Protection Law.

1. The Data User shall implement and maintain security and risk assessment standards, facilities, controls and procedures appropriate to the nature of the Data held by it and the harm that would be caused by its loss or disclosure, including:
   1. to maintain a comprehensive and up-to-date data protection policy, (and the Data User shall ensure that all its Personnel who have access to the Data shall comply with the obligations upon them contained in the data protection policy);
   2. to maintain an up to date Information Asset Register, which identifies the Information Asset Owner for Data supplied under the relevant DAA.

1. The Data User shall ensure:
   1. that it has properly configured access rights for its Personnel including a well-defined joiners and leavers process to ensure access rights to the Data are properly managed;
   2. that it has proper controls in place to make sure that complex alphanumeric passwords are required for access to the Data and that training is provided in relation to the need to keep such passwords secure;
   3. it has in place procedures to identify wrongful use of Data, including the monitoring of wrongful access to Data;
   4. that suitable and effective authentication processes are established and used to protect Data;
   5. that Data is backed up on a regular basis and that all back up data is subject to such vigorous security procedures as are necessary in order to protect data integrity, such security measures being commensurate to the nature of the data. The Data User shall take particular care when transporting backup data and other personal information and shall ensure such backup data and other personal information is transported in a safe and secure manner;
   6. that Data transferred electronically is encrypted using only the Advanced Encryption Standard (AES) – 256 bits specification;
   7. that Data stored on laptops or other portable media is encrypted and that the Data User maintains an accurate, up to date asset register, including all such portable media used to process the Data;
   8. that Personnel are not able to access the Data from home or via their own electronic device other than through a secure electronic network and that Data may not be stored in such devices;
   9. that suitable physical security measures are established commensurate to the harm that could result from the unlawful disclosure of the Data. Such physical security measures shall be as identified in the Data User’s data protection policy;
   10. without prejudice to the Data User's obligations to NHS England in relation to the disposal of Data, all Data which is disposed of must be disposed of in accordance with Applicable Law and Guidance (including the NHS England Destruction and Disposal of Sensitive Data Good Practice Guidelines), (and provided it does not conflict with the foregoing, in accordance with the Data User's policy for the disposal of Data identified in the data protection policy, including the disposal of assets containing Personal Data, a copy of which policy shall be provided, on request, to NHS England; and
   11. that the Data User establishes and maintains adequate data security compliance policies and audits its use of Personal Data in compliance with its data security policies on a regular basis and in any event annually.

1. The Data User shall nominate in writing an individual to take responsibility and be accountable for compliance with Data Protection Law, and shall provide to NHS England the name of that individual.

**Section B**

1. It is the Department of Health’s policy that all organisations which process NHS patient information must provide security assurance through annual completion and publication of the IG Toolkit.
2. To provide assurance that good information governance practices are being maintained, the Data User must demonstrate, and will allow NHS England to audit, that it:
3. meets or exceeds the **IG Toolkit** standards required by NHS England for their organisation type Organisation Code:

If A does not apply, B and/or C, as NHS England may require and specify in the relevant DAA:

1. is Certified against international security standard **ISO 27001**

AND/OR

1. Has other security assurance in place which, without prejudice to any other elements of such assurance, meets the requirements of paragraph 4 below.
2. In cases where the Data User has not completed an IG Toolkit assessment to NHS England's satisfaction and where the Data User is not ISO 27001 certified, in addition to the information provided in the relevant DAA detailing the security assurance it has in place, the Data User must ensure that it meets the requirements set out in paragraph 4 of this section B of Schedule 2, which NHS England reserves the right to audit in accordance with Clause 7 of Part 2 of this Contract.
3. Where the Data User has provided information in the relevant DAA about what other security assurance it has in place, and without prejudice to the Data User's other obligations under this Contract, the Data User shall:
   1. process Personal Data only for the provision of health care or adult social care, or the promotion of health, and only for purposes described in this Contract and the relevant DAA , and which are consistent with the purposes recorded in the Data User’s data protection registration with the Information Commissioner’s Office;
   2. request and process the minimum data necessary (e.g. using age range rather than age if sufficient);
   3. deploy secure processes, procedures, practice and technology for storage and access, commensurate with the Personal Data being processed;
   4. ensure the rights of individuals are met, such as satisfying subject access requests received, ensuring data accuracy and correcting errors, and handling objections and complaints;
   5. permanently destroy/delete or erase the Data once it is no longer required for the purpose for which it was collected and confirm destruction to NHS England;
   6. ensures all Personnel with access to Personal Data provide a written undertaking that they understand and will act in accordance with the Data Protection Law, will not share passwords, and will protect the confidentiality of the Personal Data;
   7. report immediately to NHS England any security incidents relating to the Data, and any instances of breach of any of the terms of this Contract; and
   8. comply with any specific legislation in relation to the Data (such as the Statistics and Registration Services Act 2007).

**SCHEDULE 3**

**Applicable Law and Guidance**

Applicable Law with which the Data User must comply under this Contract includes, but is not limited to the following:

**Applicable Law**

* The Care Act 2014
* The Computer Misuse Act 1990
* The Copyright, Designs and Patents Act 1988
* The Data Protection Act 1998
* The Human Rights Act 1998
* The Electronic Communications Act 2000
* The Freedom of Information Act 2000
* The European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, on and from the date upon which the Regulation applies (as set out in Article 99 (Entry into force and application)
* The Health and Social Care Act 2012
* Section 251 of the NHS Act 2006 (originally enacted under Section 60 of the Health and Social Care Act 2001)
* The Regulation of Investigatory Powers Act 2000
* The Statistics and Registration Services Act 2007

Where applicable, the Data User shall comply with the following Guidance.

**Guidance**

* Anonymisation Standard for Publishing Health and Social Care Data (ISB, 1523).
* Anonymisation: managing data protection risk code of practice (ICO, 2012).
* A guide to confidentiality in health and social care (HSCIC 2013).
* ISO/IEC 27001:2013 (published by the [International Organization for Standardization (](https://www.iso.org/home.html)ISO) and the [International Electrotechnical Commission (](http://www.iec.ch/)IEC)).
* The Caldicott Committee Report on the Review of Patient-Identifiable Information 1997.
* NHS England Destruction and Disposal of Sensitive Data Good Practice Guidelines Version: 3.0 Date: March 2015.
* The Caldicott Information Governance Review: Information: To share or not to share? The Information Governance Review (March 2013) also known as Caldicott 2
* NHS England Code of Practice on confidential information (HSCIC, 2014).
* Confidentiality: NHS Code of Practice 2003.
* The NHS Care Record Guarantee 2011 (Version 5).
* Information Security Management: NHS Code of Practice (2007).
* IGA: Records Management Code of Practice for Health and Social Care 2016.
* ONS Review of Dissemination of Health Statistics: Confidentiality Guidance 2006.
* The ONS Disclosure control guidance for birth and death statistics 2014.
* The Code of Practice for Official Statistics.
* The Social Care Record Guarantee 2009.

Such guidance as may be issued by the ICO in relation to the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.