

Appendix C

**Memorandum of Understanding**

**Between**

- 1. NHS Hertfordshire and West Essex Integrated Care Board (ICB)**
- 2. NHS Cambridge and Peterborough ICB**
- 3. NHS Bedford, Luton and Milton Keynes ICB**
- 4. NHS Mid and South Essex ICB**
- 5. NHS Suffolk and North Essex ICB**
- 6. NHS Norfolk and Waveney ICB**

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## **1. Purpose and Status of this Memorandum of Understanding (MoU)**

- 1.1 Until 31 March 2026 the three ICBs with a geographical area in Essex, and three ICBs with a geographical areas of Bedford, Luton, Milton Keynes, Cambridge, Peterborough and Hertfordshire will retain sole accountability for planning and commissioning healthcare services for the population within their ICB areas.
- 1.2 In support of the Model integrated Care Board Blueprint and Fit for the future: 10 Year Health Plan for England, this Memorandum of Understanding (MoU) sets out delivery and governance arrangements for system oversight covering a period prior to the following being dissolved and transitioned into new ICB entity structures:
1. Mid and South Essex ICB; and the Essex related areas for Suffolk & North East Essex and the Hertfordshire & West Essex ICBs will be disestablished on 31 March 2026 and a single ICB covering the totality of the Essex geography will be created.
  2. Bedford, Luton, Milton Keynes ICB, Cambridge and Peterborough ICB, and the Hertfordshire area of Hertfordshire and West Essex ICB will be disestablished on 31 March 2026 and a single ICB known as Central East ICB will be created.
  3. For the purposes of this document, Norfolk and Waveney ICB – will encompassing the Suffolk area of Suffolk & North East Essex ICB.
- 1.3 Whilst the Chair and senior appointment roles may be held across more than one ICB pending the new national ICB map, each ICB will retain its sovereign status until dissolution, and new ICBs are formed.
- 1.4 This Memorandum is not a legal contract. It is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from this Memorandum.
- However, it is a formal understanding between all of the Parties who have each entered into this Memorandum intending to honour all their obligations under it. It does not replace or override the legal and regulatory frameworks that apply to our statutory NHS organisations and Councils. Instead, it sits alongside and complements these frameworks, creating the foundations for closer and more formal collaboration.
- 1.5 Nothing in this Memorandum is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties to the Memorandum, constitute a Partner as the agent of another, nor authorise any of the Parties to make or enter into any commitments for or on behalf of another Parties.

## **2. Scope of this MoU**

- 2.1 Included within this document is the following on the understanding that flexibility will be sought as the ask and scope of ICBs settles, further the Parties acknowledge that the MoU and appended content will need to be reviewed and updated following the establishment of a new statutory Integrated Care Boards:
- Quality governance arrangements. *A shared commitment to quality* and monitoring and escalation of quality issues and concerns.

- The oversight mechanisms and structures that reflect delivery and governance arrangements.
- Healthcare data and analytics - this includes a Data Sharing Agreement (found at **Appendix A**) to support the sharing of intelligence in a compliant manner during a period of transition.
- Strategy – whilst maintaining day-to-day business as usual. This will be supported by a revised governance structure that works alongside providing effective assurance with agility, alongside recognising the interplay with system including Health Care Partnerships and Neighbourhood arrangements.
- Intelligent healthcare payer – having financial governance arrangements that will support the effective management of resources within the system financial envelope, that complement the evolving landscape incentivising quality improvement and innovation.
- User involvement and co-design – patients, service users, carers, and community groups in designing the future landscape and solutions.

### **3. Quality governance arrangements**

There will be a shared commitment to quality and monitoring and the escalation of quality issues and concerns. This will include clear lines of responsibility regarding complaints management and Serious Incident Reporting. Assurance will be monitored through relevant identified committees. These committees will be cited in HWE ICBs Scheme of Reservation and Delegation (SoRD).

### **4. The oversight mechanisms and structures that reflect delivery and governance arrangements**

- 4.1 HWE ICB will through pre-transition, have a SoRD and Standing Financial Instructions (SFI's) that set out the arrangements for delegation of functions and assurance forming clear audit trails.
- 4.2 A transition structure will be established to oversee transition, and to ensure Where possible we operate Board and sub-Committees of the Board using the in-Common or Joint Committee models. For clarity:
- A committee in common is two or more organisations meeting in the same place at the same time, has separate agendas but the same items on them and it may reach the same conclusions. But the individual organisations remain distinct and (if the committee is decision-making) take their own decisions. It is understood, this form will have to be used for Boards or Committees triggered by statute i.e. the ICB Board, Remuneration Committee, Audit Committee.
  - A joint committee is made up of representatives from two or more organisations, who work together to oversee, manage, or resolve specific matters. Joint Committees often have delegated authority from the host organisations to make decisions on its behalf.
- 4.3 Parties will adopt a safe but pragmatic approach to governance with the following core principles of:
- Lean and Focused: Reducing duplication and bureaucracy, and language where possible being kept consistent e.g. the term

- Committee being used to denote a status of decision making or accountable assurance.
- Assurance-Oriented: Clear separation between assurance (Board Committees) and delivery (Management Executive).
- Inclusive: Representation from local authorities, providers, and communities.
- Aligned with SoRD: Decision-making thresholds and delegated authority clearly defined.

4.4 The governance framework for the areas referenced in paragraph 1.2 above are as follows:

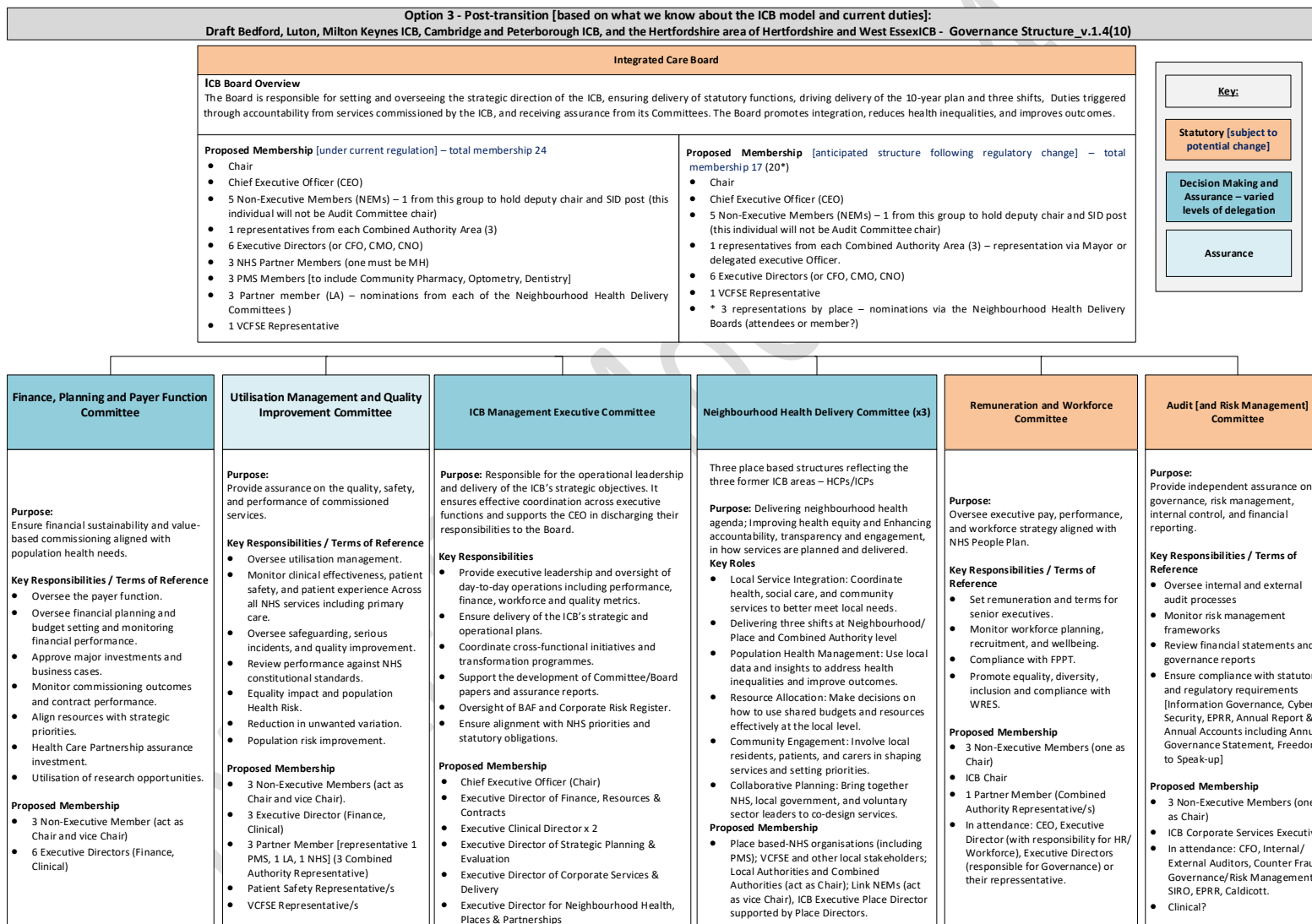
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- Essex collaboration:

[insert – Greater Essex governance diagram]

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- Bedford, Luton, Milton Keynes ICB, Cambridge and Peterborough ICB, and the Hertfordshire area of Hertfordshire and West Essex ICB



## 5. Healthcare data and analytics

In compliance with the ICB Model Blueprint and to support the safe and compliant sharing or publication of in particular - workforce information or potentially commercially sensitive data:

- Parties to this MoU will enable decisions to be guided by population health data and insights. This will be supported by a Data Sharing Agreement found at **appendix A** to this MoU and signed by signatories for an on behalf of each entity party.
- In respect of data sharing with system partners including Health Care Partnerships - parties agree to ensure the Data Sharing Agreement found at **appendix A** is shared with all employees, but with particular focus on teams likely to work with or relay particularly sensitive detail – these include HR, contract and procurement teams.

## 6. Strategy – whilst maintaining day-to-day business as usual

Parties to this MoU will develop effective strategy capability to foster a greater understanding of value-based healthcare alongside the ability to synthesise a range of information (qualitative and quantitative) and develop actionable insights to support prioritisation.

This work will be aided by the safe and compliant use of data as referenced in paragraph 5 above.

## 7. Intelligent healthcare payer

There will be a shared commitment to ensure the effective use of public resources so that investment decisions are guided by relative value, not just demand or precedent. This will require the deliberate use of tools such as programme budgeting and decommissioning frameworks to support allocative efficiency.

## 8. User involvement and co-design

The NHS is a service, funded by taxpayer money and accountable to the public. There will be a systematic approach to co-production – meaningfully involving patients, service users, carers, and community groups in designing solutions. Parties will continue working with the ICB Blueprint and supporting guidance in developing a systemic approach to co-production involving patients, services users, carers, and community groups in designing solutions.

## 9. Variations

This Memorandum, including the Schedules, may only be varied by written agreement of all the Partners

## 10. Confidentiality

In addition to the Data Sharing Agreement referenced in paragraph 5 and found in appendix A to this MoU - each Party shall keep in strict confidence all Confidential Information it receives from another Party in connection with the developing cluster arrangements and the terms of this MoU, except to the extent that such Confidential Information is required by Law to be disclosed or is already in the public domain or comes into the public domain otherwise than through an unauthorised disclosure by a Partner.

## 11. Jurisdiction

This MoU shall be governed by and construed in accordance with the laws of England and Wales.

## 12. Signatories

Chief Executive Officer:	For and on behalf of:	Date signed:
<u>Name:</u>  <u>Signature:</u>	Hertfordshire and West Essex ICB	
<u>Name:</u>  <u>Signature:</u>	Cambridge and Peterborough ICB	
<u>Name:</u>  <u>Signature:</u>	Bedford, Luton and Milton Keynes ICB	
<u>Name:</u>  <u>Signature:</u>	Mid and South Essex ICB	
<u>Name:</u>  <u>Signature:</u>	South and North Essex ICB	

<p><u>Name:</u></p> <p><u>Signature:</u></p>	<p>Norfolk and Waveney ICB</p>	
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## **DATA SHARING AGREEMENT**

Issued under UK General Data Protection Regulation (UK GDPR)  
and Data Protection Act 2018

### **BETWEEN**

**The Controller(s)  
as set out below**

(Collectively the 'Parties'.)

NHS Hertfordshire and West Essex Integrated Care Board  
NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board  
NHS Cambridgeshire and Peterborough Integrated Care Boards  
NHS Mid and South Essex Integrated Care Board  
NHS Suffolk, Norfolk and East Essex Integrated Care Board  
NHS Norfolk and Waveney Integrated Care Board

### **In support of**

The Processing (including sharing) of personal data in the operation of services within the health and care system as set out in in Part 1.

# Part 1

## Scope of agreement

Following publication of the Model integrated Care Board Blueprint and Fit for the future: 10 Year Health Plan for England, this Data Sharing Agreement (DSA) supports the development and operation of collaborative arrangements across the participating Integrated Care Board (ICB) organisations – pending transition into new ICB entities. These ICBs are likely to require the sharing of performance and/or workforce information – which may, at times, include commercially sensitive information or identifiable personal data where necessary to support effective service delivery and operational planning:

1. Mid and South Essex ICB; and the Essex related areas for Suffolk & North East Essex and the Hertfordshire & West Essex ICBs will be disestablished on 31 March 2026 and a single ICB covering the totality of the Essex geography will be created.
2. Central East collaborative – formed of Bedford, Luton, Milton Keynes ICB, Cambridge and Peterborough ICB, and the Hertfordshire area of Hertfordshire and West Essex ICB will be disestablished on 31 March 2026 and a single ICB known as Central East ICB will be created.
3. For the purposes of this document, Norfolk and Waveney ICB – will encompassing the Suffolk area of Suffolk & North East Essex ICB.

The lawful and proportionate sharing of such information will be undertaken in accordance with:

- The UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018;
- The common law duty of confidentiality; and
- Applicable NHS information governance policies, national guidance and terms held within the NHS Standard Contract.

Each ICB remains an independent Data Controller for the personal data it holds, this will continue until either they merge into a single legal entity or enter into a formal collaboration agreement underpinned by appropriate Data Processing Agreements. This will be the case where ICBs remain independent Data Controllers but share resources – such as staff and systems.

The signatories to this DSA agree to share relevant information where required, to enable joint working, service improvement, and the efficient use of shared resources within the collaborative arrangements.

This DSA has been developed to support a pre-transition collaborative arrangement. It is a live document that will be updated and amended as collaborative arrangements evolve and as further details on information flows and operational processes emerge.

All sharing and processing activities will be underpinned by the principles of data minimisation, necessity, proportionality, and security, with identifiable data used only where it is not possible to achieve the purpose through anonymised or pseudonymised information. Each party will ensure that their respective Privacy Policies, for both staff and patients, are updated to maintain transparency for data subjects.

The Definitions in Part 2 of the Agreement shall also apply to this Part 1.

In the event of any inconsistency between Part 1 and Part 2 of this Agreement, the provisions of this Part 1 shall prevail.

**1. Set out what this Agreement will cover.**

NHS plans involve changes to Integrated Care Board (ICB) footprints, including potential mergers and shifts in their strategic commissioning role. ICBs are also expected to play a key part in delivering [net-zero targets](#) and adopting [digital technologies](#). These changes are part of a broader NHS effort to streamline operations, improve efficiency, and focus on strategic commissioning.<sup>i</sup>

Controller to Controller data sharing  
With the potential of:

Joint Controller arrangement

Or

Controller to Processor arrangement as and when it becomes applicable .

**2. Summary of how data will be used and shared.**

Under the collaborative arrangements, information may be shared between participating organisations to support implementation of the NHS workforce planning, service coordination, and operational delivery. For example, staff rotas and contact details may be shared to enable cross-cover arrangements between sites, and relevant patient information may be shared to facilitate safe and timely care when patients receive services from a neighbouring provider within the collaborative.

All such sharing will be proportionate, limited to what is necessary, and conducted in compliance with UK GDPR, the Data Protection Act 2018, and the common law duty of confidentiality.

**3. Data Protection Impact Assessment (DPIA)**

A DPIA to be approved by the 6 current ICBs will be written and maintained by the relevant IG leads and will sit as an appendix to this agreement

**4. Confirm the level of identifiability of the data for each party.**

Each party will confirm the level of identifiability of the data it will share or receive under this DSA, distinguishing between identifiable, pseudonymised, and anonymised data as appropriate for the specific purpose. This assessment will be based on the current operational requirements of the collaborative arrangements and in line with UK GDPR and common law obligations. As further information on data flows, purposes, and operational processes becomes available, this DSA will be updated accordingly to reflect any changes in the level or type of data shared.

**5. What are the purposes for using or sharing the data?**

The data shared under this DSA will be used solely to support the effective operation between the above ICBs, and as set out in the NHS England plans. This includes enabling workforce coordination,

ensuring safe and timely patient care across organisational boundaries, supporting operational planning, monitoring service performance, and facilitating system interoperability. Where possible, anonymised or pseudonymised data will be used. Identifiable data will only be shared where necessary to achieve these purposes and where it is not practicable to use de-identified data.

As transition arrangements develop and additional purposes are identified, this DSA will be updated to reflect any new or amended data uses.

## 6. What are the benefits of using or sharing the data?

The sharing and use of data under this DSA will deliver measurable benefits at multiple levels:

### Benefits to Individuals (Staff and Patients):

- Ensures that patients receive safe, timely, and coordinated care, even when it is delivered by a neighbouring provider within the collaborative.
- Reduces delays in care by enabling faster access to relevant patient information and clinical histories.
- Improves continuity of care through better coordination between clinicians and services.
- Supports staff by enabling accurate workforce planning, minimising rota gaps, and facilitating access to necessary systems and resources.

### Benefits to the Organisations:

- Improves operational efficiency through shared workforce resources and better alignment of staffing levels across sites.
- Supports compliance with statutory duties and NHS England requirements for integrated care delivery.
- Enables more accurate service planning and performance monitoring using combined data sets.
- Facilitates quicker decision-making based on shared, up-to-date information.

### Benefits to the Wider Public and System:

- Contributes to more resilient health and care services across the collaborative area.
- Reduces duplication of effort and administrative burden, releasing resources back into frontline care.
- Enhances public confidence in the NHS by demonstrating joined-up working and effective use of resources.
- Supports population health management by enabling targeted interventions based on shared intelligence.

As collaborative arrangements develop, the specific benefits of data sharing will be kept under review and this DSA will be updated to reflect new evidence of impact.

## 7. For this agreement, which types of personal data do the Parties need to use and why?

[x]	Forename	[x]	Physical description, for example height	[x]	Photograph / picture of people
[x]	Surname	[x]	Phone number	[ ]	Location data e.g. <ul style="list-style-type: none"> <li>• IP address</li> <li>• Other</li> </ul>
[x]	Address	[x]	Email address	[x]	Audio recordings
[x]	Postcode full	[x]	GP details	[ ]	Video recordings
[x]	Postcode partial	[x]	Legal representative name (personal representative)	[ ]	Other

<input checked="" type="checkbox"/>	Date of birth	<input checked="" type="checkbox"/>	NHS number (pseudonymised)	<input type="checkbox"/>	None
<input checked="" type="checkbox"/>	Age	<input checked="" type="checkbox"/>	National insurance number		
<input checked="" type="checkbox"/>	Gender	<input checked="" type="checkbox"/>	Other numerical identifier e.g. hospital number where appropriate.		

**8. Which types of sensitive (including special category) data do the Parties need to use or share?**

[[x] inserted for areas that apply]

Type of data		Reason why this is needed (leave blank if not applicable)
<input checked="" type="checkbox"/>	Information relating to an individual's physical or mental health or condition, for example information from health and care records	The data shared under this DSA will be used solely to support the effective operation of the collaborative arrangements, as set out in the NHS England plans. This includes enabling workforce coordination, ensuring safe and timely patient care across organisational boundaries, supporting operational planning, monitoring service performance, and facilitating system interoperability. Where possible, anonymised or pseudonymised data will be used. Identifiable data will only be shared where necessary to achieve these purposes and where it is not practicable to use de-identified data.
<input type="checkbox"/>	Biometric information in order to uniquely identify an individual, for example facial recognition	
<input type="checkbox"/>	Genetic data, for example details about a DNA sample taken as part of a genetic clinical service	
<input checked="" type="checkbox"/>	Information relating to an individual's sexual life or sexual orientation	As above
<input checked="" type="checkbox"/>	Racial or ethnic origin	As above
<input type="checkbox"/>	Political opinions	

<input checked="" type="checkbox"/>	Religious or philosophical beliefs	As above
<input checked="" type="checkbox"/>	Trade union membership	As above
<input checked="" type="checkbox"/>	Information relating to criminal or suspected criminal offences	As above
<input type="checkbox"/>	None of the above	

**9. Who are the individuals that can be identified from the data?**

[[x] inserted for areas that apply]

- Patients or service users
- Carers
- Staff
- Wider workforce
- Visitors
- Members of the public
- Other

**10. Describe the flows of data.**

An appendix of data flows is attached to this agreement.

**11. Under Article 6 of UK General Data Protection Regulation (UK GDPR), what is the lawful basis for processing personal data?**

(e) **We need it to perform a public task**

**Other**

**12. Under Article 9 of UK General Data Protection Regulation (UK GDPR), what is the lawful basis for processing special category data?**

(h) **We need it to comply with our legal obligations to provide or manage health or social care services**

**Other**

**Not applicable**

**13. What is the legal basis for sharing or using health and care data under the common law duty of confidentiality?**

[Implied consent](#) - for individual care or local clinical or care audits.

[Explicit consent](#)

**Section 251 support** - all organisations currently have s.251 support, this will be amended to the new legal entities when applicable.

**Legal requirement**

**Overriding public interest**

**Not applicable**

**14. How will the Parties ensure that information is safe and secure?**

Encryption

Password protection

Role based access controls (RBAC)

Restricted physical access

Business continuity plans

Security policies

Other

**15. For this Agreement, how long are the Parties planning to use the data for?**

We intend to start using the data on 1<sup>st</sup> September 2025 and will finish using the data when new entities are formed (current expect to be from 1<sup>st</sup> April 2026).

**16. For this Agreement, how long do the Parties intend to keep the data?**

In line with the Records Management Code of Practice.

**17. What will happen to the data at the end of this Agreement?**

Secure destruction (for example by shredding paper records or wiping hard drives with evidence of a certificate of destruction)

Permanent preservation by transferring the data to a Place of Deposit run by the National Archives

Transfer to another organisation

Extension to retention period

It will be anonymised and kept

- The Controller(s) will manage as it is held by them  
 Other

**18. How will the Parties comply with the following data subject rights (where they apply)?**

Individual right	How the Parties will comply (or state <i>not applicable</i> if the right does not apply)	
<b>The right to be informed</b> The right to be informed about the collection and use of personal data.		We have assessed how we should inform individuals about the use of data. We consider the communications methods below meet this obligation.
	<input checked="" type="checkbox"/>	Privacy notice(s) for all relevant organisations.
	<input type="checkbox"/>	Information leaflets
	<input type="checkbox"/>	Posters
	<input type="checkbox"/>	Letters
	<input type="checkbox"/>	Emails
	<input type="checkbox"/>	Texts
	<input checked="" type="checkbox"/>	Social media campaign
	<input type="checkbox"/>	DPIA published (best practice rather than requirement)
	<input type="checkbox"/>	Other
	<input type="checkbox"/>	Not applicable
<b>The right of access</b> The right to access details of data use and receive a copy of their personal information - this is commonly referred to as a subject access request.		Subject Access requests (SARs) will be managed under current SAR policies for each of the current ICBs until such time as the new legal entities are formed at which point agreements over processes for open SARs to be managed will come into force in the new ICBs
<b>The right to rectification</b> The right to have inaccurate personal data rectified or completed if it is incomplete.		Managed under current ICB policies until such time as the new legal entities are formed.
<b>The right to erasure</b>		Not applicable.

The right to limit how their data is used, if applicable.	
<b>The right to restrict processing</b> The right to limit how their data is used, if applicable.	Not applicable.
<b>The right to data portability</b> The right to obtain and re-use their personal data, if applicable.	Not applicable.
<b>The right to object</b> The right to object to the use and sharing of personal data, if applicable.	Not applicable.

**19. Will the national data opt-out need to be applied? Which organisation is responsible for managing this process?**

Current arrangement for national data opt out will continue to apply where applicable.

**20. List the organisation(s) that will decide why and how the data is being used and shared (Controllers).**

The ICBs listed as Controllers in this agreement will be making the decisions, for example:

- To collect the data in the first place
- What data is being collected
- What it is being used for
- Who it is being collected from

The organisations are likely to have a direct relationship with those the data is being collected from, for example patients, service users or employees.

**21. List the organisation(s) that are being instructed to use or share the data (Processors).**

See appendix on data flows under this agreement that will specify where data processors are being used.

**22. List any organisations that have been subcontracted by your Processor to handle data (Sub-Processors).**

**23. How will the Parties ensure data accuracy and that updates to the data are communicated where necessary?**

As per current ICB policies and procedures

**24. Describe how data breaches will be managed.**

As per current ICB policies and procedures

**25. Set out any terms agreed by the Parties regarding liability.**

**26. If applicable, provide details of any agreed variation of terms from Part 2 of this agreement.**

This will be as agreed between the parties.

**27. Set out the mechanism for issuing a variation to this agreement.**

This will be as agreed between the parties.

**28. Detail any processing that has not been captured above.**

Not applicable.

**29. Set out the review period for this agreement.**

This agreement will be kept under continued review through the referenced period of transition.

**30. Reviewers**

This Agreement has been reviewed by:

<b>Name</b>	<b>Role</b>	<b>Organisation</b>
Tania Palmariellodiviney	Interim Data Protection Officer	HWE ICB
Jane Marley	Head of IG & DPO	MSE ICB
Paul Cook	Associate Director of Data Security, Risk and Protection and DPO.	SNEE ICB
Martin Whelan	Head of Governance and Data Protection Officer	C&P ICB

[Add additional approval sections as required locally.]

**31. Signatories**

**Authorised signatory on behalf of the Controller**

Name	Role	Organisation	Signature	Date

**Authorised signatory on behalf of the Processor**

[Add additional lines for multiple Processors. Electronic signatures or clicking 'Accept' through data sharing management portals are acceptable.]

Name	Role	Organisation	Signature	Date

**Part 1**

**Annex 1 – List of Controllers and Processors and their named points of contact**

[add additional lines where necessary]

Name	Role	Organisation	Contact

## Part 2

### 1. BACKGROUND AND SCOPE

- 1.1. This Part 2 of this Agreement sets out the general terms and conditions relating to inter-Party Data Processing Activities which the Parties agree to meet.
- 1.2. Part 1 of the Agreement sets out the specific details of what each Party has agreed to in respect of any intended inter-Party Processing of Personal Data.
- 1.3. The Parties agree that no Party will access or otherwise Process Personal Data that solely relates to any other Party's individual Processing purpose, which is outside of the scope of the Processing set out in Part 1 of the Agreement.
- 1.4. To the extent that any other agreement between the Parties in relation to these Data Processing activities contains any provisions which govern the Processing of Personal Data by the Parties, the Parties agree and acknowledge that the provisions of this Agreement shall prevail in the event of any conflict or inconsistency.
- 1.5. Data Protection Legislation requires that "[w]here two or more controllers jointly determine the purposes and the means of Processing they shall be joint controllers." It also requires that Joint Controllers determine their respective responsibilities for compliance "...in a transparent manner...by means of an arrangement between..." This Agreement meets the requirement of having an arrangement. All Parties shall meet the additional transparency requirements under clause 13.

**IT IS AGREED** as follows:

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. The following definitions shall apply in this Agreement:

**Commencement Date** means between any two Parties or more the date from which the last of those Parties have signed this Agreement in respect of any Data Processing Activities (or such other date as those Parties may agree);

**Controller** means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;

**Data Guidance** means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with the Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Parties by NHS England and/or any relevant Regulatory, Advisory or Supervisory Body. This includes but is not limited to guidance issued by the National Data Guardian for Health and Care, the Department of Health and Social Care, NHS England, the Health Research Authority, Public Health England (now the UK Health Security Agency) and the Information Commissioner;

**Data Loss Event** means any event that results, or may result, in unauthorised Processing of Personal Data held by the Parties under this Agreement or the loss of Personal Data that the Parties have responsibility for under this Agreement including without limitation actual or potential loss, destruction, corruption or inaccessibility of Personal Data, including any Personal Data Breach;

**Data Processing Activities** means the data Processing activities described in Part 1 of this Agreement;

**Data Protection Impact Assessment (DPIA)** means an assessment by the Controller(s) of the impact of the envisaged Processing on the protection of Personal Data;

**Data Protection Legislation** means UK Data Protection legislation currently comprising (i) the DPA 2018 (ii) the UK GDPR, the Law Enforcement Directive and any applicable national Laws implementing them as amended from time to time (iii) all applicable Law concerning privacy, confidentiality or the Processing of personal data including but not limited to the Human Rights Act 1998, the Common Law Duty of Confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

**Data Protection Officer (DPO)** shall be the individual designated as such by Controllers and Processors where required by the Data Protection Legislation;

**Data Subject** means an identified or identifiable natural person whose Personal Data is being Processed;

**DPA 2018** means the Data Protection Act 2018;

**EU** means the European Union;

**Information Commissioner** means the Information Commissioner's Office ([ICO](#)) which is the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals and any other relevant data protection or supervisory authority recognised pursuant to the Data Protection Legislation;

**International Data Transfer Agreement (IDTA)** means the documents approved for the restricted transfer of Personal Data to countries not covered by UK adequacy regulations. The documents can be found on the [Information Commissioner's website](#);

**Joint Controller** means where two or more Controllers jointly determine the purposes and means of Processing;

**Law** means any law or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, by-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Parties are bound to comply;

**LED** means the Law Enforcement Directive (Directive (EU) 2016/680);

**Party or Parties** shall mean any and all signatories to this agreement, including Controllers and Processors and signatories acting as Sub-Processors;

**Personal Data** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

**Personal Data Breach** shall take the meaning given in the Data Protection Legislation, and shall also include events that would have been regarded as Personal Data Breach but which relate to information about deceased individuals where a duty of confidentiality is still owed;

**Processor** means a natural or legal person, public authority, agency or other body which Processes personal data on behalf of a Controller or (where a Party to this Agreement this shall include Processors acting as Sub-Processors, provided that the relevant Processing is described Part 1 of this Agreement). A Controller may instruct a Processor who is not a Party to this Agreement, provided such contractual provisions as are required by the Data Protection Legislation are in place with such a Processor;

**Processing** and cognate terms mean any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**Protective Measures** means appropriate technical and organisational measures which may include: pseudonymisation and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services; ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of such measures;

**Regulatory or Supervisory Body** means any statutory or other body having authority to issue guidance, standards or recommendations with which the Parties and/or their staff must comply or have regard to, including:

- (i) The Care Quality Commission (CQC);
- (ii) NHS England;
- (iii) the Department of Health and Social Care;
- (iv) the National Institute for Health and Care Excellence;
- (v) Healthwatch England and Local Healthwatch;
- (vi) UK Health Security Agency;
- (vi) The General Medical Council
- (vii) The General Dental Council
- (viii) The Nursing and Midwifery Council
- (ix) the General Pharmaceutical Council;
- (x) the Healthcare Safety Investigation Branch; or
- (xi) the Information Commissioner.

**Respective Responsibilities** means for each Controller who is a Joint Controller the responsibilities which must, in a transparent manner, be determined for compliance with the Data Protection Legislation

**Responsible Controller** means (i) in the event of a Personal Data Breach by a Processor, the Controller who instructed that Processor (ii) in the event of a Personal Data Breach by a Controller, that Controller (iii) where Joint Controllers have designated one party as the Responsible Controller in relation to the relevant Personal Data Breach under the Agreement, that designated Controller, (iv) where there is no agreement then each of the Joint Controllers shall be a Responsible Controller;

**Staff** means any and all persons employed or engaged from time to time in the provision of the Data Processing Activities whether employees, workers, consultants or agents of any Party or any subcontractor or agent of any Party;

**Subject Rights Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation including to access their Personal Data (including a "subject access request");

**Sub-Processor** means any organisation appointed by a Processor to Process Personal Data on behalf of a Processor;

**UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

**Working Day** means a day other than a Saturday, Sunday, or public or bank holiday in England.

- 2.2. The following rules of interpretation shall apply to this Agreement:
- reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment, amendment or replacement of the same;
  - 2.2.1. words in the singular shall include the plural and in the plural shall include the singular; and
  - 2.2.2. references to clauses and Annexes are to clauses and Annexes to this Agreement.

### 3. DURATION AND CONSIDERATION

- 3.1. This Agreement shall commence on the Commencement Date and shall continue until termination or expiry for whatever reason.
- 3.2. This Agreement is entered into in consideration of the mutual trust, convenience and benefit of all the Parties and in consideration of the benefits to the health and care system.

### 4. GENERAL OBLIGATIONS

- 4.1. A Controller remains legally responsible for the Personal Data where it is being Processed by a Processor and therefore the Controller must take steps to ensure the information assets remain protected and that the liabilities and risk are appropriately managed, Personal Data is Processed lawfully, and the Agreement is legally enforceable.

- 4.2. A Processor is nevertheless also legally responsible for the Personal Data to the extent required under Data Protection Legislation and in any relevant Personal Data Processing contract.
- 4.3. Each Party shall ensure that it has in place Protective Measures in relation to the Personal Data Processed under this Agreement, which are appropriate to protect against a Data Loss Event having taken account of the:
- 4.3.1. nature of the Personal Data to be protected;
  - 4.3.2. harm that might result from a Data Loss Event;
  - 4.3.3. state of technological development; and
  - 4.3.4. cost of implementing any measures;

Processors who are Party to this Agreement are subject to additional requirements under clause 6.7.2. Where a Controller instructs a Processor who will Process Personal Data in relation to this Agreement and such Processor is not a Party to this Agreement, the instructing Controller shall ensure that contractual provisions complying with the Data Protection Legislation are in place with such Processor.

- 4.4. Each Party shall ensure that its staff involved in the Processing of Data under this Agreement have undergone adequate training in the use, care, protection and handling of Personal Data that enables them and the Processor to comply with their responsibilities under the Data Protection Legislation and this Agreement. Processors are subject to additional requirements under clause 6.7.3.
- 4.5. All Parties shall in good faith cooperate fully during any handover arising from the cessation of any part of the Data Processing Activities. Processors are subject to additional requirements under clause 6.7.7.
- 4.6. All Parties shall be under a duty to notify any potentially impacted Parties where they become aware of or reasonably suspect a Data Loss Event; or become aware of or reasonably suspect that it has in any way caused, or might reasonably be considered to be likely to cause, a breach of Data Protection Legislation by another Party. Processors are subject to additional requirements under clause 6.8.

## **5. CONTROLLER OBLIGATIONS**

- 5.1. Each Controller shall at all times ensure Personal Data is Processed fairly, lawfully and transparently in accordance with Data Protection Legislation.
- 5.2. Each Controller warrants that any instructions it issues to a Processor in respect of the Personal Data are lawful.

## **6. ADDITIONAL ALL PARTY AND PROCESSOR SPECIFIC OBLIGATIONS**

- 6.1. The following obligations within this clause 6 shall apply where at least one Processor has been identified in Part 1 of this Agreement. Where the Processor is not a Party to this Agreement, the Controllers who instruct them must ensure that any contracts with such Processors provide

equivalent protection to the clauses set out in clause 6 of this Agreement. Where indicated, the obligations shall apply to any Party to this Agreement not just Processors.

- 6.2. The Parties acknowledge that for the purposes of the Data Protection Legislation in relation to the Data Processing Activities, the Controller(s) and the Processor(s) are as set out in Part 1 of this Agreement. A Processor must Process the Processor Data only to the extent necessary to perform the Data Processing Activities and only in accordance with the written instructions set out in Part 1 of this Agreement.
- 6.3. A Processor must use the Personal Data shared solely for the purposes as instructed and shall not Process the Personal Data for any other purposes.
- 6.4. Each Party agrees to treat the data (including Personal Data) received by them under the terms of this Agreement as confidential and shall safeguard it accordingly.
- 6.5. All Parties must provide all reasonable assistance to one another and in particular to any Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing under this Agreement. Such assistance may include:
  - 6.5.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 6.5.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Data Processing Activities;
  - 6.5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 6.5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 6.6. Any Party requested, but in particular any Processor who is a Party to this Agreement, shall provide all reasonable assistance to a Controller if the outcome of the Data Protection Impact Assessment leads the Controller to consult the Information Commissioner concerning any proposed arrangements.
- 6.7. A Processor must (and must be required in any contractual documentation where such Processor is not a Party to this Agreement), in relation to any Personal Data Processed in connection with its obligations under this Agreement:
  - 6.7.1. Process that Personal Data only in accordance with the documented instructions of a Controller, unless the Processor is required to do otherwise by Law. If it is so required, the Processor must promptly notify the Controller before Processing the Personal Data unless such notification is prohibited by Law;
  - 6.7.2. Ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
    - 6.7.2.1. nature of the Personal Data to be protected;

6.7.2.2. harm that might result from a Data Loss Event;

6.7.2.3. state of technological development; and

6.7.2.4. cost of implementing any measures;

6.7.3. ensure:

6.7.3.1. when delivering the Data Processing Activities, the Processor Staff only Process Personal Data in accordance with this Agreement;

6.7.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Staff who have access to the Personal Data and ensure that they:

6.7.3.2.1. Are aware of and comply with the Processor's duties under this clause;

6.7.3.2.2. Are subject to appropriate confidentiality undertakings with the Processor and any Sub-Processor that are in writing and are legally enforceable;

6.7.3.2.3. Are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

6.7.3.2.4. Have undergone adequate training in the use, care, protection and handling of Personal Data that enables them and the Processor to comply with their responsibilities under the Data Protection Legislation and this Agreement. The Processor shall provide the Controller with evidence of completion and maintenance of that training within three Working Days of request by the Controller.

6.7.4. At the written direction of the Controller, delete or return Personal Data (and any copies of it) to that Controller on termination of the Data Processing Activities and certify to the Controller that it has done so within five Working Days of any such instructions being issued, unless the Processor is required by Law to retain the Personal Data;

6.7.5. If the Processor is required by any Law or Regulatory or Supervisory Body to retain any Processor Data that it would otherwise be required to destroy under this clause 6, notify the Controller in writing of that retention giving details of the Processor Data that it must retain and the reasons for its retention;

6.7.6. Notify the Controller immediately if it considers that carrying out any of the Controller's instructions would infringe Data Protection Legislation. This obligation extends to breaches concerning the systems on which the data shared under this Agreement are held, even if the data shared under this Agreement is not directly affected;

6.7.7. Cooperate fully with the Controller during any handover arising from the cessation of any part of the Data Processing Activities, and if the Controller directs the Processor to migrate Processor Data to the Controller or to another nominated organisation, provide

all reasonable assistance with ensuring safe migration including ensuring the integrity of Personal Data and the nomination of a named point of contact for the Controller (as set out in Annex 1 of Part 1 of this Agreement).

6.8. Subject to clause 6.10, a Processor must notify the relevant Controller immediately if it:

6.8.1. Receives a Subject Rights Request (or purported Subject Rights Request);

6.8.2. Receives a request to rectify, block or erase any Personal Data;

6.8.3. Receives any other request, complaint or communication relating to obligations under Data Protection Legislation owed by the Processor or Controller;

6.8.4. Receives any communication from the Information Commissioner or any other Regulatory or Supervisory Body (including any communication concerned with the systems on which Personal Data is Processed under this Agreement);

6.8.5. Receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

6.8.6. Becomes aware of or reasonably suspects a Data Loss Event; or

6.8.7. Becomes aware of or reasonably suspects that it has in any way caused the Controller to breach Data Protection Legislation.

6.9. The notification under clause 6.8 shall be given by emailing any relevant request and any subsequent communications to the Controller's Data Protection Officer immediately, and in no longer than one Working Day of receipt by the Processor.

6.10. A Processor shall not respond substantively to the communications listed at clause 6.8 save that it may respond to a Regulatory or Supervisory Body following prior consultation with the Controller.

6.11. A Processor's obligation to notify under clause 6.8 includes the provision of further information to the Controller in phases, as details become available.

6.12. A Processor must provide their instructing Controller with all reasonable assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 6.8 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

6.12.1. The Controller with full details and copies of the complaint, communication or request;

6.12.2. The Controller with any Personal Data it holds in relation to a Data Subject;

6.12.3. Such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Subject Rights Request within the relevant timescales set out in the Data Protection Legislation;

- 6.12.4. Such assistance as is reasonably requested by the Controller to enable the Controller to comply with other rights granted to individuals by the Data Protection Legislation including the right of rectification, the right to erasure, the right to object to Processing, the right to restrict Processing, the right to data portability and the right not to be subject to an automated individual decision (including profiling);
  - 6.12.5. Assistance as requested by the Controller following any Personal Data Loss Event;
  - 6.12.6. Assistance as requested by the Controller in relation to informing a Data Subject about any Data Loss Event, including communication with the Data Subject;
  - 6.12.7. Assistance as requested by the Controller with respect to any request from the Information Commissioner, or any consultation by the Controller with the Information Commissioner.
  - 6.12.8. A Processor shall designate a Data Protection Officer if required by the Data Protection Legislation, and shall communicate to the Controller the name and contact details of any Data Protection Officer.
- 6.13. A Processor must allow for reasonable audits of its delivery of the Data Processing Activities by the Controller or the Controller's designated auditor at no additional cost to the Controller.
- 6.14. For the avoidance of doubt:
- 6.14.1. A Processor must not novate this Agreement nor assign, delegate, subcontract, transfer, charge or otherwise dispose of all or any of its rights or obligations or duties under this Agreement without the prior written approval of the instructing Controller. The approval of any sub-processing or subcontracting arrangement may include approval of the terms of the proposed subcontract;
  - 6.14.2. Subcontracting any part of this Agreement will not relieve a Processor of any of its obligations or duties under this Agreement. A Processor will be responsible for the performance of and will be liable to the Controller for the acts and/or omissions of all Sub-Processors as though they were their own;
  - 6.14.3. Any positive obligation or duty on the part of the Processor under this Agreement includes an obligation or duty to ensure that all subcontractors and Sub-Processors comply with that positive obligation or duty. Any negative duty or obligation on the part of the Processor under this Agreement includes an obligation or duty to ensure that all subcontractors and Sub-Processors comply with that negative obligation or duty.
- 6.15. Without prejudice to clause 6.16, before allowing any Sub-Processor to Process any Personal Data related to this Agreement, a Processor must:
- 6.15.1. Notify the relevant Controller in writing of the intended Sub-Processor and Processing;
  - 6.15.2. Obtain the written consent of the relevant Controller;

- 6.15.3. Carry out appropriate due diligence of the Sub-Processor and ensure this is documented;
- 6.15.4. Enter into a binding written agreement with the Sub-Processor which includes equivalent terms to those set out in this Agreement; and
- 6.15.5. Provide the relevant Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 6.16. The Parties agree to take account of any guidance issued by the Information Commissioner. A Controller may (or where there is more than one Controller they may by agreement) on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner.
- 6.17. A Controller may (or where there is more than one Controller they may by agreement), at any time on not less than 30 Working Days' notice, revise this Agreement by adding to it any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 6.18. A Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement, the Data Protection Legislation and Data Guidance. A Processor must create and maintain a record of all categories of data Processing activities carried out under this Agreement, which must be made available to the instructing Controller within two Working Days of a written request, containing:
- 6.18.1. The categories of Processing carried out under this Agreement;
- 6.18.2. Details of categories of Data Subjects;
- 6.18.3. Where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards;
- 6.18.4. A general description of the Protective Measures taken to ensure the security and integrity of the Personal Data Processed under this Agreement; and
- 6.18.5. A log recording the Processing of Personal Data in connection with this Agreement comprising, as a minimum, details of the Personal Data concerned, how the Personal Data was Processed, where the Personal Data was Processed and the identity of any individual carrying out the Processing.
- 6.19. A Processor warrants and undertakes that it will deliver the Data Processing Activities in accordance with the Data Protection Legislation and this Agreement and in particular that it has in place Protective Measures that are sufficient to ensure that the delivery of the Data Processing Activities complies with the Data Protection Legislation and ensures that the rights of Data Subjects are protected.

- 6.20. A Processor must assist the Controller in ensuring compliance with the obligations set out at Article 32 to 36 of the UK GDPR and equivalent provisions implemented into Law, taking into account the nature of Processing and the information available to the Processor.
- 6.21. A Processor must assist the Controller in ensuring compliance with the obligations set out in Articles 32 to 36 of the UK GDPR (security of Processing, obligations with regards to Personal Data Breaches and conducting Data Protection Impact Assessments) and equivalent provisions implemented into Law, taking into account the nature of Processing and the information available to the Processor.
- 6.22. A Processor must take prompt and proper remedial action regarding any Data Loss Event.
- 6.23. A Processor must assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controllers' obligation to respond to requests for exercising rights granted to individuals by Data Protection Legislation.
- 6.24. A Processor must promptly (and in any event within a maximum of four (4) Working Days) comply with any request of the Controller or the Information Commissioner to provide a copy of any or all Personal Data which is under the Processor's custody or control, in the format and on a media reasonably specified by the Controller or the Information Commissioner.
- 6.25. A Processor must not transfer Personal Data outside the UK except to countries covered by adequacy regulations, unless the prior written consent of their instructing Controller has been obtained and the following conditions are fulfilled:
- 6.25.1. Appropriate safeguards in relation to the transfer are in place as determined by the instructing Controller;
  - 6.25.2. The Data Subject has enforceable rights and effective legal remedies;
  - 6.25.3. The Party transferring the data complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the relevant Controller in meeting its obligations); and
  - 6.25.4. The Processor, where one has been appointed, complies with any reasonable instructions notified to it in advance by the relevant Controller with respect to the Processing of the Personal Data.

## **7. PERSONAL DATA BREACHES**

- 7.1. A Responsible Controller will notify the other Controllers who are Parties to this Agreement of a Data Breach if, acting reasonably, they consider that the interests of those Controllers may be affected by any Personal Data Breach for which it is the Responsible Controller. In the case of Joint Controllers, each of the Joint Controllers shall notify the other Joint Controllers of any Personal Data Breach of which it becomes aware.
- 7.2. A Responsible Controller will determine whether to notify Personal Data Breaches to the Information Commissioner.

- 7.3. A Responsible Controller will determine whether and how to notify Personal Data Breaches to the Data Subjects.
- 7.4. The Responsible Controller will monitor Personal Data Breach responses to ensure compliance with statutory timescale and any other requirements arising by Law or under this Agreement.

## **8. DATA SECURITY ARRANGEMENTS**

### **8.1. All Parties shall:**

- 8.1.1. Have in place appropriate technical and organisational security measures designed to protect Personal Data against accidental events or unlawful or malicious actions that compromise the availability, integrity and confidentiality of the Personal Data, and ensure that such measures are appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and have regard to the nature of the Personal Data which is to be protected;
- 8.1.2. Ensure that all Personal Data Processed by any Party and its staff are subject to the technical and organisational security measures the Party implements and maintains, pursuant to clause 8.1.1 above;
- 8.1.3. Have procedures in place to monitor access to the Personal Data and to identify unauthorised and unlawful access and use of Personal Data;
- 8.1.4. Where health and care data is accessed by a Party, that Party must complete and publish an annual information governance assessment in accordance with, and comply with the mandatory requirements of, the NHS Data Security and Protection Toolkit, as applicable to the Data Processing Activities and the Party's organisation type. Where health and care data is not accessed, any Party accessing other Personal Data must maintain annual governance assessments to any agreed equivalent standard; and

### **8.2. A Processor shall:**

- 8.2.1. Immediately report any untoward incidents, near misses or activities that suggest non-compliance with this Agreement to the Controller and cooperate with the Controller to carry out a risk assessment, root cause analysis and identify any corrective action required. A Processor will cooperate with the Controller in implementing any required corrective action agreed between the Parties. (N.B. It is the Controller's responsibility to ensure that any incidents are reported in accordance with the Department of Health and Social Care policy and procedures and for informing the relevant Data Subjects as appropriate.)

## **9. LIABILITY**

- 9.1. The Parties shall not do or omit to do anything that will put any other Party in breach of the Data Protection Legislation or the Data Guidance.

9.2. The rights and remedies provided under Part 1 of this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law or in equity.

9.3. A waiver of any right or remedy under Part 1 of this Agreement or by Law or in equity is only effective if given in writing and signed on behalf of the Party giving it and any such waiver so given shall not be deemed a waiver of any similar or subsequent breach or default.

9.4. A failure or delay by a Party in exercising any right or remedy provided under Part 1 of this Agreement or by Law or in equity shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law or in equity shall prevent or restrict the further exercise of that or any other right or remedy.

## **10. VARIATION OF AGREEMENT**

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

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

## **11. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

11.1. Where a Controller is a public authority, the Parties acknowledge that such a Controller is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

11.2. A Controller as set out in clause 11.1 will be statutorily required, subject to any applicable exemptions, to disclose information about the Data Processing Activities provided under this Agreement or the Agreement itself in response to a specific request under FOIA or EIR. In which case:

11.2.1. A Processor shall provide its instructing Controller with all reasonable assistance and co-operation to enable the Controller to comply with its obligations under FOIA or EIR; and

11.2.2. A Controller as set out in clause 11.1 Controller shall consult any Party it reasonably considers relevant or who may have a legitimate interest in respect of any commercial, confidential or other issues in relation to the Agreement relevant to the issue of whether the information is exempt from disclosure or not; however the final decision about disclosure of information or application of exemptions shall rest solely with the Controller which has received the request.

## **12. GENERAL**

12.1. A Processor, where appointed, shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of their instructing Controller.

- 12.2. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 12.3. It is an offence under the Data Protection Legislation for any Party to knowingly or recklessly re-identify any data that is de-identified without the consent of the Controller that has provided the information.

### **13. TRANSPARENCY**

- 13.1. All Parties agree that the Controllers shall:
- 13.1.1. Ensure publication of a summary of the Data Processing Activities, provided in a concise, transparent, intelligible and easily accessible form;
  - 13.1.2. Ensure Data Subjects are appropriately instructed on how they can exercise their rights under Data Protection Legislation, including where they must contact another Party; and
  - 13.1.3. To reference other Parties' transparency materials published under 13.1.1.

### **14. DISPUTE RESOLUTION**

- 14.1. Parties shall aim to resolve all disputes, differences and questions by means of cooperation and consultation.
- 14.2. If any dispute arises, the Parties in dispute must first attempt to settle it with a written offer of negotiation by any of the Parties to the other Parties. During the following 15 Business Days Period each of the Parties in dispute must negotiate and be represented:
- 14.2.1. For the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter and has authority to settle the Dispute; and
  - 14.2.2. For the last 5 Business Days, by their chief executive, director, or equivalent senior individual who has authority to settle the dispute.
- 14.3. Where practicable, no Party in dispute should be represented by the same individual for the different stages described in 14.2.1 and 14.2.2 above.
- 14.4. If the Parties in dispute are unable to settle the Dispute by negotiation, they must, within 5 Business Days after the end of the Negotiation Period, submit the Dispute to mediation by the Centre for Effective Dispute Resolution (CEDR) or other independent body or organisation agreed between the Parties which will follow the mediation Process of CEDR or other independent body or organisation as agreed.
- 14.5. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England.

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

## **15. TERMINATION**

15.1. These arrangements may be terminated in respect of a Party by that Party giving reasonable notice to the other Parties. Termination by one Party shall not terminate the Agreement in respect of the other Parties.

15.2. The Parties may terminate this Agreement by mutual agreement.

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

## **Part 3**

### **Data Flow Template for data being shared under this DSA**

- Data Flow Name
  
- Purpose of Data Flow
  
- Sending Organisation
  
- Receiving Organisation
  
  
- Description of Data to be Shared
  
  
  
  
  
  
  
  
  
  
- Where staff or patient data is being shared is it: (please put an x in the relevant box)

- Anonymised
- Pseudonymised
- Identifiable

- If Data being shared is Identifiable what Identifiers are being shared: (please put an x in the relevant boxes)

- Forename
- Surname
- Address
- Postcode
- Date of Birth
- Gender
- Physical description
- Phone number
- Email address
- GP details
- NHS Number
- National Insurance Number
- Photograph
- Other (please specify).....
- .....
- .....

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<sup>i</sup> <https://www.england.nhs.uk/long-read/update-on-the-draft-model-icb-blueprint-and-progress-on-the-future-nhs-operating-model/>

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