

NHS Digital End User Organisation Terms

End User Organisation Name: [to complete]_____

The Health and Social Care Information Centre of Trevelyan Square, Leeds, known as NHS Digital ("**NHS Digital**"), has published these End User Organisation Terms to govern the use of systems, services and capabilities by End User Organisations.

References to "**End User Organisation**" and "**you**" and "**your**" in these End User Organisation Terms shall refer to the End User Organisation named above. An End User Organisation may be a commissioning body consuming or commissioning the relevant Service(s) from the Connecting Party directly or indirectly (via an agent or other commissioning body).

Other definitions relevant to these End User Organisation Terms are set out in Appendix A.

These End User Organisation Terms shall govern connection to and use of systems, services and capabilities by the End User Organisation as selected below in the Menu of Services.

The connection to the Services may also be underpinned by terms between a service or product provider ("**Connecting Party**") and NHS Digital governing the connection to the relevant Services made available by NHS Digital ("**Connection Agreement**").

Where Services are connecting via an "in house solution" directly developed and managed by the End User Organisation, the End User Organisation will act as both the Connecting Party (in a supplier capacity) and End User Organisation. In those circumstances provided that the End User Organisation has achieved all required technical conformance and connection criteria, and has completed all required declarations covering information governance, security and clinical safety, a Connection Agreement shall not be required, and references to the Connection Agreement and Connecting Party in these End User Organisation Terms shall not be relevant.

BY SIGNING THE RELEVANT PART OF THE MENU OF SERVICES BELOW, YOU ACCEPT THESE TERMS, AS CONFIRMED IN THE STATEMENT SET OUT IN CLAUSE 1.

Menu of Services: Tick which Services apply	Yes	No	Name of signatory	Signature (Digital submission acceptable)	Position	Date
NRL: https://developer.nhs.uk/apis/nrls/						
GP Connect: https://developer.nhs.uk/apis/gpconnect/						
NHS Digital SMSP-PDS https://digital.nhs.uk/services/spine/spine-mini-service-provider-for-personal-demographics-service						
EMS: https://developer.nhs.uk/apis/ems-beta/						
DCH : tbc						
NHS Login: tbc						
NHS e-Referral Service (https://developer.nhs.uk/apis/e-Referrals/)						

1. AGREEMENT TO TERMS

1.1 By signing these End User Organisation Terms, you confirm that:

- 1.1.1 you agree to comply with these End User Organisation Terms;
- 1.1.2 you have read, understood and agree to these End User Organisation Terms and the requirements as set out on the End User Organisation Declaration; and
- 1.1.3 you shall comply with all the obligations and processes set out on the End User Organisation Declaration which are applicable to End User Organisations.

2. CONNECTIONS / OTHER SUPPLIERS

2.1 Except where Services are connecting via an “in house solution” directly developed and managed by the End User Organisation, you receive services and products from a Supplier(s) with whom you have a separate contract either directly or through a commissioning body. NHS Digital shall have no responsibility for the management or enforcement of your contract(s) for the provision of service and products by your Suppliers(s).

2.2 NHS Digital has permitted you and your Supplier a connection to systems, services and capabilities provided by NHS Digital governed by a Connection Agreement. NHS Digital provides access to these systems, services and capabilities for the benefit of health and social care in England. NHS Digital does not provide you or your Supplier with any commitments with regards to performance.

2.3 NHS Digital neither assures nor accredits a Supplier’s systems or services but will carry out a conformance assessment of your Supplier’s connection method, against the requirements of the Service you wish to connect to. The assessment of conformance to NHS Digital requirements is recorded on Supplier conformance documentation and is provided to you, alongside essential information that is collected from your Supplier, to assist you in: (a) carrying out your responsibilities described in clause 2.4 and (b) optimising your use of the Services. Once the conformance assessment is successfully completed a Connection Agreement will be issued to the Supplier.

2.4 You are solely responsible for:

- 2.4.1 choosing the Supplier’s systems and services;
- 2.4.2 ensuring that the Supplier’s systems and services meet your requirements and are secure, clinically safe and legally compliant;
- 2.4.3 all arrangements with the Supplier for the testing, local assurance, acceptance and deployment to you of the Supplier's systems and services;
- 2.4.4 ensuring that your Supplier provides updates to and maintains its systems and services, provides helpdesk and incident management services and shares any incidents impacting NHS Digital services with NHS Digital;
- 2.4.5 on boarding, service management and delivery of the Supplier’s systems and services to Individual End Users; and
- 2.4.6 assuring all End User Organisations comply with the obligations set out in these End User Organisation Terms and on the End User Organisation Declaration. For example, a Clinical Commissioning Group must assure that all on boarded General

Practice Surgeries or Federated Practices comply with these End User Organisation Terms and any requirements set out on the End User Organisation Declaration.

3. EVIDENCE OF COMPLIANCE

- 3.1 NHS Digital shall reasonably be entitled to request evidence from you regarding your local conformance at no cost to NHS Digital. NHS Digital may at any time request that you provide conformance evidence.
- 3.2 NHS Digital shall be entitled to retain a copy of your signed, completed End User Organisation Declaration and applicable End User Organisation terms and any evidence provided in accordance with clause 3 for as long as required.

4. USE, SECURITY AND DATA

- 4.1 You shall use the systems, services and capabilities accessed and enabled through these End User Organisation Terms for their lawfully intended purposes only.
- 4.2 You shall not use any of such systems, services and capabilities in a way that could damage, disable, overburden, impair or compromise security of any system, service or capability.
- 4.3 You shall co-operate with investigations and resolution of clinical safety and/or security incidents reported by you, a consumer or your Supplier to NHS Digital.
- 4.4 You shall not knowingly transmit any data, send or upload any material that contains viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.
- 4.5 In relation to any Processing of Personal Data pursuant to these End User Organisation Terms, you acknowledge that You and NHS Digital shall be separate and independent Controllers. You shall comply with your obligations as a Controller under the Data Protection Legislation, including without limitation and where applicable: i) putting in place with your Supplier(s) a written contract which specifies that your Supplier acts as a Processor and which complies with the requirements of article 28(3) of the GDPR; ii) using only Suppliers which provide sufficient guarantees to implement appropriate technical and organisational security measures in such a manner that Processing meets the requirements of the GDPR; iii) implementing appropriate technical and organisational measures for the Personal Data to ensure a level of security appropriate to the risk involved in the Processing; and iv) conducting any data protection impact assessments required in connection with the Processing in accordance with article 35 of the GDPR. You shall notify us without undue delay if you or your Supplier suffer a Personal Data Breach in relation to the Personal Data Processed pursuant to these End User Organisation Terms and cooperate with us as reasonably required in relation to: i) such Personal Data Breach; and ii) any communication from or enquiry by a competent Supervisory Authority or regulatory body in relation to Personal Data Processed in connection with these End User Organisation Terms.
- 4.6 You shall comply with NHS Digital's Data Security Protection Toolkit, cyber security guidance and policy. If a Service requires identity verification of an Individual End User, you shall comply with the identity verification and authentication standards for health and care specified by NHS Digital.

5. SUSPENSION / TERMINATION

- 5.1 NHS Digital may suspend or terminate your right to use the systems, services and capabilities providing a report setting out the reason and recommended remediation action(s) without any

direct or indirect cost or reputational attribution liability. Following your review of such report, you shall be entitled to raise any concerns with NHS Digital and your Supplier. Any remediation action to be implemented by you or your Supplier shall be subject to approval by NHS Digital.

6. SERVICE MANAGEMENT

6.1 NHS Digital may invite End User Organisations to contribute to or attend service review or service engagement meetings at your own cost.

6.2 Where an End User Organisation is also acting as the Connecting Party (in a supplier capacity), you shall:

- 6.2.1 provide a suitable service desk and support model during their documented support hours for the reporting, management, and communication related to Incidents, service requests, complaints, and enquiries;
- 6.2.2 publish an appropriate escalation and complaints process for use by NHS Digital and third parties connecting to the same Services;
- 6.2.3 be responsible for the management and resolution of Incidents which impact on the relevant Services, including End User Organisation communications;
- 6.2.4 raise and manage HSSIs 24/7x365, which includes the notification of HSSIs to the Service Bridge (any HSSIs should be reported within 20 minutes of identifying);
- 6.2.5 include with each HSSI notification as a minimum the Minimum Data Set applicable;
- 6.2.6 provide NHS Digital with updates on the status of each reported HSSI and that update shall include as a minimum the Minimum Data Set applicable to the HSSI until resolution;
- 6.2.7 if NHS Digital defines an Incident as an HSSI, co-operate and engage as required irrespective of any conflicting definition and assessment of the severity of the Incident.
- 6.2.8 request that NHS Digital convenes a Multi Supplier Intervention where, acting reasonably, the End User Organisations determines that it cannot reasonably bring all relevant and necessary parties together to resolve an Incident;
- 6.2.9 ensure that a HSSI Manager is available to cover their defined documented support hours;
- 6.2.10 upon request from the Service Bridge, ensure that the HSSI Manager attends and contributes to any relevant Multi Supplier Intervention within 30 minutes of notification by the Service Bridge;
- 6.2.11 report all clinical or data incidents that are not defined as an HSSI and are deemed by NHS Digital to impact Services, within 48 hours of becoming aware of the Incident during documented support hours (if there are any such incidents, NHS Digital will provide a recommendation to the End User Organisation if it deems that the Incident is not a Clinical Safety Incident; and

- 6.2.12 be able to raise a complaint with NHS Digital where third parties connecting to the same Services persistently fail to meet their Incident management responsibilities as defined in the Connection Agreement.

7. CONFIDENTIALITY

- 7.1 These End User Organisation Terms are not confidential and do not contain any Confidential Information. Each party may however give Confidential Information to the other party and in such cases, subject to other provisions in these End User Organisation Terms, all Confidential Information given by one party to the other, or otherwise obtained or developed by one party relating to the other, shall be kept secret and confidential by the receiving party for the duration of these End User Organisation Terms plus 3 years following its termination or expiry and shall not be used or disclosed without the prior written consent of the other party other than for the purposes of the proper performance of these End User Organisation Terms.
- 7.2 The obligations of confidentiality in clause 7.1 shall not extend to any matter which the receiving party can show:
- 7.2.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these End User Organisation Terms;
 - 7.2.2 was independently disclosed to it by a third party entitled to disclose the same;
 - 7.2.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction; or
 - 7.2.4 is required to comply with its transparency obligations as a public body.

8. UPDATES

- 8.1 NHS Digital may update these End User Organisation Terms from time to time.
- 8.2 New versions of these End User Organisation Terms shall take effect from the date you are notified of the change.

9. NOTICES

10. All notices given by one party to the other under these End User Organisation Terms shall be in writing and sent to such email address as the relevant party shall nominate from time to time.

11. DISPUTES

- 11.1 To resolve disputes, the parties shall follow the mandatory (if any) or best practice dispute resolution procedure in effect at that time in the NHS for resolution of such disputes.

12. GOVERNANCE

- 12.1 Each Service shall have its own forum arrangements involving different Connecting Parties and End User Organisations. The End User Organisations may participate in these arrangements, and if so shall contribute to and attend such meetings at its own cost. NHS Digital retains the right to limit attendee numbers at such forum arrangements but shall endeavour to include as many relevant parties as possible.

13. RELATIONSHIP OF THE PARTIES

13.1 Nothing in these End User Organisation Terms is intended to create a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other.

13.2 Except where otherwise expressly provided in these End User Organisation Terms, neither party shall have authority to make representations, act in name or on behalf of, or otherwise to bind the other.

14. WAIVER AND CUMULATIVE REMEDIES

14.1 No failure or delay by either party to exercise any right or remedy existing under, or in connection with, these End User Organisation Terms (collectively, any "**action**") will act as a waiver, or otherwise prejudice or restrict the rights of that party, in relation to that action or any other contemporaneous or future action.

14.2 The rights and remedies arising under, or in connection with, these End User Organisation Terms are cumulative and, except where otherwise expressly provided in these End User Organisation Terms, do not exclude rights and remedies provided by law or otherwise.

15. THIRD PARTIES

15.1 A person who is not NHS Digital or the End User Organisation shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these End User Organisation Terms. This clause does not affect any right or remedy of any person which exists, or is available, other than pursuant to that Act.

15.2 The rights of the parties to rescind or vary these End User Organisation Terms are not subject to the consent of any other person or entity.

16. SEVERANCE

16.1 If any provision of these End User Organisation Terms is or becomes illegal, invalid or unenforceable in any respect, it shall not affect or impair the legality, validity or enforceability of any other provision of these End User Organisation Terms. If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.

17. ENTIRE AGREEMENT

17.1 These End User Organisation Terms and all documents referred to in it (including the information and documents referred to in the url links set out in the Menu of Services) sets out the entire agreement and understanding between the parties in respect of its subject and supersedes any previous agreement, warranty, statement, representation, undertaking or understanding (in each case whether written or oral) given or made before the date of these End User Organisation Terms by, or on behalf of, the parties and relating to its subject matter.

17.2 Each party confirms that it has not relied upon, and (subject to clause 17.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, undertaking or understanding made by any party (whether or not a party to these End User Organisation Terms) unless that agreement, warranty, statement, representation, undertaking or understanding is expressly set out in these End User Organisation Terms.

17.3 Subject to clause 17.4, neither party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty,

statement, representation, undertaking or understanding whether or not it is set out in these End User Organisation Terms.

- 17.4 Nothing in these End User Organisation Terms shall restrict or exclude any party's liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

18. **LAW AND JURISDICTION**

- 18.1 These End User Organisation Terms shall be governed by the laws of England and Wales and the courts of England shall have exclusive jurisdiction.

Appendix A

Definitions

"Clinical Safety Incident"	means any unintended or unexpected incident which could have led, or did lead, to harm for one or more patients receiving healthcare, where harm is: death, physical injury, psychological trauma and/or damage to the health or well-being of a patient;
"Confidential Information"	means all information which is disclosed before or after the date of these End User Organisation Terms by one party to the other however conveyed and which: (i) is marked confidential or which is accompanied by a written or oral statement saying that it is confidential or proprietary or (ii) ought reasonably to be considered confidential; and which relates to the business affairs of the party disclosing it (including, products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the party disclosing it (or other companies within a group of companies owned by or under common ownership of that party)), and all information derived from the above;
"Data Protection Legislation"	shall mean applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including 'the General Data Protection Regulation' (" GDPR ") and the Data Protection Act 2018, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable government authorities. The terms " Controller ", " Process/Processing ", " Processor ", " Personal Data ", " Personal Data Breach " and " Supervisory Authority " shall have the meanings given to them in the Data Protection Laws.
"Data Security and Protection Toolkit"	means the online self assessment tool and guidance managed by NHS Digital which reflects the National Data Guardian for Health and Care's data security standards, and enables organisations to measure their performance against such standards;
"End User Organisation Declaration"	means the document or online tool which is used by NHS Digital to confirm the suitability and conformance of an End User Organisation;
"HSSI (High Severity Service Incident)"	means an Incident defined or classified as severity level 1 or 2 in NHS Digital's published descriptions of the severity of impact that an Incident has or will have on the Services, or the integration of those Services: (NHS Digital HSSI definition link);
"HSSI Manager"	means an individual who shall be a single point of contact for HSSIs and who possesses the skills, knowledge and experience to resolve incidents in the shortest possible timeframe, and has the authority to convene the relevant experts to meet the objectives of a Multi-Party Intervention;

"Incident(s)"	means an unplanned interruption to any Services or a reduction in the quality of such Services;
"Individual End User(s)"	means a recipient consuming a Service via a digital tool as an individual (e.g. patient, citizen or other), not as an organisation;
"Menu of Services"	means the table (on the front page of these terms) setting out the range of Services available;
"Minimum Data Set"	means the set of information that must be captured and recorded for an Incident so that it can be effectively triaged, analysed and resolved;
"Multi-Party Intervention"	means a real-time/live collaborative sharing of information using telephone, screen sharing and any other appropriate collaboration technologies, where the objective is to resolve in the shortest possible timescale an Incident caused by or impacting multiple parties accessing the Services;
"Service Bridge"	means the NHS Digital function / team providing technical assistance, support and maintenance;
"Services"	means the services available from NHS Digital as set out in the Menu of Services;
"Supplier(s)"	means the provider(s) of products and services to the End User Organisation relevant to the connected Services, and would ordinarily be a Connecting Party (subject to the exceptions described in these terms).