

# TERMS AND CONDITIONS

## NHS Digital Services Connection Agreement

A contract (**Connection Agreement**) is formed between the party who signs below ("**Connecting Party**") and the Health and Social Care Information Centre (known as NHS Digital) of Trevelyan Square, Leeds ("**NHS Digital**") on the date the Connecting Party signs this document. The Connection Agreement comprises the appended terms and all documents attached to, referred to or linked to (by URL) in the appended terms or on the Services Web Page and supporting repository maintained by NHS Digital in relation to the connected services.

The Connection Agreement shall govern the connection to, and use by the Connecting Party of, the Services selected in the Menu of Services below.

By signing the relevant part of the Menu of Services below, the Connecting Party agrees to the terms and conditions of the Connection Agreement and confirms that it has read, understood and agrees to all the information on the selected Services Web Page relating to the Services selected below in the Menu of Services:

**Connecting Party Name (company/organisation):** \_\_\_\_\_

				Connecting Party				
Menu of Services with link to Services Web Pages: Mark (X) which Services apply:	Yes (X)	No (X)	Special Terms in place – see Appendix 2 and/or 3	Name of Signatory	Signature (Digital submission acceptable)	Position of Signatory in the Connecting Party	Date	NHS Digital CA version
NRL:  <a href="https://developer.nhs.uk/apis/nrls/">https://developer.nhs.uk/apis/nrls/</a>								
GP Connect:  <a href="https://developer.nhs.uk/apis/gpconnect/">https://developer.nhs.uk/apis/gpconnect/</a>								
NHS Digital SMSP-PDS  <a href="https://digital.nhs.uk/services/spine/spine-mini-service-provider-for-personal-demographics-service">https://digital.nhs.uk/services/spine/spine-mini-service-provider-for-personal-demographics-service</a>								
EMS:  <a href="https://developer.nhs.uk/apis/ems-beta/">https://developer.nhs.uk/apis/ems-beta/</a>								
DCH :  TBC								
NHS Login :  See Special terms at Appendix 1								
NHS e-Referral Service ( <a href="https://developer.nhs.uk/apis/e-Referrals/">https://developer.nhs.uk/apis/e-Referrals/</a> )								

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 In this Connection Agreement:

**"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;

**"Commencement Date"** means the date the Connecting Party accepts the terms of the Connection Agreement by either signing the terms or clicking 'Accept';

**"Connection Criteria"** means the Requirements, the contents of the Test Pack, and all policies relating to the applicable Services as published on the Services Web Page;

**"Connecting Party"** means the organisation providing a product or service that is interfacing with NHS Digital Services;

**"Connection Method"** the technical method (for example an application program interface) of accessing or connecting to the Services, developed and/or used by the Connecting Party to meet the Connection Criteria;

**"Confidential Information"** means all information which is disclosed before or after the Commencement Date 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;

**"Current Version"** means the current version of specified product, software, system or interface which incorporates the latest releases, upgrades and versions made generally available to users (and, where relevant, as updated to meet changes in the Connection Criteria);

**"Data Protection Legislation"** means 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 and the Privacy and Electronic Communications Regulations 2003, 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;

**"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;

**"Digital Tool"** in relation to this Connection Agreement can be programs, websites, Apps or online resources enabling Individual End Users access to NHS Digital Services;

**"Direct Care"** means a clinical, social or public health activity concerned with the prevention, investigation and treatment of illness and the alleviation of suffering of individuals and does not include activities that contribute to the overall provision of services to a population as a whole or a group of patients, as more particularly described in the National Data Guardian for Health and Care's 2016 report "Review of data security, consent and opt-outs";

**"Dispute"** means any dispute, difference or question of interpretation arising out of or in connection with this Connection Agreement (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of this Connection Agreement or the consequences of non-existence or invalidity of this Connection Agreement), whether contractual or non-contractual;

**"End User Organisation Declaration"** means the document or online tool pursuant to which the Connecting Party confirms the suitability and compliance of an Individual End User(s);

**"End User Organisation"** means the recipient or commissioning body consuming or commissioning an NHS Digital Service from the Connecting Party directly or indirectly via an agent or other commissioning body;

**"End User Organisation Terms"** means the terms which govern each End User Organisation's connection to and use of relevant systems and services;

**"Individual End User"** means a recipient providing or consuming an NHS Digital Service via a digital tool as an individual not an organisation;

**"End User Organisation Request"** means a request from an End User Organisation for information or advice regarding a standard change or for access to services from the Connecting Party;

**"HSSI"** (or 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 an NHS Digital Service;

**"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;

**"ICO"** means the UK's Information Commissioner's Office;

**"Incident" or "Incidents"** means an unplanned interruption to any of the Services or a reduction in the quality of such Services;

**"Intellectual Property Rights"** means: (a) patents, utility models, petty patents, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not or know-how), registered designs, database rights, design rights, rights in copyright (including moral rights), semiconductor topography rights, mask work rights, and trademarks: (b) all registrations or applications to register any of the rights referred to in paragraph (a); and (c) all rights in the nature of any of the rights referred to in paragraph (a) including continuations, continuations in part and divisional applications, rights in unfair competition and, without prejudice to anything else in this definition, rights to sue for passing-off and rights having the equivalent or similar effect to, and the right to apply for any of the rights listed in this definition, in any country or jurisdiction;

**"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;

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**"Previous Version"** means the previous version (that is, Current Version minus 1) of the relevant product, software, system or interface;

**"Purpose"** means the interface of the Connecting Party's product or service with NHS Digital's Services so that the Connecting Party may provide such product or service to the End User Organisation, subject to separate terms between such parties, and strictly for the purposes of and/or the enablement of Direct Care;

**"Requirements"** means the suite of specifications, documents outlined on the Services Web Page also comprising of the supplemental guidance and policies and information related to a Service, which collectively enables each Connecting Party to understand the Services available and the criteria to be fulfilled for connection to those Services;

**"Restricted Country"** means any country which is not (i) a member of the European Economic Area; (ii) the United Kingdom; or (iii) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;

**"Service(s)"** or **"NHS Digital Services"** means each of the Services on the Menu of Services; which NHS Digital makes available;

**"Service Bridge"** means the NHS Digital function / team providing Support;

**"Services Web Page"** means NHS Digital's online information repository for each Service (as shown in the Menu of Services) comprising the Service Descriptions, Requirements, Technical Conformance Documentation, Onboarding processes, Test Pack, Special Terms, requirements for data sharing agreements, and all supplemental guidance, policies and other information relevant to the connection to and receipt of each Service;

**"Service Description"** means the service description detailed or linked to on the Services Web Page for each Service;

**"Special Terms"** means any supplemental terms identified as Special Terms on the Services Web Page, or in an Appendix to this Connection Agreement, and which shall be incorporated into this Connection Agreement;

**"Standard Contractual Clauses"** means the standard contractual clauses for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of protection, as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;

**"Support"** means technical assistance, support and maintenance;

**"Technical Conformance"** means the process of compliance with requirements specified in applicable series recommendations which is undertaken by a Connecting Party for assurance, onboarding, and lifecycle management for each Service. This also includes the process of compliance meaning conforming to a rule, such as a specification, policy, standard or law;

**"Technical Conformance Documentation"** means the documentation completed during a Technical Conformance or compliance process, outlining the conformance of a product or service to the Service requirements outlined on a Services Web Page and could include a supplier conformance assessment list (SCAL) or a targeting operating model (TOM) or equivalent tool or document;

**"Test Pack"** means the procedures, test tools, test data, test scripts and other information and criteria relating to Technical Conformance of the Connection Method as published on the Services Web Page;

**"Working Day"** means any day other than a Saturday, Sunday or a public or statutory holiday in England and Wales.

1.2 In this Connection Agreement (unless the context requires otherwise):

1.2.1 the words **"including"**, **"include"**, **"for example"**, **"in particular"** and words of similar effect shall not limit the general effect of the words which precede them;

1.2.2 reference to any agreement, contract, document or deed shall include that document as varied, supplemented or novated from time to time;

1.2.3 reference to a party shall, upon any assignment or other transfer that is permitted by this Connection Agreement, be construed to include those successors and permitted assigns or transferees;

1.2.4 words importing persons shall include natural persons, bodies corporate, unincorporated associations and partnerships (whether any of them have separate legal identity);

1.2.5 words importing the singular shall include the plural and vice versa;

1.2.6 words importing any one gender shall not exclude other genders;

1.2.7 the headings are for reference only and shall be ignored when construing this Connection Agreement;

1.2.8 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 or amendment of the same; and

1.2.9 references to a clause are references to the clauses in this Connection Agreement.

## 2. TERM

The Connection Agreement shall take effect on the Commencement Date and shall continue until the contract formed by this Connection Agreement is terminated in accordance with its provisions.

## 3. CONNECTION CRITERIA & REQUIREMENTS

3.1 In consideration of the provision of the Services by NHS Digital, the Connecting Party shall comply with its obligations as described in this Connection Agreement.

3.2 It is a condition of this Connection Agreement (meaning it will not remain valid and will automatically terminate if the condition is not complied with) that the Connecting Party shall (and shall procure that all its contractors, subcontractors and agents shall):

3.2.1 use the Services for the Purpose only;

3.2.2 ensure that the only commercial purpose underpinning or linked with its use of the Services and related data is for the enablement of Direct Care (and not other commercial purposes such as provision of, or obtaining market information for, commercial insurance);

3.2.3 not cause NHS Digital to be in breach of the Health and Social Care Act 2012 or other statutory duties governing how NHS Digital may disseminate information; ; and

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- 3.2.4 develop and maintain a Connection Method in accordance with the Connection Criteria relevant to the Service as set out in the relevant Services Web Page.
- 3.3 If the Connecting Party wishes to use the Services or data in any way which is not compliant with the provisions of clauses 3.2.1 or 3.2.2, then it shall follow the appropriate processes managed by the NHS outside these Connection Agreement (currently the Data Access Request Service).
- 3.4 The Connecting Party shall comply at its own cost with the Technical Conformance processes set out on a Services Web Page or requirements document and all ongoing testing and Technical Conformance processes and criteria that are prescribed by NHS Digital via Technical Conformance documentation or otherwise on the Services Web Page, including any remedial action, prior to using the relevant Service or to enable a suspension of such rights to be lifted and including any resubmission for assurance after an update to the relevant Connection Criteria is published or following completion of remedial work.
- 3.5 NHS Digital shall from time to time publish all the requirements a Connecting Party are to meet for a Service and the relating Technical Conformance Documentation into the public domain or to defined or selected recipients a catalogue of suppliers and their status in terms of conformance with the Connection Criteria and the terms governing the Services.
- 3.6 The Connecting Party shall support End User Organisations for implementation of the relevant Services by providing Technical Conformance Documentation for review where required as outlined on the Services Web Page;
- 3.7 The Connecting Party shall ensure that information provided to meet a requirement of Technical Conformance for the relevant Service is (and remains for the duration of the Service) accurate, current and complete at all times.
- 3.8 The Connecting Party accepts that NHS Digital may request management information (including but not limited usage, viewing figures and utilisation) and/or evidence of continuing Technical Conformance to the requirements detailed on the Services Web Pages, and may request copies of documentation, design and relevant external certifications, and the Connecting Party shall fulfil such requests within the timescales requested provided the requests and timescales are reasonable. NHS Digital may make request/s by written notice to the Connecting Party and the Connecting Party shall co-operate and provide all relevant assistance and reasonable further information in relation to such request.
- 3.9 The Connecting Party shall notify (via an agreed email mailbox) NHS Digital and End User Organisations of, and provide details of, updates to their Technical Conformance.
- 4. RESTRICTIONS**
- 4.1 To protect the availability of the Services as a shared resource for the health and social care service in England, where (in its sole discretion) NHS Digital has concerns in respect of the clinical risk, security, information assurance or information governance arrangements of an organisation applying for access or a connection to a Service, or NHS Digital's vires, it reserves the right subject to complying with any notice periods set out in this Connection Agreement and/or on the Services Web Page as described in clause 14.2 to:
- 4.1.1 modify a Service; or
- 4.1.2 refuse access to a Service;
- 4.1.3 restrict or modify access under a Service, or to NHS Digital's systems, services or applications;
- 4.1.4 suspend access to a Service;
- 4.1.5 terminate a Service.
- 4.2 The Connecting Party shall not (and shall ensure that any third parties acting on its behalf shall not) use the Service in a manner that (in NHS Digital's reasonable opinion) constitutes excessive use beyond fair usage volumes and/or a breach of usage policies published by NHS Digital from time to time (and made available on the Services Web Page) and/or otherwise fails to comply or is inconsistent with any reasonable instructions provided by NHS Digital from time to time, and/or the standards expected of a Connecting Party of clinical IT services in relation to security and/or Clinical Safety Incidents.
- 4.3 Any person who makes use of the Services does so entirely at their own risk and NHS Digital assumes no duty of care or other legal liability or responsibility to any person who makes use of the Services for any loss or damage suffered by them as a result of such use nor shall NHS Digital be liable to contribute to or otherwise share in any liability to compensate any third party harmed as a result of the usage of the Services.
- 4.4 The Services are provided on an "as is" basis without (to the extent permitted by law) any warranty or representation of any kind either express or implied (including the implied warranties of merchantability and fitness for a particular purpose).
- 4.5 To the extent permissible by law, NHS Digital shall not be liable for any direct, special, indirect or consequential losses and/or damages nor for any loss (whether direct or indirect) of use, data, business or profits arising out of or in connection with this Connection Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not NHS Digital has been advised of the possibility of such loss or damage.
- 5. VERSIONS**
- 5.1 NHS Digital shall publish on a Services Web Page:
- 5.1.1 the Connection Criteria and all new versions to apply to each Service from time to time; and
- 5.1.2 details if available of the anticipated changes to versions of the Connection Criteria.
- 5.2 Subject to any variation expressed on the Services Web Page, NHS Digital shall for each Service provide Support to the Previous Version of the Connection Criteria for a minimum period of 12 months from the date it publishes the Current Version of the Connection Criteria.
- 6. CHANGE MANAGEMENT**
- 6.1 The Connecting Party shall, on reasonable notice and at as reasonable frequency, notify NHS Digital (as per clause 6.2) of all planned changes over the next 12 months to its systems and services to the extent such changes could reasonably be expected to impact the Services or its End User Organisations.
- 6.2 The notification referred to in clause 6.1 shall be done where possible via the Forward Schedule of Change (FSC) facility within NHS Digital's change management process.
- 6.3 If NHS Digital notifies the Connecting Party of changes to the underlying systems, components or processes relevant to the Services which are managed by NHS Digital, the Connecting Party shall make any necessary changes to their systems and services through:
- 6.3.1 liaising with NHS Digital and (under the direction of NHS Digital) other Connecting Parties in order to develop an implementation plan(s) with defined timescales for making the changes;
- 6.3.2 executing, following agreement by NHS Digital the implementation plan, their

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	responsibilities in accordance with that agreed implementation plan; and				all relevant and necessary parties together to resolve an Incident
	6.3.3	informing, immediately upon completion of the implementation, NHS Digital of the outcome of the implementation.	8.8		The Connecting Party shall ensure that a HSSI Manager is available to cover their defined documented support hours. Upon request from the Service Bridge, the Connecting Party's on duty HSSI Manager shall attend and contribute to a Multi Supplier Intervention within 30 minutes of notification by the Service Bridge.
<b>7.</b>	<b>END USER ORGANISATION</b>				
7.1	The identification, onboarding and management of End User Organisations shall be the responsibility of the Connecting Party.				
7.2	Engagement of an End User Organisation with regards to uptake and utilisation of NHS Digital Services may be undertaken by NHS Digital.				
7.3	The Connecting Party shall ensure that all its customers enter into an End User Organisation Declaration with NHS Digital. For an End User Organisation implementation, activity cannot be started without the End User Organisation Declaration.				
7.4	The Connecting Party shall remain liable for the act and/or omissions of any third party engaged.				
7.5	The Connecting Party shall notify all End User Organisations of changes to the Services, the Connection Criteria and/or the Connection Method used by the Connecting Party.				
7.6	The Connecting Party shall be fully accountable and responsible for the service management and delivery of its services to End Users Organisations and Individual End Users.				
7.7	If an End User Organisation does not comply with the Service specific End User Organisation requirements, NHS Digital may require the Connecting Party to disconnect the End User Organisation and/or suspend the End User Organisation's access so that it cannot receive the benefit of the Services.				
<b>8.</b>	<b>SERVICE MANAGEMENT</b>				
8.1	The Connecting Party shall reasonably collaborate with NHS Digital and third parties also connecting to the Services to help investigate and resolve Incidents.				
8.2	The Connecting Party shall provide a suitable service desk and support model during their documented support hours for the reporting, management, and communication related to Incidents, End User Organisation Requests, complaints, and enquiries.				
8.3	The Connecting Party shall publish an appropriate escalation and complaints process for use by NHS Digital and third parties connecting to the same Services.				
8.4	The Connecting Party shall be responsible for the management and resolution of Incidents, including End User Organisation communication, relating to the products and services used by End User Organisations.				
8.5	If NHS Digital defines an Incident as a HSSI the Connecting Party shall co-operate and engage as required irrespective of their own definition and assessment of the severity of the Incident.				
8.6	The Connecting Party shall:				
	a) notify NHS Digital of HSSIs which impact the NHS Digital Services, or the integration of those Services and that notification shall include as a minimum the Minimum Data Set applicable; and				
	b) 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.				
8.7	The Connecting Party may request that NHS Digital convenes a Multi Supplier Intervention where, acting reasonably, the Connecting Party determines that it cannot reasonably bring				
			8.9		The Connecting Party may 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.
			8.10		The Connecting Party shall during its documented support hours report all Clinical Safety Incidents that are not defined as an HSSI and are deemed to impact an NHS Digital Service within 48 hours of becoming aware of the Clinical Safety Incident. NHS Digital will provide a recommendation to the Connecting Party if it deems that the reported Clinical Safety Incident is not a Clinical Safety Incident.
			<b>9.</b>	<b>LICENCES</b>	
			9.1	The Connecting Party hereby grants to NHS Digital a non-exclusive, non-transferable, royalty free licence to use the Intellectual Property Rights relating to the Connection Method used by the Connecting Party solely for the duration of the Service for the purposes of assurance, with rights to sub-license for the same purposes and on the same terms.	
			9.2	NHS Digital hereby grants to the Connecting Party a non-exclusive, non-transferable, royalty free licence to connect, access and use the Services solely for the duration of the Service. The Connecting Party shall comply with any further licence requirements set out on the Services Web Page in relation to the relevant Service.	
			9.3	The Connecting Party shall not (to the extent permitted by law) attempt to: (i) copy, adapt, duplicate, modify, create derivative works from or distribute all or any portion of any application program interface technology it accesses through the Service, except to the extent expressly set out in this Connection Agreement, or (ii) reverse compile, decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service, or (iii) make changes or error corrections to the Service in whole or in part.	
			9.4	Where NHS Digital publishes as open source any software, code and/or specifications, the Connecting Party shall not be restricted to using the software, code and/or specifications in connection with use of the Services subject to:	
				9.4.1	the Connecting Party complying with the associated open source licences, and
				9.4.2	NHS Digital having no obligations or liability in respect of that extended use.
			<b>10.</b>	<b>INTELLECTUAL PROPERTY RIGHTS</b>	
			10.1	All Intellectual Property Rights created and developed by NHS Digital which subsist or are used in, or in connection with, the Services and Services Web Page will be the absolute property of and will vest and remain vested in NHS Digital. The Connecting Party shall do and execute or arrange for the doing or executing of each necessary act, document and thing that NHS Digital may consider necessary or desirable to perfect the right, title and interest of NHS Digital in and to those Intellectual Property Rights where this Connection Agreement and exercise of rights and obligations has created a conflict with the intended ownership of such Intellectual Property Rights by NHS Digital.	
			10.2	Subject to clause 10.3, all Intellectual Property Rights created and developed by (or on behalf of) the Connecting Party which subsist or are used in, or in connection with, its Connection	

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	Method will be the absolute property of, and will vest and remain vested in the Connecting Party.		Processing the Personal Data, unless prohibited by law;
10.3	Nothing in clause 10.2 will affect the ownership and licensing of Intellectual Property Rights already provided by any agreement between the Connecting Party and any End User Organisation or any other agreement between NHS Digital and the Connecting Party.	11.6.2	taking into account the state of the art, the cost of implementation and the nature, scope, context and purpose of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security commensurate to the risk, including inter alia as appropriate:
<b>11.</b>	<b>SECURITY AND DATA PRIVACY</b>		
11.1	NHS Digital shall assess the role of the Connecting Party in relation to its Processing of Personal Data prior to the Connecting Party entering into this Connection Agreement. Clauses 11.3 11.17 shall apply in respect of Processing carried out by the Connecting Party as a Processor, and the terms set out in Appendix 3 shall apply in respect of any Processing carried out by the Connecting Party as a Controller.	a)	the pseudonymisation and encryption of the Personal Data;
11.2	Within this clause, "Controller", "Data Subject", "Processor", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the meanings set out in the Data Protection Legislation and "Process" shall be construed in accordance with the definition of "Processing".	b)	the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
11.3	The parties acknowledge that:	c)	the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident;
	11.3.1 where any Personal Data is Processed in connection with this Connection Agreement, the Connecting Party shall be acting as a Processor and NHS Digital as a Controller;	d)	a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing; and
	11.3.2 the provisions of this clause 11 govern only the Processing of Personal Data of which NHS Digital is Controller, for the purposes of enabling the Connecting Party to access the NHS Digital Services ("Purpose"); and	e)	NHS Digital's cyber security guidance and policy (where available) NHS Digital web site: <a href="#">NHS Digital Cyber Security information</a> ;
	11.3.3 Processing of Personal Data carried out by the Connecting Party for the purposes of providing services to an End User Organisation shall be subject to and governed by separate data protection terms between the Connecting Party and the relevant End User Organisation.	11.6.3	take reasonable steps to ensure the reliability and integrity of any Connecting Party personnel who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the services in the context of that individual's duties to the Connecting Party, ensuring that all such individuals:
11.4	For the purposes of Article 28(3) of the GDPR, the subject matter and purpose of the Processing shall the Purpose; the duration of the Processing shall be as set out in this Connection Agreement; the nature of the Processing is the retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available the Personal Data, as required for the Purpose; the types of Personal Data Processed, the categories of Data Subjects and the Connecting Party's Data Protection Officer are as set out in the Technical Conformance Documentation.	a)	are aware of and comply with the Connecting Party's duties under this clause 11;
11.5	The Connecting Party shall ensure it has robust business continuity management plans and supporting procedures.	b)	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 NHS Digital or as otherwise permitted by this Connection Agreement;
11.6	Insofar as any Personal Data of which NHS Digital is Controller is Processed pursuant to this Connection Agreement by the Connecting Party, its agents or subprocessors, the Connecting Party shall and shall procure that its agents and subprocessors shall:		
	11.6.1 not Process the Personal Data other than on the documented instructions of NHS Digital unless the Connecting Party is required to do otherwise by law. If it is so required the Connecting Party shall promptly notify NHS Digital before		

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	c)	are subject to user authentication and log on processes when accessing the Personal Data;		Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
	d)	have undertaken appropriate training in relation to Data Protection Legislation and in the use, care, protection and handling of the Personal Data; and	b)	communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
	e)	are subject to confidentiality undertakings with the Connecting Party that are in writing and are legally enforceable or subject to professional or statutory obligations of confidentiality;	c)	describe the likely consequences of the Personal Data Breach; and
			d)	describe the measures taken or proposed to be taken to address the Personal Data Breach;
11.6.4	Process the Personal Data in accordance with the Data Protection Legislation (as applicable) and:		11.6.7	cooperate with NHS Digital and take such steps as are directed by NHS Digital to assist in the investigation, mitigation and remediation of a Personal Data Breach;
	a)	not do or permit anything to be done in performing its obligations under this Connection Agreement which might cause NHS Digital in any way to be in breach of the Data Protection Legislation, to the extent that the Connecting Party is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations; and	11.6.8	not inform any third party of a Personal Data Breach, except as may be strictly required by applicable law, without first obtaining NHS Digital's prior written consent;
	b)	immediately inform NHS Digital if, in its opinion, performance of the services or compliance with any instruction received from NHS Digital infringes, or might reasonably be considered to infringe, the Data Protection Legislation;	11.6.9	notify NHS Digital immediately if it:
11.6.5	provide reasonable assistance to NHS Digital in relation to any data protection impact assessments and/or any prior consultations to the Supervisory Authority which are required, in each case solely in relation to Processing of the Personal Data by the Connected Party on behalf of NHS Digital and taking into account the nature of the Processing and information available to NHS Digital;		a)	receives any of the following requests from a Data Subject (or third party on their behalf): (i) a Data Subject access request; (ii) a request to rectify any inaccurate Personal Data; (iii) a request to have any Personal Data erased or blocked; (iv) a request to restrict the Processing of any Personal Data; (v) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or (vi) an objection to any Processing of Personal Data;
			b)	receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
11.6.6	notify NHS Digital immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach providing NHS Digital with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Legislation. Such notification shall as a minimum:		c)	receives any communication from a Supervisory Authority or any other regulatory authority in connection with the Personal Data Processed under this Connection Agreement; or
	a)	describe the nature of the Personal Data Breach, the categories and numbers of	d)	receives a request from any third party for disclosure of the Personal Data where compliance with such request is required or purported to be required by law

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- (each a "**Relevant Communication**");
- 11.6.10 taking into account the nature of the Processing, provide NHS Digital with full cooperation and assistance in relation to any Relevant Communications (whether received by the Connecting Party or NHS Digital directly) including:
- a) provision of all data requested by NHS Digital within the timescale specified by NHS Digital in each case, including full details and copies of the complaint, communication or request and any Personal Data it holds in relation to a Data Subject;
  - b) where applicable, providing such assistance as is reasonably requested by NHS Digital to enable it to comply with the relevant request within the Data Protection Legislation statutory timescales; and
  - c) assistance as requested by NHS Digital with respect to any request from a Supervisory Authority, or any consultation by NHS Digital with a Supervisory Authority;
- 11.6.11 appoint and identify to NHS Digital a named individual within the Connecting Party to act as a point of contact for any enquiries from NHS Digital relating to the Personal Data;
- 11.6.12 not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country unless the transfer is required by EU or member state law to which the Connecting Party is subject, and if this is the case, then the Connecting Party shall inform NHS Digital of that requirement before Processing the Personal Data, unless a law prohibits such information being provided on important grounds of public interest;
- 11.6.13 in respect of any Processing in, or transfer of Personal Data to any Restricted Country permitted in accordance with clause 11.6.12 above, the Connecting Party shall, when requested by NHS Digital, promptly enter into an agreement with NHS Digital including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or NHS Digital might require. Such terms shall, in the event of any conflict, take precedence over those in this clause 11 and the Connecting Party shall comply with any reasonable instructions notified to it in advance by NHS Digital with respect to the transfer of Personal Data;
- 11.6.14 not authorise any subprocessor to Process the Personal Data other than with the prior written consent of NHS Digital. In all cases where a subprocessor is appointed, the Connecting Party shall:
- a) notify NHS Digital in writing of the intended subprocessor and provide NHS Digital with full details of the Processing to be undertaken by the proposed subprocessor;
  - b) provide NHS Digital with such information regarding the subprocessor as NHS Digital may reasonably require;
  - c) include terms in the contract between the Connecting Party and the subprocessor which offer at least the same level of protection for the Personal Data as those set out in this clause 11. Upon request, the Connecting Party shall provide a copy of its agreements with subprocessors to NHS Digital (which may be redacted to remove confidential commercial information not relevant to the requirements of this clause 11);
  - d) carry out adequate due diligence on each subprocessor to ensure that it is capable of providing the level of protection for the Personal Data as is required by this clause 11 including without limitation sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of Data Protection Legislation and provide evidence of such due diligence to NHS Digital where requested by NHS Digital or a Supervisory Authority;
  - e) insofar as that contract involves the Processing and/or transfer of Personal Data in or to any Restricted Country, ensure that (at NHS Digital's option): (i) the Standard Contractual Clauses are at all relevant times incorporated into the agreement between the Connecting Party and the subprocessors; or (ii) before the subprocessor first Processes the Personal Data, procure that it enters into an agreement incorporating the



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	Standard Contractual Clauses with NHS Digital;	11.13	The Connecting Party shall comply with its obligations under the Network and Information Systems Regulations 2018 to the extent applicable to its provision of the Services.
f)	remain fully liable to NHS Digital for any failure by a subprocessor to fulfil its obligations in relation to the Processing of any Personal Data;	11.14	Should a Service require identity verification of an Individual End User the Connecting Party shall comply with the Identity Verification and Authentication Standards for Health and Care as set out or linked to on a Services Web Page.
g)	cease Processing the Personal Data immediately upon the end of the provision of the services to which the Processing relates	11.15	The Connecting Party shall (and shall procure that all its contractors and subcontractors) comply with NHS Digital's cyber security guidance and policy (where available) as set out on the NHS Digital web site: <a href="#">NHS Digital Cyber Security information</a>
( the "Relevant Date")		11.16	The Connecting Party shall ensure it has robust business continuity management plans and supporting procedures.
	and as soon as reasonably practicable thereafter, at NHS Digital's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains and certify that all copies of the Personal Data have been deleted or returned in compliance with this clause within a reasonable time but in any event not later than 90 days after the Relevant Date.	11.17	The Connecting Party shall indemnify NHS Digital, and keep NHS Digital indemnified, against damages, costs, claims, demands, expenses, professional costs, charges and/or monetary penalty notices arising from enforcement by a Supervisory Authority and/or assertion of rights by Data Subjects, arising from a breach by the Supplier of the Data Protection Legislation and/or the data processing provisions set out in this Connection Agreement.
11.7	The Connecting Party shall maintain complete and accurate records and information necessary to demonstrate compliance with this clause 11, shall make all such records and information available to NHS Digital on request and allow for and contribute to audits, including inspections by NHS Digital or an independent auditor mandated by NHS Digital of its data processing facilities, procedures and documentation which relate to the Processing of Personal Data, in order to ascertain compliance with the terms of this clause 11. The Connecting Party shall provide full cooperation to NHS Digital in respect of any such audit and shall at the request of NHS Digital, provide evidence of compliance with its obligations under this clause 11, including but not limited to a written description of the technical and organisational security measures it has in place.	12.	<b>CONFIDENTIALITY</b>
11.8	The Connecting Party warrants that it has and its agents, subprocessors and employees have the necessary legal authority in any country where any Processing of Personal Data shall take place under this Connection Agreement and undertakes to comply with any of the Data Protection Legislation which is applicable in such country.	12.1	This Connection Agreement is not confidential and does 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 this Connection Agreement, 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 this Connection Agreement 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 this Connection Agreement.
11.9	Without prejudice to any other provision of this Connection Agreement, NHS Digital may, on reasonable notice, request a detailed written description of the technical and organisational methods employed by the Connecting Party and its subprocessors for the Processing of Personal Data which shall be provided within 10 days of receipt of such written notice.	12.2	The obligations of confidentiality in this clause 12 shall not extend to any matter which the receiving party can show:
11.10	NHS Digital may, at any time on not less than 30 Working Days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.	12.2.1	is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Connection Agreement;
11.11	The Parties agree to take account of any guidance issued by a Supervisory Authority. NHS Digital may on not less than 30 Working Days' notice to the Connecting Party amend this clause 11 to ensure that it complies with any guidance issued by a Supervisory Authority.	12.2.2	was independently disclosed to it by a third party entitled to disclose the same; or
11.12	The Connecting Party shall comply (and shall procure that all its contractors, subprocessors and agents comply) with the Data Security Protection Toolkit.	12.2.3	is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
		12.3	For the avoidance of doubt, NHS Digital may disclose the Connecting Party's Confidential Information:
		12.3.1	to the Department of Health and Social Care, NHS England, and to any other commissioners of Direct Care and/or any health or social care body or organisation whose remit relates to Direct Care;
		12.3.2	to any central government body;
		12.3.3	to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
		12.3.4	if NHS Digital (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
		12.3.5	on a confidential basis to exercise its rights or comply with its obligations under this Connection Agreement; and/or

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- 12.3.6 on a confidential basis to a proposed transferee, assignee or novate of, or successor in title to, NHS Digital.
- 12.4 References to disclosure 'on a confidential basis' will mean disclosure subject to a confidentiality agreement or arrangement containing the same obligations as those placed on NHS Digital.
- 12.5 The reference in this clause 12 to central government bodies shall include the following sub categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- 12.5.1 Government Department;
- 12.5.2 Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- 12.5.3 Non-Ministerial Department; and
- 12.5.4 Executive Agency.
- 12.6 In relation to NHS Digital's obligations under the Freedom of Information Act 2000 and/or Central Government transparency requirements, the Connecting Party hereby gives its consent for NHS Digital to publish to the general public the Confidential Information. NHS Digital shall, prior to publication, take reasonable steps to consult with the Connecting Party on the manner and format of publication and to inform the Connecting Party of its decision regarding any redactions but NHS Digital shall have the final decision in its absolute discretion and the Connecting Party acknowledges that NHS Digital may be required to disclose Confidential Information without consulting the Connecting Party.
- 13. REMEDIATION**
- 13.1 Where the Connecting Party fails to meet the requirements set out on a Services Web Page, updates to the Connection Criteria and/or is otherwise in breach of its obligations under this Connection Agreement, then the Connecting Party shall agree a remediation plan with NHS Digital in reasonable timescales and will provide evidence of the actions taken as part of the remediation plan at specified points during the period agreed for implementation of the remediation plan.
- 13.2 Unless otherwise agreed, the period for implementation of the remediation plan shall be 30 days. If the breach is impossible to remedy within a 30-day period, NHS Digital shall extend the remedy period by a number of days which NHS Digital acting reasonably and objectively believes is proportionate to the circumstances. If NHS Digital reasonably believes that a remedy period should be shorter than 30 days, then a shorter period will be set.
- 14. TERMINATION**
- 14.1 NHS Digital shall have the right to suspend and/or terminate the contract formed by this Connection Agreement and/or the Connecting Party's permission to access the Service with immediate effect by written notice if the Connecting Party:
- 14.1.1 is, or is adjudicated or found to be, insolvent as set out in section 123 of the Insolvency Act 1986 (whether or not the company is registered or unregistered) or stops or suspends payments of its debts or is (or is deemed to be) unable to or has no real prospect of being able to or admits inability to pay its debts as they fall due or fails to satisfy any judgment debt in whole or in part within 14 days of the judgment date; or
- 14.1.2 enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or
- 14.1.3 passes a resolution or makes a determination for it to be wound up (without a declaration of solvency
- / except for the purposes of amalgamation or reconstruction); or
- 14.1.4 has a winding-up order or bankruptcy order made against it; or
- 14.1.5 has appointed to it an administrator or administrative receiver; or
- 14.1.6 being a partnership, in addition to the above, suffers bankruptcy orders being made against all its partners; or
- 14.1.7 suffers any event or step analogous to the events or steps set out in clauses 14.1.1 to 14.1.6 (inclusive) in any jurisdiction.
- 14.2 The Special Terms shall set out the notice periods (if any) and / or criteria for defining notice periods which shall apply if NHS Digital serves written notice to the Connecting Party of its intention to terminate where there has not been a breach by the Connecting Party of obligations under this Connection Agreement. If a notice period is not specified, then a reasonable notice period shall apply giving regard to the circumstances and type of Service.
- 14.3 If the Connecting Party is in breach of obligations under this Connection Agreement then NHS Digital shall be entitled to require a remediation plan as described in clause 13 and/or suspend the Connecting Party ability to on board new End User Organisations and/or suspend access to the Service and/or terminate any or all of the Services and/or terminate this Connection Agreement.
- 14.4 If the Connecting Party is in breach of obligations under this Connection Agreement, then if the breach is capable of remedy, a remediation plan shall be agreed and implemented in accordance with clause 13. If the breach is not capable of remedy or the applicable remedy period has been exceeded without a resolution to the underlying breach or its impact, then NHS Digital shall be entitled to suspend and/or terminate the Connecting Party's permission to access the relevant Service(s).
- 14.5 NHS Digital's preference shall be to work with a Connecting Party to identify and rectify root cause clinical risk, security, impact issues to avoid terminating a Service where possible. However, if evidence emerges of activity or behaviour by a Connecting Party in relation to the use of Service that would undermine the availability of Service, damage the reputation of Service, the NHS or Her Majesty's Government, or otherwise pose a security threat or clinical safety risk to the organisation or other Users or providers of Service, NHS Digital may have no choice other than to terminate and/or suspend the Service without notice.
- 14.6 Where NHS Digital intends to terminate or suspend the Connecting Party's access to the Service(s), NHS Digital reserves the right to inform the Connecting Party's End User Organisations of the pending suspension and termination and/or include this information as part of published information described in clause 3.5.
- 14.7 The termination or expiry of this Connection Agreement shall not affect any provision of the Connection Agreement which is expressly or by implication intended to come into or remain in effect on or after termination or expiry. The suspension or termination of a Service shall not affect the continuation of other Services to the Connecting Party if NHS Digital deems this to be appropriate.
- 15. NOTICES**
- 15.1 All notices given by one party to the other under this Connection Agreement shall be in writing and sent to such email address as the relevant party shall nominate from time to time.

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### 16. DISPUTE RESOLUTION

- 16.1 If a Dispute arises out of or in connection with this Agreement, then the matter shall be escalated to authorised senior officers. If the escalation to authorised senior officers does not resolve the Dispute within 5 Working Days, then either party shall give to the other written notice of the Dispute, setting out its nature and full, together with supporting documentation and shall attempt in good faith to resolve the Dispute.
- 16.2 Nothing shall prevent either party from seeking urgent injunctive relief from the courts nor from following alternative dispute resolution such as mediation or expert determination to resolve a Dispute if the parties agree and/or if it is prescribed on the Services Web Page as a process for Dispute resolution for the relevant Service(s).
- 16.3 To the extent that a Dispute is between NHS Digital, the Department of Health, NHS England, and/or a health or social care body or organisation whose remit relates to Direct- Care including commissioning, then those parties shall follow the mandatory (if any) or best practice dispute resolution procedure in effect at that time for resolution of such Disputes.
- 16.4 The Connecting Party shall operate an escalation procedure to deal with issues and complaints from End User Organisations, incorporating the following principles:
- 16.4.1 the party raising the issue or complaint shall be kept informed of progress at an appropriate interval as agreed with that party;
  - 16.4.2 all escalated issues and complaints shall be managed to an appropriate conclusion with agreed remedial actions to prevent re-occurrence;
  - 16.4.3 all escalated issues and complaints shall not be closed without the agreement of the party that raised them;
  - 16.4.4 details of all escalated issues and complaints shall be retained for a period of two years; and
  - 16.4.5 remedial and preventative action shall be taken to mitigate re-occurrence of the escalated issues and complaints.

### 17. GOVERNANCE

- 17.1 Each Service shall have its own forum arrangements involving different Connecting Parties who connect to the Services and End User Organisations. The Connecting Party may participate in these arrangements, and if it does so shall contribute to and attend such meetings at its own cost.
- 17.2 NHS Digital retains the right to limit attendee numbers at the forum arrangements referred to in clause 17.1 but shall endeavour to include as many relevant parties as possible.

### 18. RELATIONSHIP OF THE PARTIES

- 18.1 Nothing in this Connection Agreement 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.
- 18.2 Except where otherwise expressly provided in this Connection Agreement, neither party shall have authority to make representations, act in name or on behalf of, or otherwise to bind the other.

### 19. WAIVER AND CUMULATIVE REMEDIES

- 19.1 No failure or delay by either party to exercise any right or remedy existing under, or in connection with, this Connection Agreement (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.
- 19.2 The rights and remedies arising under, or in connection with, this Connection Agreement are cumulative and, except where otherwise expressly provided in this Connection Agreement, do not exclude rights and remedies provided by law or otherwise.

### 20. THIRD PARTIES

- 20.1 A person who is not NHS Digital or the Connecting Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Connection Agreement. This clause does not affect any right or remedy of any person which exists, or is available, other than pursuant to that Act.
- 20.2 The rights of the parties to rescind or vary this Connection Agreement are not subject to the consent of any other person or entity.

### 21. SEVERANCE

- 21.1 If any provision of this Connection Agreement 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 this Connection Agreement.
- 21.2 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.

### 22. VARIATION

- 22.1 NHS Digital reserves the right to amend this Connection Agreement if necessary, to comply with any applicable law or regulatory requirements. For changes which are not a requirement of applicable law or regulatory requirements, NHS Digital shall, acting reasonably, consult with the Connecting Party if the proposed variation or update could reasonably be considered a material change to this Connection Agreement.
- 22.2 Any variation or update to this Connection Agreement shall be made available to the Connecting Party via the Services Web Page from time to time, and any such variation or update shall take effect from the date of publication on the Services Web Page, meaning that from that publication date the new version of this Connection Agreement shall supersede all previous versions.
- 22.3 If there is any conflict between the terms of this Connection Agreement and the Special Terms, then the Special Terms shall prevail.

### 23. ENTIRE AGREEMENT

- 23.1 This Connection Agreement and all documents referred to in it (including the Services Web Page and repository of documents as updated from time to time) 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 Commencement Date by, or on behalf of, the parties and relating to its subject matter.
- 23.2 Each party confirms that it has not relied upon, and (subject to clause 23.4) 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 this Connection Agreement) unless that agreement, warranty,

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statement, representation, undertaking or understanding is expressly set out in this Connection Agreement.

23.3 Subject to clause 23.4, 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 this Connection Agreement.

23.4 Nothing in this Connection Agreement shall restrict or exclude any party's liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

### **24. GOVERNING LAW AND JURISDICTION**

24.1 This Connection Agreement and any Dispute or non-contractual obligation arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales. Subject to clause 16, each party hereby submits to the exclusive jurisdiction of the courts of England over any Dispute arising out of or in connection with this Connection Agreement.

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## Appendix 1

### NHS Login Connection Agreement : Special Terms

The following clauses shall be included into the Connection Agreement for NHS login:

All other provisions of the Connecting Agreement shall remain unaffected by the Special Terms set out below . If there is any conflict between these Special Terms and any other part of the Connection Agreement, then these Special Terms shall prevail.

Where there is no End User Organisation, the following terms shall be the responsibility of the Connecting Party.

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Connection Agreement:

**“Clinical Authorisation”** means the process of ensuring that no harm would be caused to Individual End Users by providing access to a health or care service;

**“Data Access Management Controls”** means the process of managing and controlling the data an Individual End User is permitted to access;

**“Vector of Trust”** means value(s) which should be considered when using the Services. Guidance for this is outlined within the Technical Conformance Documentation;

**“Verification”** means the process of verifying the identity of an Individual End User to the level selected and confirmed by the End User Organisation;

**“Verification Incident”** means any instance where the result of a Verification is inaccurate (including matched to the wrong record) or incomplete;

#### 3. CONNECTION CRITERIA & REQUIREMENTS

3.1A The Connecting Party shall comply with the Identify Verification and Authentication Standards of Health and Care (DCB3051), a link to which shall be provided on the Services Web Page.

#### 7. END USER ORGANISATION

7.1A Where there is no End User Organisation, the Connecting Party shall be responsible for selecting and confirming the correct Vector of Trust for each Individual End User.

7.1B Where there is no End User Organisation, the Connecting Party in order to mitigate the possibility of an Individual End User suffering harm, distress or loss by using the Service, shall be responsible for and ensure the correct Data Access Management Controls and Clinical Authorisations are in place and are followed.

7.1C In order for the Individual End User to use the Service and information the Connecting Party enables, an Individual End User and Verification must be appropriate and correct with the agreed Vector of Trust.

7.1D The Connecting Party agrees that NHS Digital shall only be responsible for a Verification Incident and/or a Clinical Safety Incident to the extent that:

7.1.D.1 an error occurs in the way the Verification is processed; and

7.1.D.2 it was not caused by an incorrect Clinical Authorisation or Data Access Management Controls.

7.1E The Connecting Party agrees that NHS Digital shall only be responsible for a Clinical Safety Incident to the extent that it was directly caused by a Verification Incident.

7.3A The Connecting Party shall not include any terms in its arrangement with an Individual End User which conflict with NHS Digital End User Organisation Agreement Terms regarding Verification.

7.6A The Connecting Party shall during its defined support hours (documented in the On-Boarding Process) report a Clinical Safety Incident and/or a Verification Incident within 30 minutes of becoming aware of the same. NHS Digital shall provide a recommendation to the End User Organisation if NHS Digital deems the event is not such an event.

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### Appendix 2

#### Further Special Terms

The Special Terms below shall apply where one or more of the following scenarios exists:

1. the Connecting Party's product is integrated with another third party system that has already been declared technically conformant by NHS Digital, where the integration is seamless, rendering the end user organisation (and/or individual end users) unaware of the interface with NHS Digital Service(s);
2. individual End Users, rather than an End User Organisation, access NHS Digital Service(s) via an Interface (Services Web Page or other digital tool) to the Connecting Party's product;
3. where a Connecting Party's estate includes a service support model where the end user organisations devolve responsibility for implementation of systems and management of associated risks to the Connecting Party and where the Connecting Party is willing to undertake the responsibilities on behalf of all End User Organisations within its estate, as defined in the End User Organisation Terms.

#### **SPECIAL TERM 1**

For the Service(s) indicated, clause 7.3 (End User Organisations to enter into the End User Organisation Declaration and the End User Organisation Terms) shall not apply.

#### **SPECIAL TERM 2**

For the Service indicated from the menu above only, the Connecting Party shall enter into the End User Organisation Terms for and on behalf of any of its customers ("CP Customers") who use the Connecting Party's system which connects either directly or indirectly to the Service. The Connecting Party shall procure that each CP Customer shall use the Services in a manner that is consistent and compliant with the End User Organisation Declaration and End User Organisation Term . Where NHS Digital considers that any CP Customer is not using the Services in such a manner then Clause14 of the End User Organisation Terms may apply.

This document and any Special Terms set out above shall not be published on any Services Web Page notwithstanding any provision in the Connecting Agreement which defines and governs the use of Special Terms.

All other provisions of the Connecting Agreement shall remain unaffected by the Special Terms set out above. If there is any conflict between these Special Terms and any other part of the Connection Agreement, then these Special Terms shall prevail.

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## Appendix 3

### Connecting Party as Controller

The terms set out in this Appendix 3 ("**Controller Terms**") shall apply where it has been determined by NHS Digital that the Connecting Party is acting as a separate and independent Controller in respect of Personal Data it Processes pursuant to this Connection Agreement. The terms set out in this Appendix 3 govern only the Processing of Personal Data of which NHS Digital is Controller, for the Purpose. Processing of Personal Data carried out by the Connecting Party for the purposes of providing services to an End User Organisation shall be subject to and governed by separate data protection terms between the Connecting Party and the relevant End User Organisation.

1. The Connecting Party shall:

- 1.1 use the Personal Data solely for the Purpose;
- 1.2 Process the Personal Data at all times in accordance with the terms of this Connection Agreement and comply with the requirements of the Data Protection Legislation in respect of its Processing;
- 1.3 maintain good information governance standards and practices, meeting or exceeding the Data Security and Protection Toolkit standards required of its organisation type;
- 1.4 not share the Personal Data with any third party (other than the End User Organisation) without the prior written consent of NHS Digital;
- 1.5 take reasonable steps to ensure the reliability and integrity of any Connecting Party personnel who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the services in the context of that individual's duties to the Connecting Party, ensuring that all such individuals:
  - 1.5.1 are aware of and comply with the Connecting Party's duties set out in this Appendix 3;
  - 1.5.2 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 NHS Digital or as otherwise permitted by this Connection Agreement;
  - 1.5.3 are subject to user authentication and log on processes when accessing the Personal Data;
  - 1.5.4 have undertaken appropriate training in relation to Data Protection Legislation and in the use, care, protection and handling of the Personal Data; and
  - 1.5.5 are subject to confidentiality undertakings with the Connecting Party that are in writing and are legally enforceable or subject to professional or statutory obligations of confidentiality;
- 1.6 taking into account the state of the art, the cost of implementation and the nature, scope, context and purpose of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security commensurate to the risk, including inter alia as appropriate:
  - 1.6.1 the pseudonymisation and encryption of the Personal Data;
  - 1.6.2 the ability to ensure the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
  - 1.6.3 the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident;
  - 1.6.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing; and
  - 1.6.5 NHS Digital's cyber security guidance and policy (where available) NHS Digital web site: [NHS Digital Cyber Security information.](#);
- 1.7 unless otherwise agreed in writing with NHS Digital, cease Processing the Personal Data immediately upon expiry or termination of this Connection Agreement and securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the

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information it contains and certify that all copies of the Personal Data have been deleted in compliance with this clause within a reasonable time but in any event not later than 90 days after termination or expiry.

- 1.8 identify a relevant legal basis for its Processing of the Personal Data and immediately notify NHS Digital if it no longer has a legal basis for Processing the Personal Data;
  - 1.9 immediately notify any Personal Data Breach to NHS Digital as soon as the Connecting Party discovers such Personal Data Breach and provide such information and cooperation as may be required by NHS Digital;
  - 1.10 inform NHS Digital immediately if it receives any communication from the ICO which relates to the Personal Data, unless explicitly prohibited from doing so by the ICO;
  - 1.11 not transfer Personal Data outside the European Economic Area without the prior written consent of NHS Digital and only in circumstances when such transfer is permitted under, and complies with the requirements of, the Data Protection Legislation; and
  - 1.12 appoint and identify to NHS Digital a named individual within the Connecting Party to act as a point of contact for any enquiries from NHS Digital relating to the Personal Data.
2. Without prejudice to any other provision of this Connection Agreement, NHS Digital may, on reasonable notice, request a detailed written description of the technical and organisational methods employed by the Connecting Party for the Processing of Personal Data which shall be provided within 10 days of receipt of such written notice.
  3. In the event of any change in applicable law, including the Data Protection Legislation, the Connecting Party shall take such steps (including agreeing to additional obligations and/or executing additional documents) as may be requested by NHS Digital to ensure that the sharing of the Personal Data with the Connecting Party and the Processing by the Connecting Party complies with applicable laws.
  4. The Connecting Party shall maintain complete and accurate records and information necessary to demonstrate compliance with this Appendix 3, shall make all such records and information available to NHS Digital on request and allow for and contribute to audits, including inspections by NHS Digital or an independent auditor mandated by NHS Digital of its data processing facilities, procedures and documentation which relate to the Processing of Personal Data, in order to ascertain compliance with the terms of this Appendix 3. The Connecting Party shall provide full cooperation to NHS Digital in respect of any such audit and shall at the request of NHS Digital, provide evidence of compliance with its obligations under this Appendix 3, including but not limited to a written description of the technical and organisational security measures it has in place.
  5. The Connecting Party warrants that it has and its agents and employees have the necessary legal authority in any country where any Processing of Personal Data shall take place under this Connection Agreement and undertakes to comply with any of the Data Protection Legislation which is applicable in such country.
  6. The Parties agree to take account of any guidance issued by a Supervisory Authority. NHS Digital may on not less than 30 Working Days' notice to the Connecting Party amend the terms of this Appendix 3 to ensure they comply with any guidance issued by a Supervisory Authority.
  7. The Connecting Party shall comply (and shall procure that all its contractors and agents comply) with NHS Digital's Data Security Protection Toolkit.
  8. The Connecting Party shall comply with its obligations under the Network and Information Systems Regulations 2018 to the extent applicable to its provision of the services.
  9. Should a Service require identity verification of an Individual End User the Connecting Party shall comply with the Identity Verification and Authentication Standards for Health and Care as set out or linked to on a Services Web Page.
  10. The Connecting Party shall (and shall procure that all its contractors and agents comply) comply with NHS Digital's cyber security guidance and policy (where available) as set out on the NHS Digital web site: [NHS Digital Cyber Security information](#).
  11. The Connecting Party shall ensure it has robust business continuity management plans and supporting procedures.
  12. The Connecting Party shall indemnify NHS Digital, and keep NHS Digital indemnified, against damages, costs, claims, demands, expenses, professional costs, charges and/or monetary penalty notices arising from enforcement by a Supervisory Authority and/or assertion of rights by Data Subjects, arising from a breach by the Supplier of the Data Protection Legislation and/or the data processing provisions set out in this Connection Agreement.