

**Data Access Request Form (DARF)**

Applicants should ensure that they have discussed this request with the National Joint Registry research department. The National Joint Registry acts as data processor to HQIP and is referred to as the ‘data provider’ for the purpose of this data access request.

Once completed please return this signed form to research@njr.org.uk

**All sections within this form are mandatory unless specifically stated otherwise. Unless this form is completed in full, it will be returned to the applicant which will extend the time to data receipt.**

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| ***For HQIP office use only*** |
| **HQIP application number** | Click or tap here to enter text. | **Date of submission to HQIP** | Click or tap to enter a date. |
| **If applicable, any linked application number(s)** | Click or tap here to enter text. | **Charging category** | Click or tap here to enter text. |
| **Tracking history** | Click or tap here to enter text. |
| **Expiry date** | Click or tap to enter a date. |
| **DSFC reference**  | Click or tap here to enter text. |
| **DFSC expiry** | Click or tap to enter a date. |

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| **Section 1** | **Primary applicant information** |
| **Title of project** | Click or tap here to enter text. |
| **Name of primary applicant organisation** | Click or tap here to enter text. |
| **Name of any partner organisation (s) if applicable***(ensure partner form also completed)* | Click or tap here to enter text. |
| **Address of primary applicant organisation** | Click or tap here to enter text. |
| **Primary contact** *(must be a permanent senior member of staff)* | Click or tap here to enter text. | **Job title** | Click or tap here to enter text. |
| **Telephone** | Click or tap here to enter text. | **Email** | Click or tap here to enter text. |
| **Organisation type** | **NHS Healthcare Provider** | **Academic Institution** | **Healthcare Regulator** | **Other Healthcare Body** |
|  |[ ] [ ] [ ] [ ]
|  | **Local Authority** | **Individual Citizen(s)** | **Commercial Body** | **Other (please state)** |
|  |[ ] [ ] [ ] [ ]
| **HQIP projects from which data is requested***(For reference a list of HQIP projects and their Project Managers are listed on the HQIP website)* | **Please list below the name(s) of each of the HQIP-commissioned projects from which you are requesting data.** |
|  | National Joint Registry |
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| **Section 2** | **Application type** |
| ***Please tick at least one box below confirming whether the application is for a new application, extension or amendment. For extensions or amendments, you must highlight the specific information within this form that has been updated and provide updated signatures in order for the request to be processed.*** |
| **Request** | **Provide original HQIP application number and approval date and any subsequent amendment approval dates.** | **Summary of changes and rationale for the change to your original application. In addition all changes must be made as highlighted edits within this form.** |
| [ ]  **New Application** Including applications that have not previously been approved by HQIP. | **N/A** | **N/A** |
| [ ]  **Extension**Request to extend the term of a current data sharing agreement. | Click or tap here to enter text. | Click or tap here to enter text. |
| [ ]  **Amendment** Request to change the scope, data fields requested or any other change to an application previously approved by DARG. | Click or tap here to enter text. | Click or tap here to enter text. |
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| **Section 3** | **Project type** |
| **Please select the most appropriate answer** | **Research** | **Service Evaluation** | **Clinical Audit** | **Other (please state)** |
|  |[ ] [ ] [ ] [ ]  Click or tap here to enter text. |
| **Is ethics approval required?**  | **If the request is for research purposes you must enclose evidence of NHS ethics approval or evidence that this is not required** |
|  | **YES**Confirmation of NHS ethics needs to be submitted with this application. |[ ]
|  | **NOT REQUIRED**Confirmation needs to be submitted with this application from the HRA decision tool[**http://www.hra-decisiontools.org.uk/ethics/**](http://www.hra-decisiontools.org.uk/ethics/)or confirmation from your local Research and Development Department that NHS ethics is not required. |[ ]
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| **Section 4** | **Project details** |
| **Please provide full details of the project below. You should describe and justify the project’s objectives, rationale and methodology.** |
| **Objective/Rationale** | Click or tap here to enter text. |
| **Methodology** | **Please include:*** **A summary of your project methodology, ensuring this description aligns with the dataset requested**
* **A justification of sample size, analyses proposed and plans for patient and/or user group involvement**
 |
|  | Click or tap here to enter text. |
| **Please describe the expected measurable benefits to health and/or social care including target date** | Click or tap here to enter text. |
| **Proposed completion date of the project** | Click or tap to enter a date. |
| **Lay Title and Summary** | **Please provide a lay summary of your project (max 300 words).** The lay summary should be written in plain English and must enable a non- medical audience to understand the research question and aims of the project. If your request is approved, this paragraph (title and summary) will be published on the NJR website. |
|  | Click or tap here to enter text. |
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| **Section 5** | **Publications and other outputs** |
| **Please include all intended outputs of the project including publications. Outputs include all types of disseminations produced from the project data. For each output include the highest level of detail of data/information that will be displayed.** |
| **Outputs including publications***(add more rows if required)* | **What is the highest level of detail that will be displayed in the output** *(e.g. case record, unit, hospital, trust, network, regional, national, whole study, study group)* | **Will this output be published?** | **Expected Date of Publication** | **Confirm that published output will be anonymised to the level required by** [**ISB1523: Anonymisation Standard for Publishing Health and Social Care Data**](https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/isb1523-anonymisation-standard-for-publishing-health-and-social-care-data) |
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| Add more rows if needed |  |  |  |  |
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| **Section 6** | **Project funding** |
| **Please indicate whether your project has received dedicated funding. Please also indicate whether there is a commercial interest in the project, either by funding or direct input into project design or team.** |
| **Funding***(please select one answer)* | **No** [ ]  |  |
|  | **Yes** [ ]  | **If yes**, please provide the name of the funding body belowClick or tap here to enter text. |
| **Commercial interest** *(please select one answer)* | **No** [ ]  |  |
|  | **Yes** [ ]  | **If yes**, please provide the name of the organisation and the nature of any interest into the project design below. Please also note information required in Section 7Click or tap here to enter text. |
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| **Section 7** | **Declaration of Interest** |
| **Please indicate whether any individuals named in this application have an interest to declare about this application.** All interests that might unduly influence an individual’s judgement and objectivity in the use of the data being requested from DARG are of relevance. Particular consideration should be given to declaring interests involving payment or financial inducement for use of the data being requested. These will be considered by DARG to determine if there is any potential conflict of interest identified as part of the request. |
| **Declaration of interest*****(please select one answer)*** | **No** [ ]  |  |
|  | **Yes** [ ]  | **If yes**, please provide the name and details of the declaration for each individual belowClick or tap here to enter text. |
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| **Section 8** | **Data Summary** |
| **Please tick the box(es) confirming the geographical coverage of the data you are requesting. Coverage is defined as the location of the healthcare services who originated / initially provided the extract of data you are requesting.** *NB. HQIP’s DARG can only approve applications for access to the datasets which HQIP commission and thereby act as Data Controller.* |
| **Geographical coverage** | [ ]  **England**  | [ ]  **Wales**  | [ ]  **~~Scotland~~**  |
|  | [ ]  **Northern Ireland**  | [ ]  **~~Republic of Ireland~~**  | [ ]  **Other**, please state: Isle of Man; Guernsey  |
| **Inclusion and exclusion criteria (including date parameters)** | **Describe precisely the criteria which define the patients to be included and to be excluded from the data extract you are requesting.** Please include precise date parameters for the start and end of the range requested (dd/mm/yy) and explain which dated project field will be used to define the requested cohort (e.g. date of admission or date of operation).**[NJR to complete: Apply NDOO?** [ ] **Yes** [ ] **No]** |
|  | Click or tap here to enter text. |
| **Periodic updates**  | **Periodic updates may sometimes be available.** These must be agreed with the HQIP data provider in advance and any falling outside of the term of the Data Sharing Agreement will be subject to an application extension being agreed. Please provide details below including reasons. |
|  | [ ]  **None** [ ]  **Monthly**[ ]  **Quarterly**[ ]  **Bi-annual (6 monthly)**[ ]  **Annual**[ ]  **Other**, please state: Click or tap here to enter text. |
| **Project/linked data***(please tick all that apply)* | **HQIP commissioned projects routinely link the data that they collect to other external datasets. The requirements of each data controller vary and there may not be an agreed process for onward sharing of linked project data. Please contact HQIP for advice before completing this form if you wish to apply for project data that has been linked with other datasets.**Please confirm whether you are applying for unlinked project data, or project data that has been linked to an external dataset. |
|  | [ ]  **Unlinked project data** | [ ]  **Project data linked with HES** |
|  | [ ]  **~~Project data linked with ONS~~** | [ ]  **Project data linked with PEDW** |
|  | [ ]  **Project data linked with Civil Registration data** | [ ]  **Project data linked with another dataset** Please provide details below:PROMs |
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| **Section 9** | **Data Type** |
| **First discuss your request with the data provider and then indicate in this section the type of data you are requesting (tick all that apply).** Note that what is relevant here is the identifiability of the data you are requesting at the point it leaves the HQIP data provider and not the level disclosed in any future publication. For further information on these categories of identifiability please see the Understanding patient data guidance [**https://understandingpatientdata.org.uk/what-does-anonymised-mean**](https://understandingpatientdata.org.uk/what-does-anonymised-mean) |
| [ ]  **Anonymous data**This is information from many people combined together (aggregated), so that it would not be possible to identify an individual from the data. Information about small groups or people with rare conditions could potentially allow someone to be identified and so would not be considered anonymous. Individual patient level data may alsovery occasionally be categorised as anonymous. In this case, the information in each record requested would also potentially be true for many other similar individuals, and so could not be used to deduce the person’s identity. | Click or tap here to enter text. |
| [ ]  **De-personalised data**This is information that does not identify an individual, because identifiers have been removed or encrypted. However the information is still about an individual person and so needs to be handled with care. It might, in theory, be possible to re-identify the individual if the data was not adequately protected, for example if it was combined with different sources of information. | **HQIP data provider to provide a description for how the data will be de-identified to reduce any risk of re-identification.** |
|  | Click or tap here to enter text. |
| [ ]  **Personally identifiable data**This is information that identifies a specific person. Identifiers might include: name, address, full postcode, date of birth or NHS number. Personally identifiable data fields that are requested solely for the purpose of linkage still need to be described here and in Section 10, even if they are removed before the data reaches the applicant. | Click or tap here to enter text. |
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| **Section 10** | **Data Fields** |
| **Please detail in the table below the data fields required as part of this request. All fields required to leave the data provider must be included here including linkage fields.** Justification for these should include whether they will be retained or destroyed once linkage is complete. This should also be clear on the data flow map in Section 11. Applicants should only request the minimum data set required to address the purpose stated within this application. |
| **Data field requested** | **Data source** *(HQIP/ NHS Digital)* | **Transformation applied** **This must be completed for every data field requested:*** **None**
* **Explain the transformation applied** (e.g. pseudonymisation (including who holds the key to reverse), time elapsed, age banding etc.)
 | **Justification***Please justify your use of each data item requested* |
| *Embed Primary and/or Revision data spec* | *NJR* | *EXAMPLE –*  *Pseudonymisation and encryption with key held only by HQIP data provider* | *Justification within embedded data spec* |
| *Embed HES/PROMs/CivReg data spec* | *NJR under license from NHS Digital* | Click or tap here to enter text. | *Justification within embedded data spec* |
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| **Section 11** | **Processing locations and data flows** |
| **Please list all locations where processing will be undertaken, for the avoidance of doubt storage is considered processing. For each separate organisation processing data which is not fully anonymous a separate partner organisation form must also be completed.** |
| **Processing location** | **Organisation name** | **Processing or storage** | **Data type processed** *(anonymous, de- personalised, personally identifiable)* | **How will data be transferred to this location?** |
| Click or tap here to enter text. | Click or tap here to enter text. | Click or tap here to enter text. | Choose an item. | Click or tap here to enter text. |
| Click or tap here to enter text. | Click or tap here to enter text. | Click or tap here to enter text. | Choose an item. | Click or tap here to enter text. |
| Click or tap here to enter text. | Click or tap here to enter text. | Click or tap here to enter text. | Choose an item. | Click or tap here to enter text. |
| **Will data be transferred outside of the European Economic Area?***If yes please state to where and give details of how that will be in compliance with the Data Protection Act 2018.* | [ ]  **No** | [ ]  **Yes** |
|  | **If yes**, please provide details: Click or tap here to enter text. |
| **Data Flows****Please insert a data flow diagram which graphically describes:**1. **All locations where data is processed**
2. **All transfers that take place between locations and organisations**
3. **Data linkages to other data sets**
 |
| **Please insert data flow diagram here** |
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| **Section 12** | **Project team employed by the applicant organisation** |
| **Please list the name and job title of each member of the applicant organisation who will have access to the data for the purposes of this request.** Please also confirm that they have a formal contract with the applicant organisation and will therefore be covered by the HQIP Data Sharing Agreement.Please add additional rows if necessary.Where the data map in Section 11 details processing of data which is not anonymous by additional organisations, a partner organisation form is required to be completed for each. |
| **Team member** | **Name** | **Job title** | **Will access data** | **Contract in place with applicant organisation** | **Email address** |
| **Principal investigator** | Click or tap here to enter text. | Click or tap here to enter text. | [ ]  **No** [ ]  **Yes** | [ ]  **No** [ ]  **Yes** | Click or tap here to enter text. |
| **Project member 1** | Click or tap here to enter text. | Click or tap here to enter text. | [ ]  **No** [ ]  **Yes** | [ ]  **No** [ ]  **Yes** | Click or tap here to enter text. |
| **Project member 2** | Click or tap here to enter text. | Click or tap here to enter text. | [ ]  **No** [ ]  **Yes** | [ ]  **No** [ ]  **Yes** | Click or tap here to enter text. |
| **Project member 3** | Click or tap here to enter text. | Click or tap here to enter text. | [ ]  **No** [ ]  **Yes** | [ ]  **No** [ ]  **Yes** | Click or tap here to enter text. |
| **Project member 4** | Click or tap here to enter text. | Click or tap here to enter text. | [ ]  **No** [ ]  **Yes** | [ ]  **No** [ ]  **Yes** | Click or tap here to enter text. |
| **Project member 5** | Click or tap here to enter text. | Click or tap here to enter text. | [ ]  **No** [ ]  **Yes** | [ ]  **No** [ ]  **Yes** | Click or tap here to enter text. |
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| **Section 13** | **Data Protection** |
| **As a data controller your organisation should be registered with the Information Commissioners Office (ICO). Please provide the following information.** |
| **Registered name***(if different to applicant name, please state reason)* | Click or tap here to enter text. |
| **Registration number** | Click or tap here to enter text. |
| **Expiry date** | Click or tap to enter a date. |
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| **Section 14** | **Legal basis (of the processing you intend to undertake)** |
| **If you are requesting data that is fully anonymous, please proceed to section 20** |
| **GDPR Legal Basis** | **Article 6 legal basis:**  Click or tap here to enter text.**Justification:** Click or tap here to enter text. |
|  | **Article 9 legal basis:**  Click or tap here to enter text.**Justification:** Click or tap here to enter text. |
| **~~Common law of duty of confidentiality is addressed by~~** | **~~If the data you are requesting is personally identifiable please explain how you have addressed the common law duty of confidentiality below.~~** |
|  | [ ]  **Explicit informed consent***(please enclose consent form and patient information sheet with this application)* |
|  | [ ]  **~~Approval under section 251 of the NHS Act 2006~~***~~(please enclose both the application and the approval letter)~~* |
|  | **The section 251 approval enables the applicant to:** |
|  | [ ]  **Hold/receive personal data**[ ]  **Transfer/access personal data**[ ]  **Operate on and link personal data** |
|  | [ ]  **Other legal basis**If other legal basis selected, please provide further information here with reference to the statute, regulation or other provision relied upon: Click or tap here to enter text. |
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| **Section 15** | **Fair Processing** |
| **Please describe what transparency information has been provided to the data subjects that the data requested relates to. Please ensure you enclose copies of any privacy notices and other material you rely on when submitting this application.** |
| **Information provided by the HQIP project** | Click or tap here to enter text. |
| **Information provided by the applicant** | Click or tap here to enter text. |
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| **Section 16** | **Security** |
| **Each organisation processing data that is not fully anonymous as part of this project must demonstrate that they have appropriate security arrangements are in place. Please confirm whether the applicant organisation has a compliant Data Security and Protection Toolkit.***(Please note that additional organisations processing data which is not fully anonymous must complete a partner organisation form and evidence of security arrangements)* |
| **Applicant organisation***(please select one answer)* | [ ]  **Yes***If yes, please provide evidence with this application.* | **ODS code** | Click or tap here to enter text. |
|  |  | **Status** | Click or tap here to enter text. |
|  |  | **Published date** | Click or tap to enter a date. |
|  | [ ]  **No** | **If no, please provide below alternative evidence of adequate organisational and technical measures; to ensure the security of processing and preserve the confidentiality, integrity and availability of data.** |
|  |  | Click or tap here to enter text. |
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| **Section 17** | **Retention and destruction** |
| **Please state the date until which you are seeking to retain the data and the reason.** ***NB. That the requirement to extend the Data Sharing Agreement*** *(if retention is requested for longer than its original term) would still apply.* | Click or tap to enter a date. **[end of term date, usually 12 months**]  |
| **Please provide details of how you intend to destroy the data at the end of the retention period.** |  .  |
| **Please confirm that you will submit a certificate of destruction to HQIP within 5 business days of destruction of the data.** |  |
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| **Section 18** | **Intention to link data** |
| **Do you intend for the requested data set to be linked with any additional data sets? If yes, please provide full details of the data controller(s) of the secondary dataset(s) and a description of which organisation will perform the linkage and how the linkage will take place. HQIP will work to the principle that other relevant requests are in process.***(Please select one answer)* |
| [ ]  **No intended linkage** | [ ]  **Intention to link the data.** *Please provide full details of linkage below.* |
| **If there is an intention to link the data, please provide full details here** |
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| **Section 19** | **Further information** |
| **Please use the section below to add any additional information to support your request.** |
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| **Section 20** |
|  | **Applicant organisation(s)** | **Data provider** |
| **Type of data** **Level of data** | **Data items spreadsheet** | **Evidence of Data Security and Protection (DSPT) Toolkit or equivalent** | **Data flow map** | **Ethics approval OR confirmation that it is not required** | **Fair processing information** | **Legal basis supporting evidence (such as, consent form and patient leaflet, s251 application and approval letter or any other evidence)** | **Signed NHS Digital Framework Contract** | **Signed NHS Digital Data Sharing Agreement** | **Description for how the data will be de-identified to reduce any risk of re- identification** | **Fair processing information** |
| **Anonymous HQIP data** |  |  |  |  |  |  |  |  |  |  |
| **De-personalised HQIP data** |  |  |  |  |  |  |  |  |  |  |
| **Personally Identifiable HQIP data** |  |  |  |  |  |  |  |  |  |  |
| **NHS Digital data** |  |  |  |  |  |  |  |  |  |  |

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| Terms and Conditions for Use of HQIP Data BACKGROUND1. HQIP agrees to share the HQIP Data (defined below) with the Applicant on the terms set out in the Contract (as defined below).
2. The Applicant agrees to use the HQIP Data on the terms set out in the Contract.
3. The Applicant has submitted a request to HQIP using the Data Access Request Form (defined below) for access to the HQIP Data. These Conditions together with the Data Access Request Form comprise the Contract in relation to the access to and use of HQIP Data.
4. Where the Applicant has also requested access to NHS Digital Data (defined below and in the Data Access Request Form), the terms on which the NHS Digital Data are to be accessed are set out in separate agreements, defined below as the HQIP/NHS Digital Data Sharing Agreements.

AGREED TERMS1. Interpretation

The following definitions and rules of interpretation apply:* 1. Definitions:
1. Agreed Purpose: the purpose(s) for which the Applicant wishes to use the HQIP Data, as set out in section 3, section 4 and section 5 of the Data Access Request Form as such purposes may be amended by written agreement from HQIP from time to time, subject to the payment of any related Charges.
2. Anonymous Data: has the meaning set out in the Data Access Request Form.
3. Applicant: the party named as such in the Data Access Request Form.
4. Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Change Fees:** the fees notified by HQIP to the Applicant, to be paid by the Applicant to HQIP, in relation to a change in the HQIP Data that the Applicant wishes to access.1. Conditions: the terms and conditions set out in this document as amended from time to time in accordance with condition 27.
2. Contract: the contract between HQIP and the Applicant for the sharing of the HQIP Data by HQIP with the Applicant in accordance with these Conditions, the Data Access Request Form and any attachments to the Data Access Request Form.
3. **Data Access Request Form:** the Applicant’s request to HQIP for access to the HQIP Data set out on the form attached to these Conditions and approved by HQIP and any subsequent form(s) as completed by the Applicant and approved by HQIP which refer to these Conditions.
4. **Data Destruction Certificate:** HQIP’s required form of certificate in relation to data destruction as set out in the Schedule to these Conditions.
5. Data Sharing Code: the Information Commissioner's Data Sharing Code of Practice of May 2011, as updated or amended from time to time.
6. DSFC: The Data Sharing Framework Contract between the Applicant and HQIP, included at Annexe 1, which governs access to NHS Digital data.
7. Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation (as defined in sections 3(10) and 205(4) of the Data Protection Act 2018) (**UK GDPR**) , where applicable, the EU General Data Protection Regulation *(EU) 2016/679*) (**GDPR**); the Data Protection Act 2018 (**DPA 2018**); the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party, including the Data Sharing Code.
8. De-**personalised Data**: has the meaning set out in the Data Access Request Form.
9. EEA: European Economic Area.
10. Fees: the Initial Fees, the Renewal Fees and the Change Fees, as the case may be.

FOIA: the Freedom of Information Act 2000.1. HQIP: Healthcare Quality Improvement Partnership (company number 6498947) whose registered office is at 27A Harley Place, London, W1G 8LZ
2. HQIP Data: the HQIP controlled Anonymous Data, De-personalised Data and Shared Personal Data to be shared with the Applicant by HQIP, as set out in section 10 of the Data Access Request Form.
3. HQIP/NHS Digital Data Sharing Agreements: the DSFC and NHS Digital DSA that have been entered into by the Applicant in respect of any NHS Digital data that has been requested, and as attached to this Contract as Annex 1.
4. **Initial Fees:** the fees notified by HQIP to the Applicant, to be paid by the Applicant to HQIP prior to the relevant data sharing taking place, in relation to the Basic, Standard and Complex HQIP Data (identified in the Data Access Request Form) that the Applicant wishes to access.
5. **NHS Digital Data:** data supplied by NHS Digital, via HQIP, as set out in section 10 of the Data Access Request Form.
6. N**HS Digital DSA:** the data sharing agreement at Annex 1 of this Contract which governs the access to and use of NHS Digital Data, as set out in section 10 of the Data Access Request Form.
7. **Personal Data Breach**: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.
8. **Personally Identifiable Data:** has the meaning set out in the Data Access Request Form**.**
9. **Renewal Fees:** the annual renewal fees notified by HQIP to the Applicant, to be paid by the Applicant to HQIP prior to each anniversary of the date of the initial sharing of the HQIP Data by HQIP with the Applicant.
10. Shared Personal Data: the Personally Identifiable Data (including Personal Data and Special Category Personal Data) and De-personalised data which can be reverse engineered to be Personally Identifiable Data to be shared between the parties under condition 5 of these Conditions.
11. Subject Access Request: the exercise by a data subject of his or her rights under Article 15 of the GDPR and the DPA 2018.
12. **Supervisory Authority**: the relevant supervisory authority in the territories where the parties to the Contract are established.
13. **Transfer Dates**: the date or dates when the HQIP Data is transferred to the Applicant.
14. **Term**: the length of time for the data sharing with the expiry date specified by HQIP in the Data Access Request Form.
	1. **Controller**, **Processor**, **Data Subject** and **Personal Data**, **Special Categories of Personal Data**, **Processing** and "appropriate technical and organisational measures" shall have the meanings given to them in the Data Protection Legislation.
	2. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
	3. A reference to a statue or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
	4. References to conditions and schedules are to the conditions and schedules of these Conditions.
	5. Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
	6. A reference to **writing** or **written** includes email.
	7. In the event of any inconsistency between the terms of a Data Access Request Form and this Contract, and the DSFC or the NHS Digital DSA, in relation to NHS Digital Data, the DSFC and the NHS Digital DSA shall prevail.
	8. In the event of any inconsistency, discrepancy or conflict between a Data Access Request Form, these Conditions and the Schedule, the conflict in relation to the HQIP Data covered by that Data Access Request Form should be resolved in the following descending order of priority:

the Data Access Request Form (including any attachments to the Data Access Request Form);these Conditions;the Schedule (Data Deletion Certificate).1. Commencement and Term
	1. The data sharing shall commence on the date set out in the Data Access Request Form and shall continue for the Term, unless terminated earlier in accordance with condition 12, condition 14 and condition 17, when it shall terminate automatically without notice.
	2. Without prejudice to condition 2.1 it is the Applicant’s responsibility to instigate any request for an extension to the Term in good time to allow for HQIP to consider whether to approve the Applicant’s request and HQIP cannot be held responsible if the Applicant’s request is not made to allow sufficient time for the HQIP approval process.
	3. Where the Applicant has requested NHS Digital Data alongside HQIP Data, termination of any HQIP/NHS Digital Data Sharing Agreement shall also terminate this Contract in accordance with condition 17.2.
2. Purpose
	1. The Applicant shall only process that HQIP Data for the Agreed Purpose.
3. Compliance with data protection laws
	1. The Contract sets out the framework for the sharing of HQIP Data between HQIP, and the Applicant. Where HQIP is sharing Shared Personal Data with the Applicant HQIP acts as a Controller when it discloses such Shared Personal Data and the Applicant acts as a Controller when it receives such Shared Personal Data. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.
	2. Each Party must ensure compliance with applicable national data protection laws at all times.
	3. In the event the data protection law or approach to compliance of two or more countries conflict, the requirements of the country that necessitates stricter or additional requirements to protect data subjects' privacy and personal data shall be applied.
	4. Each party has such valid registrations and or paid such fees as are required by its national Supervisory Authority which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to the Contract, unless an exemption applies.
4. Shared Personal Data
	1. The categories of HQIP Data that will be shared by HQIP with the Applicant are set out in the Data Access Request Form at section 9 and section 10 together with any access and processing restrictions required by HQIP.
5. Lawful, fair and transparent processing
	1. The Applicant shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with condition 6.2 while the sharing of the Shared Personal Data is taking place.
	2. The Applicant shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data.
	3. The Applicant undertakes to inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR including:
		1. if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the data subject to understand the purpose and risks of such transfer; and
		2. if Shared Personal Data will be transferred outside the EEA pursuant to condition 10, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Applicant to enable the data subject to understand the purpose and risks of such transfer.
	4. HQIP Data is provided on the understanding that it will not be matched to any other datasets, even to depersonalised or aggregated datasets, unless HQIP has agreed to the proposed processing matching.
	5. The Applicant is the Controller of Shared Personal Data that HQIP has supplied. The Applicant is responsible for complying with the Data Protection Legislation, all other applicable laws and its own internal policies and procedures in relation to the Applicant’s processing of the Shared Personal Data.
6. Data quality
	1. Shared Personal Data shall be limited to the Personal Data and Special Category Data listed at section 9 and section 10 of the Data Access Request Form.
	2. The Shared Personal Data shall not be irrelevant or excessive with regard to the Agreed Purpose.
7. Data subjects' rights
	1. The parties each agree to provide such assistance as is reasonably required to enable the other party to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
	2. Each party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
8. Data retention and deletion
	1. The Applicant shall not retain or process HQIP Data for longer than is necessary to carry out the Agreed Purposes.
	2. The Applicant shall not retain HQIP Data after the end of the Term.
	3. The Applicant shall ensure that any HQIP Data are, unless otherwise required by HQIP, destroyed securely and in accordance with the Applicant’s organisational policy and standards of best practice at the end of the Term or, if earlier, once processing of the HQIP Data is no longer necessary for the Agreed Purposes.
	4. Following the deletion of HQIP Data in accordance with condition 9.3, the Applicant shall notify HQIP that the HQIP Data in question has been deleted and provide HQIP with a data destruction certificate in the form of the Data Destruction Certificate within five (5) Business Days.
9. Transfers
	1. For the purposes of this condition, transfers of Shared Personal Data shall mean any sharing of Shared Personal Data by the Applicant with a third party, and shall include, but is not limited to, the following:
		1. subcontracting the processing of Shared Personal Data;
		2. granting a third party controller access to the Shared Personal Data.
	2. Shared Personal Data must not be shared by the Applicant with any other organisations or individuals unless such sharing is included on the Data Access Request Form and agreed to in writing by HQIP.
	3. If, with HQIP’s prior consent, the Applicant appoints a third party processor to process the Shared Personal Data it shall comply with Article 28 and Article 30 of the GDPR and shall remain liable to HQIP for the acts and/or omissions of the processor.
	4. The Applicant may not transfer Shared Personal Data to a third party located outside the EEA unless this has been requested by the Applicant in the Data Access Request Form and it has been approved by HQIP in writing subject to such conditions as HQIP may impose in relation to such a transfer which (as a minimum) shall include that it;
		1. complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and.
		2. ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.
10. Security and training
	1. HQIP shall only provide the Shared Personal Data to the Applicant by using secure methods.
	2. The Applicant undertakes to have in place appropriate technical and organisational security measures to:
		1. prevent:
			1. unauthorised or unlawful processing of the Shared Personal Data; and
			2. the accidental loss or destruction of, or damage to, the Shared Personal Data
		2. ensure a level of security appropriate to:
			1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
			2. the nature of the Shared Personal Data to be protected.
	3. It is the responsibility of the Applicant to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with any applicable national data protection laws and the Data Protection Legislation and guidance and have entered into confidentiality agreements with such staff relating to the processing of personal data.
	4. The level, content and regularity of training referred to in condition 11.3 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data.
	5. Consistent with the Applicant’s responsibilities as a Controller in accordance with applicable national data protection laws and the Data Protection Legislation the Applicant shall implement and comply with its own security policy as evidence of the Applicant’s management’s commitment to information security and the security measures to be taken to cover the temporary removal of any Shared Personal Data or confidential information from the Applicant’s premises.
	6. The Applicant shall ensure that access to any buildings or rooms within the Applicant’s premises where Shared Personal Data is stored and/or can be accessed is controlled and that casual passers-by cannot read information off screens or documents.
	7. The Applicant shall not disclose or allow access to any HQIP Data other than to a person placed by the Applicant under the same obligations as those set out in the Contract who is variously employed or engaged by the Applicant or any sub-contractor, contractor, servant, agent or other person within the control of the Applicant.
	8. Confidential information (including Shared Personal Data) transferred between HQIP and the Applicant in electronic form must be encrypted and if sent by email must be password protected with the password sent in a separate email or text message.
	9. The Applicant will have in place appropriate security on external routes into its organisation, for example internet firewalls and secure dial-in facilities.
	10. The Applicant shall ensure that any system whereby any Shared Personal Data may be disclosed over the telephone is protected by a procedure for authenticating identity prior to the disclosure of that Personal Data.
	11. The Applicant’s computer systems must be password protected. Passwords must give access only to Shared Personal Data which an employee has a proper need to access and not to all levels of the system. Passwords must be known only to authorised people and changed regularly.
	12. The Applicant shall have a satisfactory procedure for cleaning media (such as hard drives and disks) before they are reused or new data written over old. The Applicant shall ensure that printed material is disposed of securely, for example by shredding.
	13. The Applicant confirms that the Shared Personal Data will not be removed from the Applicant’s secure premises nor worked on by employees on their own electronic devices unless this is permitted by the Applicants Bring Your Own Device Policy and subject to the Applicant’s requirements in relation to secure Virtual Private Networks. The Applicant shall take adequate precautions against burglary, fire or natural disaster. The Applicant shall ensure that all HQIP Data is protected against corruption by viruses or other forms of intrusion.
	14. All duplicate copies or back-up copies of the Shared Personal Data are held by the Applicant subject to the terms of the Contract and shall be securely destroyed when they are no longer required to be processed for the Agreed Purpose.
	15. The Applicant shall ensure that proper weight is given to the discretion and integrity of staff when they are being considered by the Applicant for employment or promotion or for a move to an area of work where they will have access to Shared Personal Data. The Applicant shall ensure staff are aware of their responsibilities and given training to ensure their knowledge is up to date.
	16. The Applicant shall ensure that disciplinary rules and procedures take account of the requirements of the Data Protection Legislation. In the case of an employee of the Applicant being found to be unreliable or unsuitable for access to Shared Personal Data, the Applicant shall ensure that his or her access to Shared Personal Data is withdrawn immediately
	17. The Applicant shall ensure that its staff are aware that Shared Personal Data should only be accessed for the Agreed Purpose and not for their own private purposes.
	18. The Applicant shall ensure that audit trails are kept so that access to Shared Personal Data is logged and can be attributed to a particular person.
11. Personal data breaches and reporting procedures
	1. The Applicant shall ensure that any Personal Data Breaches are properly investigated and remedied as soon as possible, particularly when damage or distress could be caused to an individual. The Applicant shall notify HQIP immediately should such a breach occur. Upon receipt of such a notification HQIP shall have the right:

 to immediately suspend provision of the HQIP Data under the Contract or any other contract for the sharing of HQIP Data with the Applicant; and/orto terminate immediately the Contract or any other contract for the sharing of HQIP Data with the Applicant; and/orto terminate immediately all other contracts for the sharing of HQIP Data with the Applicant that are entered into under this Contract; and/orto immediately suspend and/or terminate any existing applications by the Applicant to access the HQIP Data.* 1. Each party shall comply with its obligation as controller to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) data subjects under Article 33 of the GDPR.
1. Resolution of disputes with data subjects or the Supervisory Authority
	1. In the event of a dispute or claim brought by a data subject or the Supervisory Authority concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
	2. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the Supervisory Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
	3. Each party shall abide by a decision of a competent court of HQIP's country of establishment or of the Supervisory Authority.
	4. Subject to conditions 13.1 to 13.3 the Parties shall attempt to resolve any disagreement arising from the Contract informally and promptly by officers who have day-to-day responsibility for the operation of the Contract.
	5. If the disagreement cannot be resolved further to condition 13.4 within fourteen (14) days of it arising, the matter shall be referred to the Chief Executives (or the corresponding individuals) of the Parties.
2. Fees
	1. The Applicant shall pay to HQIP the Fees to cover the cost to HQIP of considering the Applicant’s request to access the HQIP Data and, if approved by HQIP, the cost of providing access to the Applicant of the HQIP Data during the Term.
	2. All Fees shall be paid by the Applicant to HQIP to its nominated bank account detailed below within thirty (30) days of the due date, in cleared funds, without withholding, set-off or deduction are non-refundable and time for payment is of the essence. The Fees shall be due and payable in full to HQIP annually in advance.
	3. The Initial Fees for the first year of the HQIP Data sharing shall be paid within thirty (30) days of the Applicant’s submission of the signed Pro Forma Invoice which will be sent to them once the completed Data Access Request Form has been received and approved by HQIP;
	4. The Renewal Fees for the second and subsequent years of the HQIP Data sharing shall be paid within thirty (30) days of HQIP’s submission of the invoice for those fees;
	5. The Change Fees shall be paid within thirty (30) days of HQIP’s submission of the invoice for those fees;
	6. HQIP’S bank details are:

Lloyds Bank plc(Threadneedle Street Branch)Account No. 00322010Sort Code 30-00-09.* 1. Where the Applicant fails to make payment of any Fees by the due date, HQIP shall be entitled (but shall not be obliged) to withhold the HQIP Data requested until payment is made. Where the Applicant fails to make payment within a further fourteen (14) days from the first date that any sums are due, HQIP shall be entitled (but shall not be obliged) to do any, or a combination of, the following on written notice to the Applicant:

to immediately suspend provision of the HQIP Data under the Contract or any other contract for the sharing of HQIP Data with the Applicant; and/orto terminate immediately the Contract or any other contract for the sharing of HQIP Data with the Applicant; and/orto terminate immediately all other contracts for the sharing of HQIP Data with the Applicant that are entered into under this Contract; and/orto immediately suspend and/or terminate any existing applications by the Applicant to access the HQIP Data.* 1. HQIP may charge interest at an annual rate of 4% above the base rate of Lloyds Bank, calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by HQIP of the full amount, whether before or after judgment.
	2. All Fees are to be paid in pounds sterling (£) and are exclusive of VAT or any other applicable sales tax, which shall be paid by the Applicant at the rate and in the manner for the time being prescribed by law, unless a current proof of VAT exemption is provided to HQIP.
	3. HQIP may, at any time after the date of the initial sharing of the HQIP Data by HQIP with the Applicant, by giving 90 days' prior written notice, vary the Renewal Fees and the Change Fees and the basis on which they are calculated. The Applicant may terminate the Contract for the HQIP Data Sharing from the date on which that variation is intended to take effect, provided that the Applicant gives HQIP written notice of termination of the Contract within 60 days of the date of HQIP's notice.
	4. Where an amendment to the provisions of the Contract (other than the Fees or the basis on which they are calculated) is required as a result of an addition to the HQIP Data sharing service or the relevant HQIP Data sharing service (including, for example, an amendment to acknowledge third party rights), HQIP may give the Applicant reasonable notice in writing of the Change Fees that will take effect on the date specified in that notice.
1. Confidentiality
	1. Each party undertakes that it shall not at any time disclose to any person any Shared Personal Data or confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 15.2;
	2. Each party may disclose the other party's confidential information:
		1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 15; and
		2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
	3. HQIP may disclose details of the Applicant’s Data Access Request Form to bodies who licence the HQIP Data to HQIP.
	4. Where NHS Digital Data has been requested as part of the Applicant's Data Access Request Form, details of that form may be shared with NHS Digital or other relevant NHS bodies as required.
	5. HQIP may publish details of the Applicant’s Data Access Request Form on a public register of HQIP’s data sharing activities.
	6. The Applicant may discuss adverse device outcomes findings with competent authorities (e.g. MHRA).
	7. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
2. Publication
	1. This condition only applies to HQIP Data supplied by the National Joint Registry. The Applicant shall provide a copy of any paper proposed for publication to HQIP approval at least one (1) month before submitting for publication or making public any information that has been derived utilising the HQIP Data.
	2. The Applicant shall acknowledge HQIP and all such bodies who licence the HQIP Data to HQIP and set out in the attachment to the Data Access Request Form, in all work published arising from any research undertaken on the HQIP data and will provide copies of such published work to HQIP. The applicant shall use the following wording for the HQIP acknowledgement:

‘Data has been provided by the Healthcare Quality Improvement Partnership from the xxx Programme’ Separate wording will be required for applications relating to HQIP Data supplied by the National Joint Registry. Applicants must use the NJR acknowledgement guidance located at <http://www.njrcentre.org.uk/njrcentre/Research/Research-requests>.* 1. Where HQIP shares Shared Personal Data with the Applicant, data shall not be published, except in compliance with all subsisting legal requirements as to confidentiality and provided that there is a lawful basis for such publishing.
1. Rights to inspection and withdrawal of data sharing
	1. HQIP reserves its rights to inspect the Applicant’s arrangements for the processing of the shared Personal Data at any time without prior notice, at the Applicant’s cost, and shall be entitled (but shall not be obliged) to do any, or a combination of, the following on written notice to the Applicant:
	2. to immediately suspend provision of the HQIP Data under the Contract or any other contract for the sharing of HQIP Data with the Applicant; and/or
	3. to terminate immediately the Contract or any other contract for the sharing of HQIP Data with the Applicant; and/or
	4. to terminate immediately all other contracts for the sharing of HQIP Data with the Applicant that are entered into under this Contract; and/or
	5. to immediately suspend and/or terminate any existing applications by the Applicant to access the HQIP Data.

where it considers the Applicant is not processing the Personal Data in accordance with the Contract.* 1. [Where the Applicant has also requested NHS Digital Data, and the HQIP/NHS Digital Data Sharing Agreements are terminated in accordance with the relevant clauses in those agreements, such termination shall have the effect of terminating this Contract.]
1. Freedom of Information
	1. The Applicant acknowledges that HQIP, although not itself a public authority subject to the FOIA, HQIP may be required to facilitate FOI requests for information made by third parties on such bodies who licence the HQIP Data to HQIP where such bodies are subject to FOIA.
	2. If the Applicant is a public authority and it receives an FOIA request regarding the HQIP Data, the Applicant must consult with the body that licences the HQIP Data to HQIP (as notified by HQIP to the Applicant in any attachment to the Data Access Request Form) prior to any release of the HQIP Data and shall take into account such licensee’s views before responding to any FOIA request. Notwithstanding this condition 18.2, bodies who licence the HQIP Data to HQIP acknowledge and the Applicant accepts that the Applicant is responsible in its absolute discretion for determining whether information regarding the HQIP Data is exempt from disclosure under FOIA.
	3. The Applicant shall ensure that its sub-contractors, servants, suppliers, agents or any other person in the control of the Applicant shall adhere to the terms of this condition 18.
2. Research
	1. Article 89 of the GDPR and Part 6 of Schedule 2 of the DPA 2018 contain various exemptions and relaxations in relation to the processing of Personal Data only for research purposes in compliance with the relevant conditions (as such terms are defined in the GDPR and the DPA 2018), including in relation to the second Data Protection Principle, the keeping of Personal Data indefinitely and the right of access to Personal Data.
	2. If the Applicant intends to claim its use of any Personal Data is covered by Article 89 of the GDPR and Part 6 of Schedule 2 of the DPA 2018, the Applicant warrants to HQIP that its use of Personal Data conforms with the required conditions of Article 89 of the GDPR and Part 6 of Schedule 2 of the DPA 2018 and the Data Access Request Form shall set out the relevant information.
3. Reporting Requirements
	1. The Applicant will comply with any reporting requirements made known to it by HQIP when the Applicant submits its Data Access Request Form and which are reflected in an attachment to the signed Data Access Request form signed by both of the parties.
	2. HQIP reserves the right to request a written update from the Applicant at any stage during the Term.
	3. This condition only applies to HQIP Data supplied by the National Joint Registry. The Applicant shall provide a written project summary update to the National Joint Registry in the form and detail required by the National Joint Registry. The written summary shall be submitted to National Joint Registry six (6) months after the Transfer Dates and then at six (6) monthly intervals (‘**Six Monthly Updates**’) until the HQIP Data has been deleted. After the Applicant has finished processing the HQIP Data in accordance with the Agreed Purposes, a final written report shall be sent to National Joint Registry within three (3) months after the end of the Term.
4. Language
	1. The Contract is drafted in the English language. If the Contract is translated into any other language, the English language version shall prevail.
	2. Any notice given under or in connection with this Contract shall be in English. All other documents provided under or in connection with this Contract shall be in English, or accompanied by an English translation certified as accurate by a notary experienced in the relevant foreign language and with the appropriate technical and legal experience in relation to the relevant document to be translated.
	3. The English language version of this Contract and any notice or other document relating to this Contract shall prevail if there is a conflict.
5. Warranties
	1. The Applicant warrants and undertakes that it will:
		1. Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations.
		2. Make available on request to the data subjects who are third party beneficiaries a copy of the Contract, unless the Contract contains confidential information.
		3. Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Supervisory Authority in relation to the Shared Personal Data.
		4. Respond to Subject Access Requests in accordance with the Data Protection Legislation.
		5. Where applicable, maintain registration or pay the appropriate fees with all relevant Supervisory Authorities to process all Shared Personal Data for the Agreed Purpose.
		6. Take all appropriate steps to ensure compliance with the security measures set out in condition 11 above.
	2. HQIP warrants and undertakes that it is entitled to provide the Shared Personal Data to the Applicant. The Applicant warrants and undertakes that it will not disclose or transfer the Shared Personal Data to a third party controller located outside the EEA unless it complies with the obligations set out in condition 10.4 above.
	3. Except as expressly stated in the Contract, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
6. Indemnity
	1. The Applicant indemnifies, and shall keep indemnified, HQIP against any liability, costs, damages, expenses (including legal fees), losses, claims, administrative sanction, fine, penalty, action or other liability or proceedings whatsoever arising under any statute or at common law or for breach of contract in respect of:
		1. damage to property, real or personal, including any infringement of third party intellectual property rights; and
		2. injury to persons, including injury resulting in death; and
		3. any direct economic or financial loss; and
		4. any enquiry or complaint by a Data Subject; and
		5. any enquiry or investigation by the Supervisory Authority; and
		6. any claim or action brought by any third party against HQIP

arising out of, in connection with any act, omission or default of the Applicant, its staff, agents or sub-contractors in relation to the HQIP Data. The indemnity in this condition shall be separate, distinct from and not subject to any exclusions and limitations on liability in the Contract.1. Allocation of cost

24.1 Except as otherwise stated each party shall perform its obligations under the Contract at its own cost.1. Limitation of liability
	1. Neither party excludes or limits liability to the other party for:
		1. fraud or fraudulent misrepresentation;
		2. death or personal injury caused by negligence;
		3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
		4. any matter for which it would be unlawful for the parties to exclude liability; or
		5. in relation to the indemnity in condition 23.
	2. Subject to condition 25.1, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
		1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
		2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
		3. any loss or liability (whether direct or indirect) under or in relation to any other contract.
	3. HQIP takes no responsibility for the accuracy, currency, reliability and correctness of the HQIP Data, nor for the accuracy, currency, reliability and correctness of links or references to other information sources and disclaims all warranties in relation to such data, links and references to the maximum extent permitted by legislation. The Applicant uses or relies on the HQIP Data at its own risk.
2. Third party rights

26.1 Except as expressly provided in condition 8 (data subjects rights) and such bodies who licence the HQIP Data to HQIP, set out in the attachment to the Data Access Request Form and to the extent required by such bodies in that attachment, contract holders with, and funders to, HQIP, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.1. Variation

27.1 Except as set out in the Contract, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Applicant.1. Waiver

28.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.1. Severance

29.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deemed deleted under condition 29, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.1. Changes to the applicable law

30.1 If the Data Protection Legislation change in a way that the Contract is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that they will negotiate in good faith to review the Contract in the light of the new legislation.1. No partnership or agency

31.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person except that HQIP enters into the Contract for the benefit of such bodies who licence the HQIP Data to HQIP, set out in the attachment to the Data Access Request Form and to the extent required by such bodies in that attachment.1. Entire agreement

32.1 The Contract constitutes the entire agreement between the parties in respect of HQIP Data, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.1. Further assurance

33.1 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract.1. Rights and remedies

34.1 The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.1. Notice
	1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to the Data Protection Officer and shall be:
		1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
		2. sent by email to HQIP at research@njr.org.uk and to the email address provided by the Applicant in the Data Access Request Form.
	2. Any notice or communication shall be deemed to have been received:
		1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
		2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
		3. if sent by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this condition 35.2(c) business hours means 9:00 am to 5:00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
	3. This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
2. Governing law

36.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.1. Jurisdiction

37.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims), arising out of or in connection with the Contract or its subjectClick or tap here to enter text. |

|  |  |
| --- | --- |
| **Section 21** | **Authorised signatories** |
| **Please note that this agreement is not valid until all parties have signed and agreed this document.**  |
| **Applicant***The applicant confirms that the details provided in the application above are accurate, valid and true. HQIP reserves the right at all times to confirm that it is so. The applicant will give HQIP all reasonable assistance and access in order to confirm any matters arising from this applicant whether now or in the future. The applicant acknowledges and agrees that the application is made on and subject to the terms and conditions for use of HQIP Data and any grant of access to the data will at all times be subject also to that agreement.* | **Name** | Click or tap here to enter text. |
| **Position** | Click or tap here to enter text. |
| **Signature** |  |
| **Date of signature** | Click or tap to enter a date. |
| **Clinical lead or appropriate project scientific committee chairman** *The clinical lead / Chair of an appropriate audit or Outcome Review Programme Scientific Committee confirms that the information included within this application would represent a clinically appropriate usage of the data requested.* | **Name** | Mark Wilkinson |
| **Position** | NJR Research Committee Chair |
| **Signature** |  |
| **Date of signature** | Click or tap to enter a date. |
| **Data provider (statistician, methodologist or project manager):** *The provider confirms that the information included within this application represents a methodologically appropriate usage of the data requested. Where de-personalised data has been requested, the data provider confirms that the data will be appropriately de-identified before release to minimise any risk of re-identification.*  | **Name** | Rachel Brophy |
| **Position** | NJR Research and Governance Programme Manager |
| **Signature** |  |
| **Date of signature** | Click or tap to enter a date. |
| **HQIP / data controller:** *Authorises release of the data described in this application as data controller.* | **Name** | Click or tap here to enter text. |
| **Position** | Click or tap here to enter text. |
| **Signature** |  |
| **Date of signature** | Click or tap to enter a date. |
| **For HQIP use only***Comments to note (if applicable)* | Click or tap here to enter text. |

 **Once completed please return this signed form to resesarch@njr.org.uk**

Partner Organisation Form

|  |
| --- |
| **Partner applicant** |
| **Title of project** | Click or tap here to enter text. |
| **Primary contact within partner organisation** (must be a permanent senior member of staff) | Click or tap here to enter text. |
| **Name of partner applicant organisation** | Click or tap here to enter text. |
| **Address of partner applicant organisation** | Click or tap here to enter text. |
|  |
| **Data protection** |
| **As a data controller your organisation should be registered with the Information Commissioners Office (ICO). Please provide the following information.** |
| **Registered name***(if different to applicant name, please state reason)* | Click or tap here to enter text. |
| **Registration number** | Click or tap here to enter text. |
| **Expiry date** | Click or tap to enter a date. |
|  |
| **Legal basis (of the processing you intend to undertake)** |
| **GDPR Legal Basis** | **Article 6 legal basis:**  Click or tap here to enter text.**Justification:** Click or tap here to enter text. |
| **Article 9 legal basis:**  Click or tap here to enter text.**Justification:** Click or tap here to enter text. |
| **Common law of duty of confidentiality is addressed by** | **If the data you are requesting is personally identifiable please explain how you have addressed the common law duty of confidentiality below.** |
| [ ]  **Explicit informed consent***(please enclose consent form and patient information sheet with this application)* |
| [ ]  **Approval under section 251 of the NHS Act 2006***(please enclose both the application and the approval letter)* |
| **The section 251 approval enables the applicant to:** |
| [ ]  **Hold/receive personal data** | [ ]  **Transfer/access** **personal data** | [ ]  **Operate on and link personal data** |
| [ ]  **Other legal basis****If other legal basis selected**, please provide further information here with reference to the statute, regulation or other provision relied upon: Click or tap here to enter text. |
|  |
| **Security** |
| **Each organisation processing data that is not fully anonymous as part of this project must demonstrate that they have appropriate security arrangements are in place. Please confirm whether the partner organisation has a compliant Data Security and Protection Toolkit.** |
| **Applicant organisation****(please select one answer)** | [ ]  **Yes*****If yes****, please provide evidence with this application.* | **ODS code** | [ ]  **Yes*****If yes****, please provide evidence with this application.* |
| **Status** | Click or tap here to enter text. |
| **Published date** | Click or tap to enter a date. |
| [ ]  **No** | **If no, please provide below alternative evidence of adequate organisational and technical measures; to ensure the security of processing and preserve the confidentiality, integrity and availability of data.** |
| Click or tap here to enter text. |
|  |
| **Retention and destruction** |
| **Please state the date until which you are seeking to retain the data (MM/YY) and the reason. Note also that the requirement to extend the Data Sharing Agreement (if retention is requested for longer than its original term) would still apply** | Click or tap here to enter text. |
| **Please provide details of how you intend to destroy the data at the end of the retention period?** | Click or tap here to enter text. |
| **Please confirm that you will submit a certificate of destruction to HQIP within 5 business days of destruction of the data** | [ ]  **Yes** |
|  |
| **Authorised signatories** |
| **Please note that this agreement is not valid until all parties have signed and agreed the HQIP application.** |
| **Partner Applicant***The partner applicant confirms that the details provided in the application above are accurate, valid and true. HQIP reserves the right at all times to confirm that it is so. The partner applicant will give HQIP all reasonable assistance and access in order to confirm any matters arising from this applicant whether now or in the future. The partner applicant acknowledges and agrees that the application is made on and subject to the terms and conditions for use of HQIP Data and any grant of access to the data will at all times be subject also to that agreement.* | **Name** | Click or tap here to enter text. |
| **Position** | Click or tap here to enter text. |
| **Signature** |  |
| **Date of signature** | Click or tap to enter a date. |

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| **Annex 1: NHS Digital Data Sharing Framework Contract and Data Sharing Agreement****NHS Digital Data Sharing Framework Contract** **Part 1: Front Sheet** [INSERT HQIP CONTRACT REFERENCE]**Contract Reference** |

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| **Introduction**1. NHS Digital (as defined in Schedule 1 below) has a statutory function to collect, analyse, publish and disseminate certain health and social care data and may in accordance with its statutory functions from time to time share and permit others to use that data.
2. HQIP (as defined in Clause 1.1, Part 1 below) has entered into the NHS Digital data Sharing Framework Contract and the NHS Digital data Sharing Agreement (both as defined in Schedule 1 below).
3. NHS Digital has authorised HQIP to Distribute (as defined in Schedule 1 below) the Data (as defined in Schedule 1 below), and to sub-license the rights granted to HQIP under the NHS Digital data Sharing Agreement.
4. Any party wishing to receive and use NHS Digital's data must first enter into this Contract and will, where the data is Personal Data, be a Data Controller of that Personal Data. This Contract is a framework agreement. It creates a framework of legally binding terms and conditions that will apply on each and every occasion HQIP agrees to share data with the Data Recipient (as defined in Clause 1.2, Part 1 below). HQIP will not share data with any party that has not entered into this Contract unless the party is a Data Processor acting on behalf of the Data Recipient, and HQIP has agreed to share the data with that Data Processor.
5. Entering into this Contract does not guarantee that HQIP may share any data with the Data Recipient, on any particular occasion, or for any particular purpose. Sharing of data by HQIP is at the absolute discretion of HQIP and subject to such terms and conditions as NHS Digital may impose on HQIP and that HQIP is required to impose on the Data Recipient. The terms and conditions on which HQIP will permit the Data Recipient to receive and use data on a particular occasion and for a particular purpose will be set out in a separate Data Sharing Agreement entered into between HQIP and the Data Recipient. Each Data Sharing Agreement will be subject to the terms and conditions of this Contract and will identify the specific data in question and will set out any specific terms that will apply to the sharing and use of the data by the Data Recipient on that occasion and for that particular purpose.

**Parties**This Contract is made between:* 1. Healthcare Quality Improvement Partnership (“**HQIP”**) incorporated and registered in England and Wales with company number 06498947 whose registered office is at 27A Harley Place, London, W1G 8LZ England; and
	2. The party whose details are set out below (the “**Data Recipient**”)**:**
 |

|  |  |
| --- | --- |
| **Organisation Name:** | [INSERT] |
| **Company Number (if relevant):** | [INSERT] |
| **Address:** | [INSERT] |
| **Email Address:** | [INSERT] |

# **Term of this Contract**

* 1. The term of this Contract shall be:

|  |  |  |  |
| --- | --- | --- | --- |
| **Start Date** | [INSERT] | **End** |  [INSERT] |
| **Term:** | 5 years |

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| **Status of this Contract*** 1. This Data Sharing Framework Contract comprises this Part 1 (Front Sheet), Part 2 (Terms and Conditions), the Schedules and any DSA entered into between the parties from time to time (collectively the "**Contract**"). It sets out the terms on which HQIP agrees to share the Data with the Data Recipient.
	2. The purpose of this Contract is to:
		1. clarify the responsibilities and commitments of the parties in relation to the Data;
		2. impose confidentiality requirements on the Data Recipient;
		3. outline the data security principles and requirements with which the Data Recipient must comply;
		4. set out the audit rights of HQIP and NHS Digital; and
		5. detail arrangements for termination or expiry of this Contract.
	3. If there is a conflict or inconsistency between any provision contained in (i) Part 1 (Front Sheet), (ii) Part 2 (Terms and Conditions), (iii) the Schedules, (iv) the provisions of a DSA, (v) the Annexes of the DSA, and (vi) any Special Conditions, then:
		1. the provisions of the Special Conditions shall prevail, followed by,
		2. this Part 1, followed by,
		3. Part 2, followed by,
		4. the Schedules, followed by,
		5. the remainder of the terms of the DSA (other than the Annexes to the DSA), followed by,
		6. the other Annexes to the DSA.
	4. The parties may, from time to time, wish to share Data under this Contract. A Data Sharing Agreement (“DSA”) will be entered into by the parties to document and agree the terms on which the relevant Data will be shared. A DSA will be entered into between the parties when the Data Recipient signs the

relevant DSA. Each DSA which is entered into between the parties will form part of this Contract and will be subject to the terms and conditions of this Contract. In no circumstances will a DSA be entered into without the parties first entering into this Contract.* 1. Each DSA will detail:
		1. the Data to be provided;
		2. the legal basis for sharing Data;
		3. the Purpose of the sharing and use of the Data;
		4. the expected benefits to health and/or social care by sharing the Data;
		5. the data transfer method;
		6. any Associated DSAs;
		7. any special terms and conditions for the use or reuse of the Data; and
		8. any Charges payable for the provision of the Data.
	2. Where the Data to be shared in accordance with the terms of this Contract and a DSA is Personal Data, the parties acknowledge and agree that:
		1. the sharing of such Personal Data will involve the transfer of Personal Data from HQIP as a Data Controller to the Data Recipient as a Data Controller; and
		2. the Data Recipient shall be either a sole Data Controller or, where specified in the relevant DSA, a Joint Data Controller or a Data Controller in Common with any other data recipient who has entered into an Associated DSA.
	3. Where agreed with HQIP under the terms of the relevant DSA, HQIP may transfer the Data directly to a third party Data Processor acting on behalf of the Data Recipient.
 |

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

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| --- |
| **Signed for and on behalf of the Data Recipient:** |
| **Organisation Name:** | [INSERT] |
| **Signature** | [INSERT] |
| **Name:** | [INSERT] |
| **Role:** | [INSERT] |
| **Date:** | [INSERT] |

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| **Signed for and on behalf of HQIP:** |
| **Name:** | Jane Ingham |
| **Signature** | [INSERT] |
| **Role:** | CEO |
| **Date:** | [INSERT] |

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| **Part 2: Terms and Conditions**1. **Interpretation**
	1. Capitalised words and expressions used in this Contract shall bear the meanings given to them in Schedule 1. The rules of interpretation set out in Schedule 1 shall apply to this Contract.

**HQIP responsibilities*** 1. HQIP will transfer the Data to the Data Recipient (or, if specified in the DSA, the Data Processor authorised by HQIP) using the data transfer method as set out in the relevant DSA.
	2. HQIP will be a Data Controller, or will act on behalf of the Data Controller, for the Data prior to transfer of the Data insofar as the Data constitutes Personal Data.

**Licence and Intellectual Property*** 1. HQIP grants to the Data Recipient a non-exclusive, non-transferable, suspendable (in whole or in part), revocable licence in the Territory for the duration of the Term of the relevant DSA solely for the Purpose and only in accordance with the terms of this Contract and the relevant DSA, to:
		1. access, view, process, copy, and Manipulate (but not modify) the Data; and/or
		2. create only Manipulated Data and Derived Data; and/or
		3. store the Data (“**Sub-Licence**”).
	2. The Data Recipient shall not be entitled to Distribute the Data, and shall not be entitled to sub-license the rights granted to it under Clause 3.1.
	3. HQIP shall have the right to suspend, in whole or in part, the Sub-Licence(s) in relation to all or part of the Data where:
		1. the licence granted by NHS Digital to HQIP under the NHS Digital data Sharing Framework Contract is suspended in whole or in part; or
		2. the Data Recipient has not complied, or is not complying with any of its obligations under the Sub-Licence, until the breach is resolved to HQIP’s reasonable satisfaction;
	4. The Data Recipient acknowledges that:
		1. any and all Intellectual Property Rights in the Data are and shall remain at all times the property of NHS Digital or its licensors, as the case may be;
		2. it shall have no rights in or to the Data other than the right to use the Data in accordance with the express terms of this Contract and the relevant DSA; and
		3. NHS Digital has and/or its licensors have made and will continue to make substantial investment in obtaining, verifying, selecting, co-ordinating, developing, presenting and supplying the Data.
	5. In consideration for the grant of the licence set out at Clause 3.1 and in accordance with Clause 3.10, the Data Recipient hereby assigns to NHS Digital absolutely with full title guarantee any and all Intellectual Property Rights (including but not limited to copyright and database rights) in any Manipulated Data from creation.
	6. For the avoidance of doubt, the Manipulated Data to which the Intellectual Property Rights assigned to NHS Digital under Clause 3.5 are attached shall be deemed to be included in the Sub-Licence from the date when such rights arise.
	7. All Derived Data and any and all Intellectual Property Rights in Derived Data shall be owned exclusively by the Data Recipient. In consideration for the grant of the licence set out at Clause 3.1, the Data Recipient agrees to be bound by any terms set out in the Special Conditions regarding the copying, processing, Distributing, Manipulating, creating, storing and any other use of the Derived Data.
	8. On demand by HQIP or NHS Digital, the Data Recipient shall make a declaration (the form and content of which will be notified to the Data Recipient by HQIP or NHS Digital at the relevant time) of any data created under the relevant DSA which it believes is Derived Data to HQIP or NHS Digital. The Data Recipient will make available to HQIP or NHS Digital, upon request, copies of any data declared to be Derived Data under this Clause 3.8.
	9. Where the Data Recipient has made a declaration upon the request of HQIP or NHS Digital under Clause 3.8, HQIP or NHS Digital shall verify whether the data declared is Derived Data and inform the Data Recipient of the outcome of its verification. The Data Recipient hereby agrees that HQIP’s or NHS Digital’s verification is final and binding on whether data is classed as Derived Data or otherwise.
	10. HQIP and NHS Digital may call upon the Data Recipient at any time to execute such documents and perform such acts as may be required for the purpose of giving full effect to this Clause 3, in particular Clause 3.5. The Data Recipient shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at its own cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Clause 3, in particular Clause 3.5.
	11. In any display of the Data, wherever possible, the Data Recipient must cite the copyright of NHS Digital and/or any licensor of NHS Digital as appropriate as follows:

*"Copyright © (year), the Health and Social Care Information Centre. Re-used with the permission of the**Health and Social Care Information Centre [and/or [name of licensor]]. All rights reserved."***Data Recipient general responsibilities in relation to Data*** 1. The Data Recipient shall:
		1. use the Data only in accordance with the Purpose;
		2. process the Data only in accordance with the terms of this Contract, the relevant DSA, and any Special Conditions;
		3. maintain good information governance standards and practices, meeting or exceeding the IG Toolkit standards required of its organisation type;
		4. not share the Data with any third party (other than any third party Data Processor permitted under the terms of the relevant DSA and only in relation to Data provided under that DSA) without the prior written consent of HQIP and NHS Digital;
		5. ensure that Personnel processing the Data are suitably trained and made aware of their responsibilities in handling the Data;
		6. ensure that all Personnel, prior to accessing or using Data, are made fully aware of, and comply with the terms and conditions set out in this Contract and the relevant DSA;
		7. promptly and in any event within 28 days of the applicable date, the applicable date being the earlier of:
			1. the expiry or termination of this Contract; and
			2. the expiry or termination of the relevant DSA,

permanently destroy or erase the Data, together with all hard and soft copies of the same and provide HQIP and NHS Digital with a Certification of Destruction;* + 1. immediately notify any Data Breach to HQIP and NHS Digital as soon as the Data Recipient discovers such Data Breach; and:
			1. where the Data Recipient is obliged to complete the IG Toolkit, the Data Recipient shall assess whether a "Serious Incident Requiring Investigation" (as defined in the IG Toolkit) report needs to be made; or
			2. where the Data Recipient is not obliged to comply with the IG Toolkit, the Data Recipient shall assess whether to notify the ICO of the Data Breach, in accordance with Applicable Law and the ICO's guidance on breach notification; and
		2. immediately notify HQIP and NHS Digital if it no longer has a legal basis on which to process Data.
	1. Unless specified in the Purpose, (or as otherwise authorised by a HQIP director and an NHS Digital director in writing), the Data Recipient must not combine the Data with any other data held by the Data Recipient and must not attempt to identify any individual from the Data, or use or manipulate the Data in any way that re-identifies any individual from the Data.
	2. The Data Recipient shall when using and processing the Data comply with and have regard at all times to:
		1. all Applicable Law;
		2. Good Industry Practice;
		3. Guidance; and
		4. the data security requirements set out in the DSA and Schedule 2.
	3. In the event of any change in Applicable Law subsequent to the date of signature of this Contract, the Data Recipient shall take such steps (including, agreeing to additional obligations and/or executing additional documents) as may be requested by HQIP and NHS Digital to ensure that the transfer to the Data Recipient, and the processing and use by the Data Recipient, of the Data complies with such amended Applicable Law.
	4. Before undertaking any Publishing activity using the Data or any derived information, the Data Recipient

must ensure it has complied with the terms of this Contract and the relevant DSA.* 1. The Data Recipient must not contact any individual that could be identified from the Data, except where:
		1. such contact is expressly permitted as part of the Purpose; and
		2. either:
			1. the individual concerned has already consented in writing to such contact; or
			2. there is legal authority for the Data to be used to contact the individual concerned without such consent.
	2. Without prejudice to its rights under Clause 12 of this Contract, HQIP shall be entitled to suspend the supply of Data to the Data Recipient under this Contract and/or any DSA without incurring any liability to the Data Recipient if, in the reasonable opinion of HQIP, the Data Recipient may be in breach of any of its obligations under this Contract or any DSA.

**Data protection*** 1. To the extent that any of the Data constitutes Personal Data (or constitutes Anonymised Data, but then the Data becomes Personal Data in the hands of the Data Recipient), the Data Recipient shall hold and process such Data at all times:
		1. as Data Controller of the Personal Data;
		2. in accordance with Data Protection Law; and
		3. using appropriate technical and organisational security measures against unauthorised or unlawful processing of Data and against accidental loss or destruction of, or damage to, the Data.
	2. To the extent the Data Recipient processes Personal Data in connection with this Contract or any DSA, the Data Recipient agrees that, for the purposes of Data Protection Law, it processes such Personal Data either:
		1. as an independent Data Controller in its own right: or
		2. where specified in the relevant DSA, (i) as a Joint Data Controller or (ii) as a Data Controller in Common, in each case with any other data recipient who has entered into an Associated DSA.
	3. Nothing in this Contract or in any DSA is intended to construe either party to this Contract as:
		1. the Data Processor of the other party; or
		2. a Joint Data Controller or a Data Controller in Common with the other party.

with respect to the Personal Data processed in connection with this Contract or any DSA.* 1. Where the Data includes Personal Data, the Data Recipient shall:
		1. store and process such Personal Data securely, and permanently destroy or erase it when it is no longer needed for the Purpose;
		2. not Publish such Personal Data without the prior written consent of HQIP and NHS Digital. Such consent may (at HQIP and NHS Digital's sole discretion) be conditional upon such Personal Data being de- identified to a standard suitable for subsequent release in compliance with the Anonymisation Standard for Publishing Health and Social Care Data (ISB 1523) and the ICO Anonymisation: managing data protection risk code of practice;
		3. not disseminate such Personal Data, or a subset of such Personal Data, to any third party other than a Data Processor approved under the relevant DSA (and only in relation to Data provided under that DSA) without prior written consent from HQIP and NHS Digital;
		4. take reasonable steps to ensure the reliability of each of its Personnel who have access to such Personal Data;
		5. inform HQIP and NHS Digital immediately if it receives any communication from the ICO which relates to such Personal Data, unless explicitly prohibited from doing so by the ICO;
		6. ensure access to such Personal Data by Personnel is managed, auditable and restricted to those needing to process such Personal Data;
		7. only be entitled to appoint a Data Processor to process such Personal Data on behalf of the Data Recipient where permitted under the terms of the relevant DSA (and only in relation to Data provided under that DSA) or with the prior written consent of HQIP and NHS Digital and shall remain fully responsible to HQIP and NHS Digital under the terms of this Contract and the relevant DSA for the actions of its Data Processors; and
		8. not transfer to or process such Personal Data outside the European Economic Area except with the express prior written consent of HQIP and NHS Digital and only in circumstances when such transfer is permitted under, and complies with the requirements of, Data Protection Law and Applicable Law.

**Confidentiality*** 1. The Data Recipient must:
		1. keep the Data confidential, and shall not disclose it to any third party save where expressly permitted to do so in accordance with the terms of this Contract and the relevant DSA; and
		2. use the Data only in so far as is necessary to perform its obligations and exercise its rights under this Contract and the relevant DSA.
	2. The restrictions on disclosure and use contained in this Clause 6 shall not apply to the Data to the extent that it:
		1. is or was already in the possession of or becomes available to the Data Recipient in either case free of any obligation of confidentiality;
		2. is required to be disclosed by the Data Recipient by Applicable Law, or Parliamentary obligation, or the rules of any stock exchange or governmental or regulatory authority having the force of law;
		3. is required to be disclosed to the Data Recipient’s professional advisers; or
		4. at the time of receipt by the Data Recipient, is in the public domain or after such receipt comes into the public domain other than as a result of breach by the Data Recipient of this Clause 6.
	3. The Data Recipient shall be responsible for any unauthorised disclosure or use of the Data made by any of its Personnel and shall take all reasonable precautions to prevent such unauthorised disclosure or use.
	4. If the Data Recipient is obliged to respond to requests under the Freedom of Information Act 2000 ("**FOIA**") and a request is received regarding the Data, the Data Recipient must consult with HQIP and NHS Digital prior to any release of the Data and shall take into account HQIP and NHS Digital’s views before responding to any request. Notwithstanding this Clause 6.4, HQIP and NHS Digital acknowledges and the Data Recipient accepts that the Data Recipient is responsible in its absolute discretion for determining whether information regarding the Data is exempt from disclosure under FOIA.
	5. Without prejudice to any other rights or remedies that HQIP and NHS Digital may have, the Data Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of confidentiality and that accordingly, HQIP and NHS Digital would be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of confidentiality by the Data Recipient.
	6. Notwithstanding the terms of this Clause 6 the Data Recipient acknowledges and agrees that the terms of the NHS Digital data Sharing Framework Contract and the NHS Digital data Sharing Agreement require:
		1. notification of the Contract and the DSA to NHS Digital (by reporting in a form and frequency to be determined by NHS Digital from time to time), and the provisions of the Contract and the DSA permitting NHS Digital to Publish details of such agreement;
		2. that HQIP shall notify NHS Digital of all Sub-Licences granted by HQIP by reference to each relevant DSA. NHS Digital may specify the form, level of detail, and frequency of such reporting from time to time, and may require HQIP to provide copies of the relevant Sub- Licences;
		3. that in respect of any Sub-Licence that NHS Digital may require HQIP to provide a copy of any such Sub-Licence at any time;
		4. the information provided to NHS Digital under Clause 6.6.3 in relation to such Sub-Licences may be
		5. shared publicly by NHS Digital at its own discretion including by disclosure on a Data Release Register.

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

HQIP and NHS Digital (and any auditors of or other advisers to HQIP and NHS Digital) shall be entitled to carry out one or more audits on the Data Recipient and/or the Third Party Contractor, including making unannounced visits and carrying out spot checks of the Data Recipient's sites and Third Party Contractor's Sites. There shall be no restriction on the number of audits HQIP and NHS Digital (and any auditors of or other advisers to HQIP and NHS Digital) may carry out under this Clause 7.4, and the restriction on the number of audits that HQIP and NHS Digital (and any auditors of or other advisers to NHS Digital) may carry out within a 12 (twelve) month period shall not apply to any audits carried out under this Clause 7.4.* 1. The Data Recipient shall, for the purpose of any audit carried out under this Clause 7, provide or procure the access to the Data Recipient’s and relevant Third Party Contractor's sites, systems, procedures, documents and staff as may be necessary or desirable in connection with the audit and shall permit or procure that HQIP and NHS Digital (and any auditors of or other advisers to HQIP and NHS Digital) are permitted to take copies of relevant documents and data pursuant to such audit.
	2. The Data Recipient shall provide and shall procure that its Third Party Contractor provides such information as HQIP and NHS Digital (and any auditors of or other advisers to HQIP and NHS Digital) reasonably requests in order to verify the Data Recipient's compliance with the terms of this Contract and/or any DSA.
	3. The cost of any audit carried out under this Clause 7 shall be borne by the Data Recipient and the Data Recipient shall promptly reimburse HQIP and NHS Digital for all reasonable costs of the audit and the full cost of any investigation which HQIP and NHS Digital may commence prior to an audit taking place.
	4. Subject to Clauses 7.9, 7.10, 7.11, and 7.12, HQIP and NHS Digital agree not to disclose to any third party any confidential information relating to the Data Recipient received or obtained by HQIP and NHS Digital (i) under Clause 3.8 with respect to the Data Recipient’s Derived Data, and (ii) in the course of carrying out any audit under this Clause 7.
	5. The restrictions on disclosure and use of the Data Recipient's confidential information contained in Clause 7.8 shall not apply to information to the extent that it is or was:
		1. already in the possession of or becomes available to HQIP and NHS Digital in either case free of any obligation of confidentiality;
		2. required to be disclosed by HQIP and NHS Digital by law, regulation or pursuant to an order of a regulatory or supervisory body, or by any other competent authority, or to a professional adviser; or
		3. at the time of receipt by HQIP and NHS Digital, is in the public domain or after such receipt comes into the public domain other than as a result of breach by HQIP and NHS Digital of this Clause 7.
	6. HQIP and NHS Digital shall be entitled to share confidential information received or obtained by HQIP and NHS Digital in the course of carrying out any audit under this Clause 7 with government organisations in accordance with its performance of their functions including NHS England, the Department of Health, Government Legal Department, National Audit Office and any auditors or advisors to HQIP and NHS Digital.
	7. HQIP and NHS Digital shall be entitled to publish the auditor’s findings and any audit report.
	8. HQIP and NHS Digital are obliged to respond to requests under FOIA. HQIP and NHS Digital must consult with the Data Recipient prior to any release of confidential information received under this Clause 7, and shall take into account the Data Recipient’s views before responding to any request. Notwithstanding this Clause 7.12, Data Recipient acknowledges and accepts that HQIP and NHS Digital are responsible in their absolute discretion for determining whether the information is exempt from disclosure under FOIA.

**Remediation process*** 1. Without limitation to Clause 7, Clause 13.6 and HQIP and NHS Digital’s other rights and remedies under this Contract, where: (i) the Data Recipient is in breach of this Contract or any DSA; or (ii) there is a breach of any Associated DSA; or (iii) (in HQIP and NHS Digital's reasonable opinion) there has been or is likely to be a breach of any Associated DSA; or (in NHS Digital's reasonable opinion) there has been or is likely to be a breach of the NHS Contract, HQIP and/or NHS Digital may:
		1. suspend provision of all or part of the Data to the Data Recipient until the breach or suspected breach is resolved to HQIP and NHS Digital’s reasonable satisfaction;
		2. suspend the licence(s) granted to the Data Recipient under Clause 3.1 in relation to all or part of the Data until the breach or suspected breach is resolved to HQIP and NHS Digital’s reasonable satisfaction; and/or
		3. require (without limitation) the Data Recipient to:
			1. destroy or erase all or part of the Data received by the Data Recipient in accordance with Applicable Law, and Guidance, and produce a Certificate of Destruction; and/or
			2. produce, or cooperate with any data recipient who is a party to an Associated DSA to produce, a remediation plan detailing how the Data Recipient (and, if applicable, any data recipient who is a party to an Associated DSA) will resolve the breach or suspected breach to HQIP and NHS Digital’s reasonable satisfaction, together with a project plan.
	2. Without prejudice to HQIP and NHS Digital’s rights and remedies under this Contract (including under Clause 12) where in HQIP and NHS Digital’s reasonable opinion the Data Recipient has not complied, or is not complying, with any of the Data Recipient's obligations under this Contract, or any DSA, the Data Recipient shall be liable to promptly reimburse HQIP and NHS Digital for its reasonable costs and expenses incurred in connection with such breach. For the avoidance of doubt, such reasonable costs may include costs associated with any additional HQIP and NHS Digital activity due to any resulting ICO investigation and any additional media and communication activity and costs.

**Warranties*** 1. The Data Recipient warrants to HQIP and NHS Digital that:
		1. it has the full right and authority to enter into this Contract; and
		2. it shall use the Data in accordance with all Applicable Laws.
	2. The Data is provided to the Data Recipient by HQIP and NHS Digital on an 'as is' basis and HQIP and NHS Digital do not warrant the accuracy or completeness of the Data, nor that the Data does not infringe the Intellectual Property Rights of any third party, nor do they undertake that the Data will meet the requirements of, or be fit for any purpose of, the Data Recipient.

**Charges*** 1. In consideration of the provision of the Data by HQIP , the Data Recipient agrees to pay the

Charges as set out in the relevant DSA.* 1. The Charges set out in the relevant DSA are payable by the Data Recipient thirty (30) days from the date of receipt by the Data Recipient of an invoice for any Charges from HQIP (the "**Due Date**").
	2. All Charges (or appropriate portions thereof) shall be paid by the Data Recipient to HQIP to its nominated bank account by the Due Date(s), in cleared funds, without withholding, set-off or deduction, and time for payment is of the essence.
	3. All Charges payable shall be paid in pounds (£) sterling and are exclusive of VAT, which shall be paid in

addition at the appropriate rate, where VAT applies.* 1. Where the Data Recipient fails to make payment, HQIP shall be entitled (but shall not be obliged) to charge the Data Recipient interest on all sums overdue at the statutory interest rate as set by the LPCDA (from time to time in force) calculated on a daily basis from the relevant Due Date until payment is made in full by the Data Recipient.
	2. In addition to its right to charge interest on late payment as set out in Clause 10.5, and without prejudice to its other rights under this Contract or any applicable DSA, where the Data Recipient fails to make payment within a further fourteen (14) days from the first date that any sums are overdue, HQIP shall be entitled (but shall not be obliged) to do any, or a combination of, the following on written notice to the Data Recipient:
		1. to immediately suspend provision of Data under any of the DSAs; and/or
		2. to terminate either immediately or by the time specified in the notice, the applicable DSA; and/or
		3. to terminate either immediately or by the time specified in the notice, all other DSAs that are entered into under this Contract; and/or
		4. to immediately suspend any existing applications.

**Liability*** 1. This Clause 11 sets out:
		1. the types of loss for which HQIP and NHS Digital shall not in any circumstances be liable to the Data Recipient under or in connection with this Contract or any DSA;
		2. the maximum liability that HQIP and NHS Digital shall have to the Data Recipient under or in connection with this Contract or any DSA; and
		3. the types of liability that are not limited by anything in this Contract.
	2. Except as set out in Clause 11.4, HQIP and NHS Digital shall in no circumstances be liable to the Data Recipient for:
		1. any loss of profits, revenue, opportunity, contracts, sales, turnover, anticipated savings, goodwill, reputation, business opportunity, production, or loss to or corruption of data (regardless of whether any of these losses or damages are direct, indirect or consequential); and
		2. any indirect or consequential loss or damage whatsoever (including where such loss or damage is of the type specified in Clause 11.2.1).
	3. Except as set out in Clause 11.4, HQIP and NHS Digital's total aggregate liability for any and all claims arising under or in connection with each DSA regardless of form of action and whether in contract, tort (including negligence and breach of statutory duty) or otherwise is limited to the greater of:
		1. the total Charges paid by the Data Recipient to HQIP under that DSA under which the

event or events giving rise to the liability occurred; or* + 1. £1,000 (one thousand pounds).
	1. Nothing in this Contract shall limit NHS Digital’s, HQIP’s or the Data Recipient’s liability to the others for:
		1. death or personal injury resulting from the negligence of its employees, agents or subcontractors;
		2. fraud or fraudulent misrepresentation; or
		3. any other liability that cannot be excluded or limited as a matter of law.
	2. Other than any warranties expressly set out in this Contract, all warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded except to the extent the exclusion is prohibited by law.

**Indemnity*** 1. The Data Recipient shall indemnify HQIP and NHS Digital in full for any liabilities, losses, demands, claims, damages, amounts agreed in settlement, costs and expenses incurred which arise from or in connection with:
		1. any loss of the Data by the Data Recipient;
		2. unauthorised or unlawful use of the Data beyond the Purpose(s) by the Data Recipient;
		3. any breach of this Contract by the Data Recipient, whether arising in negligence, contract or otherwise; and
		4. any monetary penalty notice imposed on HQIP and NHS Digital by the Information Commissioner under Data Protection Law as a result of the Data Recipient's breach of this Contract.

**Term and termination*** 1. This Contract shall, subject to prior termination in accordance with this Clause 13, continue for the

Contract Term. Each DSA shall, subject to prior termination in accordance with this Clause 13, become effective on the relevant start date and shall continue for the Term as set out and defined in the relevant DSA.* 1. If the Data Recipient wishes to retain the Data beyond the end of the Term of any DSA:
		1. it must have submitted an application to HQIP not less than three months prior to the expiry of the Term of the relevant DSA to put in place a new data sharing agreement, and such new data sharing agreement must be executed by the parties to replace the relevant DSA prior to the expiry of the term of the relevant DSA; and
		2. the Data Recipient will be required to ensure that this Contract (or a replacement to this

Contract) is in place for the duration of the DSA(s). Under no circumstances shall the Data Recipient retain the Data without an extant DSA and Contract in place which relates to that Data.* 1. HQIP may terminate this Contract and/or any DSA by giving to the Data Recipient not less than one month's prior written notice.
	2. HQIP may terminate any DSA immediately on written notice to the Data Recipient if any Associated DSA is terminated (for any reason).
	3. On or at any time after the occurrence of an event specified in Clauses 10.6 or 13.6, HQIP shall be entitled to terminate this Contract and/or any DSA, with immediate effect by written notice to the Data Recipient.
	4. HQIP may terminate this Contract and/or any DSA if:
		1. the Data Recipient is in material breach of this Contract and/or any DSA and that breach cannot be remedied;
		2. the Data Recipient is in material breach of this Contract and/or any DSA which can be remedied but the Data Recipient fails to do so within 30 days starting on the day after receipt of written notice from HQIP;
		3. in respect of Data which constitutes Personal Data, the Data Recipient no longer has the legal basis to process this Data;
		4. the Data Recipient stops payment of its debts or is unable to pay its debts as they fall due;
		5. the Data Recipient is dissolved;
		6. the Data Recipient becomes or is declared insolvent or a resolution is passed for the winding up of the Data Recipient, or the Data Recipient convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or a liquidator, an administrative receiver, a receiver, manager, trustee or administrator or analogous officer is appointed in respect of all or any part of its property, undertaking or assets, or the Data Recipient becomes subject to any bankruptcy procedure or analogous insolvency procedure in any jurisdiction, or any person files a notice of intention to appoint an administrator or a notice of appointment of an administrator or applies to court for an administration order in respect of the Data Recipient;
		7. it becomes unlawful for the Data Recipient to perform all or any of its obligations under this Contract and/or any DSA;
		8. there is a change in Applicable Law which materially affects HQIP 's powers to provide Data to the Data Recipient; or
		9. the Data Recipient (being a natural person) shall die or become mentally incapacitated.
	5. Without prejudice to HQIP 's rights under Clauses 13.3 and 13.5:
		1. where the Data Recipient commits any breach of this Contract and/or any DSA; or
		2. an event specified in Clause 13.6 occurs; or
		3. if there is a breach of any Associated DSA; or
		4. (in HQIP's reasonable opinion) there has been or is likely to be a breach of any Associated DSA;

HQIP shall be entitled to suspend this Contract and/or any DSA (which shall include the suspension of any licence granted to the Data Recipient under Clause 3.1) without incurring any liability to the DataRecipient, with immediate effect by written notice to the Data Recipient.* 1. The Data Recipient may terminate this Contract or any DSA at any time by notifying HQIP in writing.
	2. Termination and, subject to Clause 13.10, expiry of this Contract will automatically terminate all DSAs that are entered into under this Contract.
	3. Termination and expiry of the NHS Digital data Sharing Framework Contract and /or the NHS Digital data Sharing Agreement will automatically terminate the Sub-Licence, this Contract and all DSAs that are entered into under this Contract.
	4. Suspension of the NHS Digital data Sharing Framework Contract and /or the NHS Digital data Sharing Agreement will automatically suspend the Sub-Licence, this Contract and all DSAs that are entered into under this Contract.

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

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

**Notices*** 1. Except where any provision of this Contract states otherwise, all notices and communications sent pursuant to this Contract shall be in writing and shall be deemed to have been duly given:
		1. when delivered, if delivered by hand; or
		2. on the second Working Day after mailing, first class postage pre-paid; or
		3. when delivered by email, when the recipient, by an email sent to the email address for the sender, or by a notice delivered by another method in accordance with this clause, acknowledges having received that email, (with an automatic “read receipt” also constituting acknowledgment of an email for purposes of this clause).
	2. Notices shall be addressed to the addresses provided in Part 1 of this Contract or to such other address as the parties may notify in writing from time to time. Each party shall notify the other party in accordance with this Clause 16 if the address specified in Part 1 of this Contract is no longer an appropriate address for the service of notices and communications.

**Publicity*** 1. NHS Digital and HQIP shall be entitled to Publish the terms of this Contract, any DSA and the results of any audit.

**Miscellaneous*** 1. Nothing in this Contract or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party.
	2. HQIP and NHS Digital may notify the Data Recipient in writing from time to time of any update(s) that shall apply to this Contract and/or any DSA. Where specified by HQIP and NHS Digital, such updates shall be effective from the date specified in such notification.
	3. Without prejudice to Clause 18.2, no amendment or variation of the terms of this Contract or any DSA shall be effective unless made or confirmed in writing, and signed by the parties to this Contract.
	4. If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Contract which shall remain in full force and effect to the extent permitted by law.
	5. The rights and remedies provided by this Contract are cumulative and (unless otherwise provided in this Contract) are not exclusive of any rights or remedies provided by law.
	6. Except as provided in Clause 18.7 this Contract does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it (except that a person who is a permitted successor to or assignee of the rights of a party to this Contract shall be deemed to be a party to this Contract).
	7. NHS Digital shall benefit from and can enforce against the Data Recipient directly the terms of the Contract, the DSA and the Sub-Licence in accordance with the Contracts (Rights of Third Parties) Act 1999 (without the involvement or consent of HQIP).
	8. HQIP and NHS Digital shall not be liable to the Data Recipient for any delays in performance, non-performance or breach of any of its obligations under this Contract and/or any DSA caused by matters beyond their reasonable control. Such matters shall include (without limitation) industrial disputes, acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts of government or acts or omissions of third parties.

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

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

# SCHEDULE 1

**Interpretation**

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

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

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

(and "**Manipulating**" and "**Manipulated**" shall be construed accordingly) |
| **"Manipulated Data"** | any Data that has been Manipulated, unless and until it qualifies as Derived Data (to be determined at the sole discretion of NHS Digital); |
| **“NHS Contract”** |  means together the NHS Digital data Sharing Framework Contract and any NHS Digital data Sharing Framework Agreement entered into between NHS Digital and HQIP from time to time;  |
| **“NHS Digital data”** | Data supplied by NHS Digital, via HQIP, as set out in section 10 of the Data Access Request Form. |
| **"NHS Digital"** | The Health and Social Care Information Centre, a body corporate established pursuant to section 252 of the Health and Social Care Act 2012 whose address is 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE; |
| **“NHS Digital Data Sharing Agreement”**  | NHS Digital data Sharing Agreement reference DARS-NIC-07289-G8J6C-v8.9 dated 07.04.2021 entered into between NHS Digital and HQIP.  |
| **“NHS Digital Data Sharing Framework Contract”**  | NHS Digital data Sharing Framework Contract reference CON-326178-V9S5X (Version2.01) dated 04.11.2020 entered into between NHS Digital and HQIP;  |
| **"Personal Data"** | personal data as defined in Section 1(1) of the Data Protection Act 1998, and, from 25 May 2018, in accordance with Article 4 of GDPR; |
| **"Personnel"** | all employees, agents and contractors of the Data Recipient who may have access to the Data; |
| **"process" and "processing"** | have the meaning set out in section 1(1) of the Data Protection Act 1998, and from 25 May 2018, in accordance with Article 4 of GDPR; |
| **"Publish(ing)"** | to make available to third parties in any form, including the production of hard copy materials, soft and/or electronic copies, e-mails and posting online; |
| **"Purpose(s)"** | the purpose(s) for which the Data Recipient is permitted to use the Data, as set out in the relevant DSA; |
| **"Special Conditions"** | the special conditions for processing the Data as set out in the relevant DSA; |
| **“Sub-Licence”** | Has the meaning set out in Clause 3.1 of Part 2;  |
| **"Territory"** | the territory specified in the relevant DSA; |
| **“Term”** | the term for which the Data Recipient is permitted to use the relevant Data as defined in the relevant DSA; |
| **“Third Party Contractor”** | has the meaning given in Clause 7.2 of Part 2; and |
| **"Working Day"** | a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |

1. In this Contract:
	1. any gender includes any other gender and the singular includes the plural and vice versa;
	2. references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
	3. the Schedules form part of this Contract and the expression “this Contract” includes the Schedules;
	4. any reference to a statutory provision includes a reference to any modification, consolidation, replacement or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it; and
	5. any words following or associated with the terms including, include, in particular, for example, by way of example, or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or associated with those terms.
2. The Data Recipient shall promptly, and in any event not later than reasonably required in order to enable NHS Digital and HQIP to fulfil its duties under the Data Protection Law provide such information as NHS Digital and HQIP requires relating to the identity of any third parties to whom the Data has been disclosed by the Data Recipient to the extent NHS Digital and HQIP requires this information to comply with its duties under the Data Protection Law.
3. The Data Recipient shall implement and maintain security and risk assessment standards, facilities, controls and procedures appropriate to the nature of the Data held by it and the harm that would be caused by its loss or disclosure, including:
	1. to maintain a comprehensive and up-to-date data protection policy, (and the Data Recipient shall ensure that all its Personnel who have access to the Data shall comply with the obligations upon them contained in the data protection policy);
	2. to maintain an up to date Information Asset Register, which identifies the Information Asset Owner for Data supplied under the relevant DSA.
4. The Data Recipient shall ensure:
	1. that it has properly configured access rights for its Personnel including a well-defined joiners and leavers process to ensure access rights to the Data are properly managed;
	2. that it has proper controls in place to make sure that complex alphanumeric passwords are required for access to the Data and that training is provided in relation to the need to keep such passwords secure;
	3. it has in place procedures to identify wrongful use of Data, including the monitoring of wrongful access to Data;
	4. that suitable and effective authentication processes are established and used to protect Data;
	5. that Data is backed up on a regular basis and that all back up data is subject to such vigorous security procedures as are necessary in order to protect data integrity, such security measures being commensurate to the nature of the data. The Data Recipient shall take particular care when transporting backup data and other personal information and shall ensure such backup data and other personal information is transported in a safe and secure manner;
	6. that Data transferred electronically is encrypted using only the Advanced Encryption Standard (AES)

– 256 bits specification;

* 1. that Data stored on laptops or other portable media is encrypted and that the Data Recipient maintains an accurate, up to date asset register, including all such portable media used to process the Data;
	2. that Personnel are not able to access the Data from home or via their own electronic device other than through a secure electronic network and that Data may not be stored in such devices;
	3. that suitable physical security measures are established commensurate to the harm that could result from the unlawful disclosure of the Data. Such physical security measures shall be as identified in the Data Recipient’s data protection policy;
	4. without prejudice to the Data Recipient's obligations to NHS Digital and HQIP in relation to the disposal of Data, all Data which is disposed of must be disposed of in accordance with Applicable Law and Guidance (including the NHS Digital Destruction and Disposal of Sensitive Data Good Practice Guidelines), (and provided it does not conflict with the foregoing, in accordance with the Data Recipient's policy for the disposal of Data identified in the data protection policy, including the disposal of assets containing Personal Data, a copy of which policy shall be provided, on request, to NHS Digital and HQIP ; and
	5. that the Data Recipient establishes and maintains adequate data security compliance policies and audits its use of Personal Data in compliance with its data security policies on a regular basis and in any event annually.
1. The Data Recipient shall nominate in writing an individual to take responsibility and be accountable for compliance with Data Protection Law, and shall provide to NHS Digital and HQIP the name of that individual.

# Section B

1. It is the Department of Health’s policy that all organisations which process NHS patient information must

provide security assurance through annual completion and publication of the IG Toolkit.

1. To provide assurance that good information governance practices are being maintained, the Data Recipient must demonstrate, and will allow NHS Digital and HQIP to audit, that it:

A: meets or exceeds the **IG Toolkit** standards required by NHS Digital for their organisation type

Organisation Code:

If A does not apply, B and/or C, as NHS Digital may require and specify in the relevant DSA: B: is Certified against international security standard **ISO 27001**

AND/OR

C: Has other security assurance in place which, without prejudice to any other elements of such assurance, meets the requirements of paragraph 4 below.

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

# SCHEDULE 3

**Applicable Law and Guidance**

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

# **Applicable Law**

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

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

# **Guidance**

* + - Anonymisation Standard for Publishing Health and Social Care Data (ISB, 1523).
		- Anonymisation: managing data protection risk code of practice (ICO, 2012).
		- A guide to confidentiality in health and social care (HSCIC 2013).
		- ISO/IEC 27001:2013 (published by the [International Organization for Standardization](https://www.iso.org/home.html) (ISO) and the [International Electrotechnical Commission](http://www.iec.ch/) (IEC)).
		- The Caldicott Committee Report on the Review of Patient-Identifiable Information 1997.
		- NHS Digital Destruction and Disposal of Sensitive Data Good Practice Guidelines Version: 3.0 Date: March 2015.
		- The Caldicott Information Governance Review: Information: To share or not to share? The

Information Governance Review (March 2013) also known as Caldicott 2

* + - NHS Digital Code of Practice on confidential information (HSCIC, 2014).
		- Confidentiality: NHS Code of Practice 2003.
		- The NHS Care Record Guarantee 2011 (Version 5).
		- Information Security Management: NHS Code of Practice (2007).
		- IGA: Records Management Code of Practice for Health and Social Care 2016.
		- ONS Review of Dissemination of Health Statistics: Confidentiality Guidance 2006.
		- The ONS Disclosure control guidance for birth and death statistics 2014.
		- The Code of Practice for Official Statistics.
		- The Social Care Record Guarantee 2009.
		- Such guidance as may be issued by the ICO in relation to the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

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| **Parties**This Data Sharing Agreement is made between:* 1. Healthcare Quality Improvement Partnership (**“HQIP**”) Healthcare Quality Improvement Partnership (“HQIP”) incorporated and registered in England and Wales with company number 06498947 whose registered office is at 27a Harley Place, London, W1G 8LZ; and
	2. The party whose details are set out in the Data Access Request Form (the **"Data Recipient"**).

**Status of this Agreement*** 1. This Data Sharing Agreement ("**DSA**") is subject to the terms of the Data Sharing Framework Contract made between HQIP and the Data Recipient. This DSA comprises:
		1. the details set out in this document;
		2. the Annexes to this document.
	2. In the event of any conflict between any provision of this DSA and the Data Sharing Framework Contract:
		1. the Special Conditions in the Data Access Request Form of this DSA shall prevail, followed by,
		2. Part 1 of the Data Sharing Framework Contract, followed by,
		3. Part 2 of the Data Sharing Framework Contract, followed by,
		4. the Data Sharing Framework Contract Schedules, followed by,
		5. the remainder of the terms of this DSA

**Term and Termination of this DSA*** 1. This DSA shall commence on the start date specified in the Data Access Request Form and, unless otherwise terminated in accordance with the terms of this DSA and/or the Data Sharing Framework Contract, shall continue until the end date specified in the Data Access Request Form (the **"Term"**).
	2. This DSA will terminate automatically on the termination or expiry of the Data Sharing Framework Contract.
	3. This DSA may be terminated prior to the end of the Term:
		1. by the Data Recipient at any time by notifying HQIP in writing;
		2. by HQIP at any time by giving to the Data Recipient not less than one months' prior notice in writing; or
		3. in accordance with the provisions of the Data Sharing Framework Contract from time to time in force.
	4. This DSA may be updated or varied from time to time by:
		1. HQIP notifying the Data Recipient of the update in accordance with Clause 18.2 of the Data Sharing Framework Contract; or
		2. HQIP and the Data Recipient agreeing the variation in accordance with Clause 18.3 of the Data Sharing Framework Contract.
	5. Where this DSA is updated or varied in accordance with Clause 3.4, HQIP shall issue an updated version of the DSA to the Data Recipient to reflect the update or variation to the terms ("Updated DSA"). HQIP shall allocate a new sequential version number to the Updated DSA to identify that the DSA is updated or varied. For example, a DSA with reference DARS-NIC-NNNNN-NNNNN-v1.1, would be updated to DSA DARS-NIC-NNNNN- NNNNN-v2.0.
	6. The parties acknowledge that this DSA, as updated or varied in accordance with Clause 3.4, shall be read and construed as the same appears in an Updated DSA. Except as updated or varied in accordance with Clause 3.4, this DSA shall continue in full force and effect.

**Data*** 1. The Data Access Request Form HES/PROMs/CivReg data fields spec (Data Access Request Form section 10) sets out the details of the Data that will be provided by HQIP to the Data Recipient under this DSA.
	2. HQIP shall supply the Data to the Data Recipient or its nominated Data Processor in accordance with the data transfer method set out in the Data Access Request Form.
	3. The Data Recipient shall:
		1. comply with the provisions set out in the Data Access Request Form; and
		2. only process and store the Data at the location(s) specified the Data Access Request Form.

**Data Processor*** 1. The Data Recipient wishes to engage the party whose details are set out in the Data Access Request Form to act as its Data Processor to carry out the processing activities set out in the Data Access Request Form.
	2. HQIP consents to the appointment by the Data Recipient of the party whose details are set out in the Data Access Request Form to act as its Data Processor solely for the processing activities set out in the Data Access Request Form. No other processing or use is permitted by the Data Processor.
	3. The Data Recipient shall be responsible for all acts and omissions of the Data Processor as if they were acts and omissions of the Data Recipient under this DSA.

**Charges*** 1. The Data Recipient shall pay the Charges set out in the NJR Cost Recovery Policy in accordance with the payment terms contained there and in the Data Sharing Framework Contract.

**Data Access*** 1. Under the terms of this DSA, the Data Recipient must ensure that access to the Data is managed, auditable and restricted to those individuals who need to process the Data for the Purpose outlined in this DSA.
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##### SCHEDULE 1

1. **Interpretation**
	1. In this DSA the following expressions have the following meanings. Defined terms not detailed below shall be interpreted in accordance with the defined terms set out in the DSFC:

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| **Data Access Request Form** | means the HQIP Data Access Request Form submitted to the NJR Research Committee and HQIP Data Access Review Group which forms part of this agreement. |
| **Data Recipient** | means the party named in the Data Access Request Form who will be a Data Controller of any Personal Data to be shared under and in accordance with this DSA; |
| **Data Sharing Framework Contract or DSFC** | means the Data Sharing Framework Contract |
| **HES/PROMs/CivReg data fields spec** | means the data specification detailing data fields requested, as part of the Data Access Request Form  |
| **Identifiable Data** | means Personal Data, but extended to apply to dead as well as living individuals; |
| **Non-identifiable Data** | means Data that is not Identifiable Data; |
| **Term** | has the meaning given in Clause 3.1 of this DSA. |

* 1. The rules of interpretation in the DSFC shall apply to this DSA.

**Annex A: Approval Information**

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| **Signed for and on behalf of HQIP:** |
|  |
| **Name:** | Jane Ingham |
| **Electronic approval reference:** | [insert] |
| **Role:** | CEO |
| **Date/time:** | [insert] |

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| --- |
| **Signed for and on behalf of the Data Recipient:** |
| **Organisation Name:** | [insert] |
| **Electronic approval reference:** | [insert] |
| **Name:** | [insert] |
| **Position in organisation:** | [insert] |
| **Date:** | [insert] |