**End User Agreement**

**Dated: .**

BETWEEN:

1. The Health and Social Care Information Centre of 1 Trevelyan Square, Leeds, also known as NHS Digital ("**NHS Digital**"); and
2. [ ] of [ ] (the “**End User**", also referred to as"**you**" and "**your**").
3. NHS Digital has developed a range of interlinked, electronic clinical assessment and referral flows and associated rules-based and user interface functionality to allow individuals to go through an online triage and be referred on to the most appropriate NHS care service or to self-treat at home ("**111 Online**"). The clinical content on the service follows the same rigorous clinical governance and clinical assurance as the 111 telephone service, and has been reworded to be suitable for online users, allowing them to self serve. NHS Digital is providing 111 Online as a shared resource for the health and social care service in England; and
4. the parties wish to enter into this Agreement to in respect of use of 111 Online in the End User’s geographical area, and the associated actions to be undertaken by the parties.

# TERM

# This Agreement shall commence upon signature by the End User, and shall remain in force until termination by either party in accordance with clauses 14 or 15.

# REQUIREMENTS

# The parties agree that:

## they shall comply with this Agreement and the requirements schedule available at <https://nhschoices.github.io/nhs111-implementation-site/> (the “**Requirements Schedule**”); and

## the End User shall procure that all trusts, out of hours GP’s, primary care providers, 111 telephone providers and other organisations involved with the implementation, operation and interaction with local services of 111 Online (“**Service Providers**”) shall comply with this Agreement and the Requirements Schedule.

# NHS Digital shall be entitled (acting reasonably) to request evidence from you regarding your compliance with this Agreement, and you shall cooperate to maintain compliance. NHS Digital may request such evidence no more than annually except where there is a reasonable likelihood that non-compliance has occurred or will occur. NHS Digital shall be entitled to retain any evidence or supplemental documents provided in accordance with this clause 3 for as long as required.

# You shall use 111 Online and any of the systems, functionality and/or data of NHS Digital, or facilitated by NHS Digital, only for their intended purposes and lawful purposes and within any fair usage policies, and you shall not use any of such systems, functionality and/or data in a way that could damage, disable, overburden, impair or compromise any systems or security or interfere with other users.

# You acknowledge that NHS Digital may, for technical, operational or clinical safety reasons take 111 Online offline at any time in accordance with the STOP criteria set out in the Requirements Schedule.

# INTELLECTUAL PROPERTY AND LICENCE

# All intellectual property rights created, developed or subsisting (whether now or in the future) in 111 Online are and will be either: (i) the absolute property of, and will vest and remain vested in NHS Digital; or (ii) licensed to NHS Digital on terms sufficient to enable NHS Digital to comply with its obligations under this Agreement.

# The parties do not envisage that any completion of or feedback on content provided by the End User will have any proprietary rights therein. However, to the extent that the End User does develop any materials or other contributions which are provided to NHS Digital and incorporated into 111 Online which does contain proprietary material which is not covered by crown copyright, the End User hereby grants NHS Digital a perpetual, irrevocable, transferable, royalty free, non exclusive licence to use such materials/contributions, including but not limited to, the sub-licensing of such materials to third parties.

# Subject to, and in consideration of, the End User's compliance with this Agreement, NHS Digital grants the End User a revocable, non-exclusive, non-transferable licence to use and add details to 111 Online as necessary to comply with the End User’s obligations under this Agreement and the Requirements Schedule.

# The End User shall not reverse engineer, disassemble, decompile, recompile, adapt or modify any part of 111 Online or attempt to do so except to the extent permitted by this Agreement or law.

# CLINICAL ISSUES

# The parties agree that clinical accountability for 111 Online sits with NHS Digital up to such point in time as an individual’s submission of contact details triggers a message requesting a call back to be sent to a Service Provider’s system. At such time as this message is received and accepted by the relevant Service Provider clinical accountability for the individual concerned passes to the Service Provider (via the arrangements in place between the End User and Service Provider). 111 Online contains processes and communications to individual users to highlight individuals’ responsibility to provide correct information and follow dispositions given, and where possible, to mitigate associated risks.

# In order to protect yourselves and all other users of 111 Online, you shall, and shall procure that all Service Providers shall:

## contribute to the clinical governance procedures set out in the Requirements Schedule; and

## report to NHS Digital, and co-operate with investigations and resolution of, clinical safety and/or security incidents which relate to 111 Online as set out in the Requirements Schedule.

# INFORMATION GOVERNANCE

# In clause 13, the expression “**Data Protection Laws**” shall mean “the applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including the Data Protection Act 2018, the General Data Protection Regulation, and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities” and the expressions “**Personal Data**”, “**processed**”, "**process**" and " **Controller**" shall have the meanings given to them in the Data Protection Laws.

# NHS Digital shall, and the End User shall procure that all Service Providers shall:

## comply fully with the same with regard to any Personal Data collected, processed, stored or shared in connection with this Agreement and the use of 111 Online;

## seek all necessary consents and authorisations and execute and comply with such additional data sharing agreements and/or data processing agreements necessary to enable the data to be transferred and further processed for the purposes identified in the Requirements Schedule;

## use all reasonable endeavours to perform their obligations under this Agreement in such a way as to enable the other party to comply with applicable obligations under the Data Protection Laws; and

## execute and comply with such additional data sharing agreements and/or data processing agreements as may become required due to any changes to 111 Online or the Requirements Schedule.

# REMEDIES, LIABILITIES AND COSTS

# Either party may give the other 30 days’ written notice that it wishes to terminate this Agreement.

# NHS Digital may terminate this Agreement with immediate effect upon giving written notice to the End User if the End User or any of its Service Providers commit any act or omission that constitutes a material breach by the End User of this Agreement.

# Each party is responsible for funding its own costs under this Agreement. Save as set out in clause 18no party shall be responsible for any loss, damage, costs or expenses incurred by any other party, whether direct or indirect.

# Each party acknowledges that: (i) in entering into this Agreement 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 this Agreement; and (ii) it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

# Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for:

## fraud or fraudulent misrepresentation;

## death or personal injury caused by its negligence;

## breach of any obligation as to title implied by statute; or

## any other act or omission, liability for which may not be limited under any applicable law.

# GENERAL

# NHS Digital may, as appropriate, update, amend, replace or repair 111 Online and/or the Requirements Schedule from time to time, and the provisions of this Agreement shall apply to such versions: (i) with immediate effect in relation to changes to 111 Online; and (ii) with effect from the date that is seven days after you are notified of the change in relation to the Requirements Schedule.

# Any notice to be given under this Agreement shall be in writing and must be served by email to: (i) in the case of NHS Digital [nhsdigital.111online@nhs.net](mailto:nhsdigital.111online@nhs.net); and (ii) in the case of the End User to [insert email]; and, may in addition be served by personal delivery or first class recorded post to the registered address of each party. Notices shall be deemed served on the working day of delivery provided delivery is before 5.00 pm on a working day. Otherwise delivery shall be deemed to occur on the next working day. An email shall be deemed delivered when sent unless an error message is received.

# This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

# A person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.

# Any waiver or relaxation, either partly or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver.

# This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party’s behalf.

# The End User shall not without the written consent of NHS Digital assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of this Agreement or any part.

# This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute one and the same agreement.

# This Agreement shall be governed by the laws of England and Wales.

# In the event of any dispute arising between the parties in connection with this Agreement which cannot be resolved by good faith negotiations between the parties' immediate contract representatives, the resolution of the dispute shall be escalated to senior management level within fourteen (14) days of a written request from either party to the other. If the dispute is not resolved within thirty (30) then either party may refer the matter to the Secretary of State or its authorised representatives (at the Secretary of State's election) for determination under section 9 of the National Health Service Act 2006.

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| Signed for and on behalf of the End User by: |
| Signature: |
| Name: |
| Position: |

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