# Parties

This Data Access Agreement is made between:

**NHS England,** a non-departmental public body established pursuant to section 1H of the Health and Social Care Act 2012 whose address is Skipton House London SE1 6LH; and

The party whose details are set out in Annex A: section 1b (the **"Data User"**).

# Status of this Agreement

This Data Access Agreement ("**DAA**") is subject to the terms of the Data Access Framework Contract made between NHS England and the Data User, as detailed in Annex A: section 1b. This DAA comprises:

* + 1. the details set out in this document;
    2. the Annexes to this document.

In the event of any conflict between any provision of this DAA and the Data Access Framework Contract:

* + 1. the Special Conditions in Annex A section 6 of this DAA shall prevail, followed by,
    2. Part 1 of the Data Access Framework Contract, followed by,
    3. Part 2 of the Data Access Framework Contract, followed by,
    4. the Data Access Framework Contract Schedules, followed by,
    5. the remainder of the terms of this DAA (other than the Annexes), and then followed by,
    6. the other Annexes to this DAA.

# Term and Termination of this DAA

This DAA shall commence on the start date specified in Annex A: section 1a and, unless otherwise terminated in accordance with the terns of this DAA and/or the Data Access Framework Contract, shall continue until the end date specified in Annex A: section 1a (the "**Term**").

This DAA will terminate automatically on the termination or expiry of the Data Access Framework Contract, save where a New Contract has been agreed by the parties.

This DAA may be terminated prior to the end of the Term:

* + 1. by the Data User at any time by notifying NHS England in writing;
    2. by NHS England at any time by giving to the Data User not less than one months' prior notice in writing; or
    3. in accordance with the provisions of the Data Access Framework Contract (or any New Contract) from time to time in force.

This DAA may be updated or varied from time to time by:

* + 1. NHS England notifying the Data User of the update in accordance with Clause 18.2 of the Data Access Framework Contract; or
    2. NHS England and the Data User agreeing the variation in accordance with Clause 18.3 of the Data Access Framework Contract.

Where this DAA is updated or varied in accordance with Clause 3.4, NHS England shall issue an updated version of the DAA to the Data User to reflect the update or variation to the terms ("Updated DAA"). NHS England shall allocate a new sequential version number to the Updated DAA to identify that the DAA is updated or varied. For example, a DAA with reference NCCID-NNNNN-NNNNN-v1.1, would be updated to DAA NCCID-NNNNN-NNNNN-v2.0.

The parties acknowledge that this DAA, as updated or varied in accordance with Clause 3.4, shall be read and construed as the same appears in an Updated DAA. Except as updated or varied in accordance with Clause 3.4, this DAA shall continue in full force and effect.

# Data

Annex A sets out the details of the Data that will be provided by NHS England to the Data User under this DAA.

The Data User shall process Personal Data and where applicable, ensure that Data User Staff process Personal Data only in accordance with Annex B.

The Data User shall:

* + 1. comply with the provisions set out in Annex A and Annex B; and
    2. indemnifies NHS England against any and all Losses incurred if the Data User breaches Clause 4.3.1 and any Data Protection Legislation.

# Data Processor

The Data User will act as the Data Processor to carry out the processing activities set out in Annex A: section 4.

# Charges

The Data User shall pay the Charges set out in Annex A: section 7 in accordance with the payment terms contained there and in the Data Access Framework Contract.

# Provision of future services

If the Data accessed by the Data User is used (wholly or in part) to advance the development of any commercial product as detailed in Annex A: Section 4e, the Data User guarantees to provide license to the resulting commercial product to any NHS organisation for the duration of the DAFC at zero cost.

This Clause 7 does not imply or guarantee any future commercial relationships between NHS England and the Data User.

# Data Access

Under the terms of this DAA, the Data User 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 DAA.

**SCHEDULE 1**

# Interpretation

In this DAA 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 DAFC:

|  |  |
| --- | --- |
| **Data User** | means the party named in Annex A: section 1b who will be a Data Processor of any Personal Data to be shared under and in accordance with this DAA; |
| **Data Access Framework Contract or DAFC** | means the Data Access Framework Contract as detailed in Annex A: section 1b; |
| **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 DAA. |

The rules of interpretation in the DAFC shall apply to this DAA

**Annex A: Application Summary**

**1a: General**

|  |  |
| --- | --- |
| **Request Title** | DAA Test Template |
| **DAA Start Date** |  |
| **DAA End Date** |  |

**1b: Data Processor(s)**

**Example Data User**

|  |  |
| --- | --- |
| **Data User** |  |
| **Organisation Type** |  |
| **NHS England Framework Contract Reference** | PROVIDED ON SIGNATURE OF DAFC |
| **Contract Expiry Date** | XX/XX/XXXX (As above) |
| **IT Security Systems** | describe IT security systems and the measures that will put in place to ensure data is stored safely and securely and only accessed by approved personnel. Where possible aligned to the Cyber Essentials guidelines [link]. Evidence of high security standards can be provided as additional Annexes (e.g. ISO certification, security management protocol, logging and auditing measures, etc). |
| **DPA Registration** |  |
| **DPA Registration Number** |  |
| **DPA Organisation Name** |  |
| **Expiry Date** |  |
|  |
|  |

# Datasets Held/Requested

**2a. Data Access Already Given** LEAVE BLANK IF FIRST TIME APPLYING

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Dataset** | **Extract Type** | **Identifiability** | **Sensitivity** | **Periods** | **Legal Basis for Access** | **Frequency** |
|  |  |  |  |  |  |  |
| **Data Minimisation** | | | | | | |
| Information about filters goes here | | | | | | |
|  |  |  |  |  |  |  |
| **Data minimisation** | | | | | | |
| Information about filters goes here | | | | | | |

**2b. Additional Data Requested** OUTLINE DATA BEING REQUESTED

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Dataset** | **Extract Type** | **Identifiability** | **Sensitivity** | **Periods** | **Legal Basis for Access** | **Frequency** |
|  |  |  |  |  |  |  |
| **Data Minimisation** | | | | | | |
| Information about filters goes here | | | | | | |
|  |  |  |  |  |  |  |
| **Data Minimisation** | | | | | | |
| Information about filters goes here | | | | | | |

**3c. Patient Objection**

|  |  |
| --- | --- |
| **Patient Objections applied?** |  |
| Patient objections explanation should go here. | |

**3. Fair Processing**

Information about fair processing requirements in relation to the data in this application

**4. Purpose/Methods/Outputs**

**4a. Objectives for processing**

Objective for processing statements go here

**4b. Processing activities**

Objective for processing activities go here

**4c. Specific Outputs Expected, Including Target Date:**

Specific outputs expected, including target date statement

**4d.Benefits**

**i. Expected Measurable Benefits to Health and/or Social Care including Target Date:**

Expected measurable benefits to health and/or social care including target date statement

**ii. Yielded Benefits:**

Information about yielded benefits to date go here.

**4e. Is the Purpose of the Application in Anyway Commercial?**

Yes

Commercial purpose explanation goes here

**5. Approval Considerations** DETAILS OF ANY SPECIAL CONDITIONS WILL BE OUTLINED BY NHS ENGLAND

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Materials Reviewed** | **Version** | **Date of Document** | **Date of Approval** | **Expiry/Review Date** | **Comments** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**6. Period and Funding**

**6a. Data Retention**

For the Data User to give an indication of the duration that the Data User would wish to retain the data (however if this period exceeds the Term a new DAA would need to be in place)

|  |  |
| --- | --- |
| **Indicative Data Retention Period** |  |
| **Awarding Institution** | LEAVE BLANK IF N/A |
| **EU/International programme** | LEAVE BLANK IF N/A |
| **Reference and title of project/activity** | LEAVE BLANK IF N/A |
| **Year of submission/award** | LEAVE BLANK IF N/A |
| **Applicant or Partner** | LEAVE BLANK IF N/A |
| **Funding evidence URL:** | LEAVE BLANK IF N/A |

**7 Charges**

NHS England does not intend to charge for the following:

* all design and/or implementation specific services required to generate bespoke datasets or extracts;
* all administration services associated with providing access to the same;
* delivery and maintenance services to support the ongoing provision of bespoke datasets or extracts;
* administration costs associated with carrying out annual reviews of Data Users.

NHS England reserves the right to reasonably amend the charges, from time to time, with the prior agreement of the Data User where substantial costs will be incurred by NHS England.

These charges do not include the costs associated with the investigation of a breach, planning and performance of audit(s), and any prosecution activity.

Audit fees are payable where NHS England undertakes an audit or investigation which in NHS England's reasonable opinion, reveals that the Data User either has not complied, or is not complying, with any of its obligations under the Data Access Framework Contract and / or this DAA. The audit fees stated below are an estimate only and the Data User is responsible for promptly reimbursing NHS England for all reasonable costs of the audit and the full cost of any investigation which NHS England may commence prior to an audit taking place in accordance with Clause 7 (Audit and specific rights) of the Data Access Framework Contract. Audit fees are payable at cost, and shall include the costs for all activity for investigation, as well as activities associated with the performance of the audit:

**Estimated audit fees per audit: £15,000 (variable depending on circumstances).**

**Annex B:**

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with NHS England at its absolute discretion.

1. The contact details of NHS England’s Data Protection Officer are: [Insert Contact details]
2. The contact details of the Data User’s Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of Controller for each Category of Personal Data | **NHS England is Controller and the Data User is Processor**  The Parties acknowledge that in accordance with paragraph 2-15 Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, NHS England is the Controller and the Data User is the Processor of the following Personal Data:   * ***[Insert*** *the scope of Personal Data for which the purposes and means of the Processing by the Data User is determined by NHS England*   ***[Guidance*** *where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]* |
| Duration of the Processing | *[Clearly set out the duration of the Processing including dates]* |
| Nature and purposes of the Processing | *Data Processed in accordance with the Agreement may be subject to the following Processing activities:*   * *performance by the Data User of activities necessary to perform the intended purpose under the Agreement;* * disclosures in accordance with the Agreement, or as compelled by law   *The specific purposes for the processing are described below*  *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *In order to perform its obligations under the Agreement, the Data User will process the data provided or made available to the Data User in relation to the Agreement. The data to be processed pursuant to the Agreement may include, but is not limited to, the following:* |
| Categories of Data Subject | Data Subjects include the individuals about whom data is provided to the Data User via the Services or otherwise by (or at the direction of) NHS England or NHS England’s users who are authorised to use the Services. These may include, but are not limited to, the following:(i) Employees, contractors, or agents of NHS England (who are natural persons);  (ii) NHS England’s users authorized to use the Service; (iii) NHS England’s clients, customers, or other users of NHS England’s products or services; and/or (iv) Third parties with which NHS England conducts business and in each case, they include former, present, and/or prospective individuals in these categories.  Patients  Medical Professionals |
| Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data | The parties agree that on the termination of the provision of data processing services, the Data User and any subcontractor shall, at the choice of NHS England, return all the personal data transferred and the copies thereof to NHS England or shall destroy all the personal data and certify to NHS England that it has done so, unless legislation imposed upon the Data User prevents it from returning or destroying all or part of the personal data transferred. In that case, the Data User warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore. |

**Annex C: Approval Information**

|  |  |
| --- | --- |
| **Signed for and on behalf of NHS England** | |
| **Name:** |  |
| **Role** |  |
| **Data** |  |
|  | |
| **Signed for and on behalf of the Data User** | |
| **Name** |  |
| **Role** |  |
| **Date** |  |