

Influenza Hub Data Sharing Agreement

Amendment History

Version	Date	Amendment History
1	14 August 2020	First draft for comment
1.2	19 June 2020	Revisions
1.3	26 th Aug 2020	Final alterations

Reviewers

Name	Title / Responsibility	Date	Version
Winnie Kitone	Project Assistant	14/08/2020	1
Luke Wyatt	Engagement Hub Manager	26/08/2020	1.3

Approval

This document must be approved by the following:

Name	Title / Responsibility	Date	Version
Luke Wyatt	Engagement Hub Manager	26 Aug 2020	1.3
Martin Rowden	IG Lead	26 Aug 2020	1.3

This template agreement should be completed by the parties involved in the specific project, with advice and assistance from the Information Governance Lead and/or Data Protection Officer in each organisation.

Under the GDPR, all public authorities (bodies that are covered by the Freedom of Information Act 2000) must have a data protection officer (DPO). This means that all NHS bodies, local authorities and regulators will have a DPO. It may not always be the case that the DPO can provide all the input that is needed when drafting a data sharing agreement. If you are sharing patient data, then you will need to make sure that you comply with the law of confidentiality. This is another area of law separate to GDPR/data protection. The DPO will not necessarily be an expert in the law and practice around patient confidentiality.

THIS AGREEMENT	
1	<p>Between:</p> <p>NHS Kent and Medway CCG GP Practice</p> <p>and</p> <p>iPlato Healthcare Ltd</p>
2	<p>Definitions</p> <p>See Annex A</p>
3	<p>Purpose, objectives of the data sharing:</p> <p>The objective of the data sharing is to test the impact of supplemental flu and flu vaccination information (provided via additional message and a chatbot-based service, developed and funded by Seqirus UK Ltd.) in improving at-risk patient understanding, coverage and uptake of flu vaccinations in NHS Kent and Medway CCG GP Practices.</p> <p>The purpose of the data sharing is to enable the sending of text messages and myGP app push notifications to the following at-risk patients who are eligible for free flu vaccine:</p> <ul style="list-style-type: none"> • Adults 65 years and older • pregnant woman 18 years and older • patients with chronic illnesses who are 18 years and older. <p>The purpose of the message is to remind them they are eligible for free flu vaccine, and to invite them to visit a third-party chatbot site, that offers information about flu and flu vaccination and directs them to their GP practice for further questions.</p>
4	<p>Legal powers for processing the data</p> <p>Staff employed within the health and social care services, such as GPs and the administrators within surgeries, may share personal data, including personal confidential data, in the interests of individual care.</p> <p>Section 251 of the NHS Act 2006 came about as it was recognised that there were essential activities of the NHS and medical research that required the use of identifiable patient information. However, because patient consent had not been obtained to use patients' confidential information for these other purposes, there was no secure basis in law for doing so.</p> <p>S251 was established to enable the common law duty of confidentiality to be lifted to enable disclosure of confidential patient information for medical purposes, where it was not possible to use anonymised information and where seeking consent was not</p>

practical, having regard to the cost and technology available. The Confidentiality Advisory Group of the Health Research Authority provides its advice in accordance with the framework of the Health Service (Control of Patient Information) Regulations 2002.

5 Data Controllers

NHS Kent and Medway CCG GP Practice

The Processor is iPLATO Healthcare Ltd (iPLATO), of One King Street, 1-15 King Street, Hammersmith, London W6 9HR

Atlantis Healthcare carried out due diligence in procuring the data processing service from iPLATO. This will be kept under regular review. The contract with iPLATO will be managed by Atlantis Healthcare.

6 Data items to be processed

Data item	Justification
<p>All demographic data for the full patient list within the GP clinical system (please see Annex A for details of the fields extracted for each system).</p> <p>The data items will already be being processed by iPlato under the iPlato standard data sharing agreement with Kent and Medway GP Practice for a different purpose between the GP and iPlato. The two data items, 'Mobile phone number' and 'NHS number' currently processed under the above referenced agreement will be re-used for the purposes of this agreement. You give consent to create a new user within your current Connect system to allow the MyGP Engagement Hub to send these messages on behalf of the surgery using the information above.</p>	<p>The supply of the basic demographic details is necessary to enable the sending of a text message to men and women to remind them that they are due for flu vaccination. The mobile telephone numbers that form part of the basic demographic details will be extracted from the GP surgery's clinical system by iPLATO and matched with the NHS numbers of people eligible for flu vaccinations.</p> <p>Due to the technical specifications of GP clinical systems, it is not possible to extract singular items/fields within the overall demographic data of a patient. Because of this, the entire demographic dataset from a GP clinical system must be processed by iPlato in order to extract the mobile phone number within the wider demographic dataset (as these fields cannot be individually extracted). The surplus data will be purged/destroyed almost immediately.</p> <p>A purge/destruction of surplus data extracted (under the terms of a separate data sharing agreement between the GP and iPlato) will occur within an encrypted environment run by iPLATO with the resultant data items remaining being only</p>

	<p>the NHS Number and the mobile phone number of the patients to be sent a reminder text.</p>
	<p>Article 6 condition – all Personal Data</p> <p>Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller</p>
	<p>Article 9 condition – Special Categories of Personal Data</p> <p>Article 9(2)(h) - processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3 [of the GDPR]</p> <p>Article 9(2)(i) - processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy</p>
	<p>Article 10 – criminal offence data</p> <p>N/A</p>
	<p>Compliance with confidentiality and privacy rights</p> <p><u>Common law duty of confidentiality</u></p> <p>The data sharing and matching is for the purpose of providing individual care to patients and is covered by a section 251 authorisation.</p> <p><u>Human Rights Act 1998 - Article 8</u></p> <p>Is there any interference with Human Rights Article 8?</p> <p>Yes (although only inasmuch that a man or woman who has previously registered to receive text messages from their GP surgery will receive a reminder that they are due for a flu vaccination).</p> <p>If yes, document why it is necessary and proportionate to do so:</p> <p>The supply of the demographic data is necessary to enable the sending of the text reminder and proportionate to the notification of a patient due for influenza vaccination.</p>

	<p>In addition, the cited legal bases for the data sharing (together with the s251 approval) demonstrate that the processing is in accordance with the law and necessary in a democratic society for the protection of health. There is a pressing social need to increase the coverage and uptake of the seasonal flu vaccination.</p>
<p>7</p>	<p>How will the data sharing be carried out?</p> <p>The GP surgery asks patients whether they wish to receive text messages from them in accordance with their local procedure. The currency of a patient's mobile telephone number is checked periodically by the GP surgery. The GP surgery is responsible for maintaining the accuracy of these Personal Data.</p> <p>iPLATO will only use approved APIs to access the different GP clinical systems and will ensure that appropriate data minimisation procedures are implemented.</p> <p>iPLATO will then send the following sms/myGP message:</p> <p><<SurgeryName>: You may be eligible for a free flu vaccination. Flu season is here & it's more important than ever that you get vaccinated. Flu and its complications can be serious for those with certain underlying conditions and could make these conditions worse. To discuss further, call <TelephoneNo.> Also, <u>our free chatbot <Link></u>, Sam, is here to help you better understand the risks associated with flu. Seqirus UK Ltd has sponsored this initiative. Your personal data has not been shared.</p> <p>This message is considered to include the minimum amount of Personal Data necessary for the purpose.</p> <p>The Personal Data will be encrypted in transit and at rest. iPLATO must operate the service in line with stringent data security and audit requirements. No Personal Data will be transferred out of the European Union.</p>
<p>8</p>	<p>Privacy notices – articles 13 & 14</p> <p>The GP surgery is responsible for giving suitable privacy information to patients registering to receive text messages from them.</p> <p>The text reminder includes statement regarding data sharing.</p>
<p>9</p>	<p>Specify the procedures for dealing with the exercise of subject rights under Chapter III of the GDPR, FOIA access requests, or complaints or queries, from Data Subjects and members of the public</p> <p>Patients opt out of SMS by contacting their GP Practice. Patients already opted out of SMS will be excluded.</p> <p>How will the organisations keep each other up to date about the amendment, erasure or restriction of use of Personal Data that has been shared under this Agreement?</p>

	<p>In accordance with Article 19 of the GDPR, and under this Agreement, each Party shall pass on information about the amendment, erasure or restriction of use of relevant Personal Data to any organisation with which that Personal Data has been shared.</p>
10	<p>Specify the retention period for the data to be shared</p> <p>iPLATO will store the NHS numbers and mobile phone numbers of men and women within the eligible cohort for 30 days at which point all data will be deleted. <i>iPLATO will delete the date of birth and gender once the message has been sent and report generated (24-48 hours)</i></p>
11	<p>Specify the process for deleting/returning/safely destroying the data when it is no longer required (this should include provision for notification of such deletion/destruction)</p> <p>iPLATO will destroy all copies of the data when they receive NHSE's written instructions to do so or 12 calendar months after the end or expiry date of the contract, and provide written confirmation to NHSE that the data have been securely destroyed, except if the retention of the data is required by law.</p>
12	<p>Specify any particular obligations on <u>all</u> parties to the Agreement:</p> <p>Each organisation signed up to this Agreement will:</p> <p>12.1 comply with its obligations under the Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and comply with Data Guidance. The Parties acknowledge that once a Party has received data under this Agreement it will be responsible for ensuring that its own Processing of that data complies with this clause;</p> <p>12.2 use the information shared solely for the purposes identified and shall not Process the information for any other purposes;</p> <p>12.3 agree to treat the data received by them under the terms of this Agreement as confidential and shall safeguard it accordingly. Respect for the privacy of individuals will be afforded at all stages of Processing;</p> <p>12.4 notify the other parties to this Agreement of any breach of this Agreement (in particular paragraph 13.1) connected to the sharing of information under this Agreement within 24 hours of first suspecting the breach. This obligation extends to breaches concerning the systems on which the data shared under this Agreement are held, even if the data shared under this Agreement is not directly affected;</p> <p>12.5 notify the other parties to this Agreement of any complaint received from any person about the sharing of data under this Agreement or any correspondence</p>

	<p>from the Information Commissioner or other regulator regarding the sharing of data under this Agreement; and</p> <p>12.6 assist each other, in responding to requests made under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 in relation to the information shared under this Agreement to ensure a co-ordinated and consistent response.</p>
13	<p>Commencement of Agreement</p> <p>The date of this agreement will be on submission of the online microsite form (email confirmation will be sent).</p>
14	<p>Review of Agreement</p> <p>A review of this Agreement shall take place within three years of the commencement date. The parties to this Agreement agree to take part and fully cooperate in this review.</p>
15	<p>Persons responsible for the development and review of this Agreement</p> <p>CCG IG lead</p>
16	<p>Dispute Resolution</p> <p>16.1 In the event of a dispute arising under this Agreement, authorised representatives of the Parties will meet to try to resolve the dispute within five Business Days of being requested in writing by any Party to do so. If the dispute remains unresolved, it will then be referred to a senior manager from each of the Parties who will use all reasonable endeavours to resolve the dispute within a further ten Business Days.</p> <p>16.2 If the Parties are unable to settle the dispute by negotiation, they must, within 5 Business Days after the end of the ten Business Day period referred to above submit the dispute to an independent body or organisation agreed between the Parties. If the Parties are unable to agree on an independent body or organisation within that period, then the dispute shall be submitted to the Centre for Effective Dispute Resolution (CEDR). The mediations will follow the mediation process of the independent body or organisation agreed by the parties or CEDR as appropriate.</p>
17	<p>Termination</p> <p>17.1 This Agreement shall commence on the date set out at clause 13. Unless terminated in accordance with this clause, this Agreement shall terminate three years after the commencement date.</p> <p>Any Party may withdraw from this Agreement at any time by notifying the other Parties in writing that it will no longer be sharing data under this Agreement.</p>

	<p>17.2 Without affecting any other right or remedy available to it, each Party may immediately terminate this Agreement by notice in writing to the other Parties if any other Party commits a material breach of any provision of this Agreement or any other Party repeatedly breaches any of the provisions of this Agreement.</p> <p>17.3 On termination of this Agreement:</p> <ul style="list-style-type: none"> (i) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination, shall not be affected; (ii) the provisions of this Agreement which place obligations on the Parties in respect of the Processing of Personal Data shall continue in force and effect until such time as the Processing of the Personal Data received pursuant to this Agreement ceases; (iii) without prejudice to the foregoing sub-clause, the provisions of this Agreement that expressly or by implication are intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect; and (iv) each Party shall, at the request of any other Party, and promptly following that request, provide the other Parties of confirmation its compliance with sub-clause (ii) of this clause.
<p>18</p>	<p>Variation</p> <p>18.1 Any proposed changes to this Agreement, including the addition or removal of parties, the purposes of the information sharing, the nature or type of information shared or manner in which the information is to be Processed must be notified promptly to the Information Compliance/Governance leads so that the impact of the proposed changes can be assessed.</p> <p>18.2 No variation of this Agreement shall be effective unless it is in writing and signed by all of the Parties to this Agreement.</p>
<p>19</p>	<p>Remedies and no waiver</p> <p>19.1 Without affecting its liability for breach of any of its obligations under this Contract, a Controller will be liable to the other co-signees for, and must indemnify and keep the other co-signees indemnified against any fine that results from or arises out of the Controllers, or Processors engaged by the Controller, breach of Data Protection Law.</p> <p>19.2 Each Party (“the Breaching Party”) shall indemnify, defend and hold harmless the other Parties (“the Non-Breaching Parties”) from and against all and any losses, claims, liabilities, costs, charges, expenses, awards and damages of any kind including any fines and legal and other professional fees and expenses (irrespective of whether they were reasonably foreseeable or avoidable) which</p>

	<p>it/they may suffer or incur as a result of, or arising out of or in connection with, any breach by the Breaching Party of any of its obligations in this Agreement.</p> <p>19.3 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law or in equity.</p> <p>19.4 A waiver of any right or remedy under this Agreement or by law or in equity is only effective if given in writing and signed on behalf of the Party giving it and any such waiver so given shall not be deemed a waiver of any similar or subsequent breach or default.</p> <p>19.5 A failure or delay by a Party in exercising any right or remedy provided under this Agreement or by law or in equity shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law or in equity shall prevent or restrict the further exercise of that or any other right or remedy.</p>
<p>20</p>	<p>Notices</p> <p>Any notice given to a Party under or in connection with this Agreement shall be in writing in the English language and shall be sent by email to the relevant address set out below.</p> <p>Hub@iplato.com</p> <p>Any notice validly given in accordance with the foregoing clause shall be deemed to have been received the following Business Day.</p> <p>This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any mediation or other method of dispute resolution where any service may be made by any means permitted by law.</p>
<p>21</p>	<p>General</p> <p>21.1 No Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over, or deal in any other manner with any or all of its rights and obligations under this Agreement.</p> <p>21.2 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has executed at least one counterpart.</p> <p>21.3 This Agreement 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 the law of England.</p> <p>21.4 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual</p>

disputes or claims), provided that nothing in this clause shall prevent a Party from enforcing any judgement obtained in the court of England and Wales in any other court with jurisdiction over the other Party.

Annex A

Definitions

In this Agreement the following words have the following meanings:

Business Day	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
Controller	shall take the meaning given in the Data Protection Legislation
Data Guidance	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with the Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Supplier by NHS England and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health, NHS England, the Health Research Authority, Public Health England, the European Data Protection Board and the Information Commissioner
Data Privacy Impact Assessment (DPIA)	shall take the meaning given in the Data Protection Legislation
Data Protection Legislation	means (i) the DPA 1998 (ii) the GDPR, the LED and any applicable national Laws implementing them as amended from time to time (iii) the DPA 2018 (iv) all applicable Law concerning privacy, confidentiality or the Processing of Personal Data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations
Data Protection Officer or DPO	shall take the meaning given in the Data Protection Legislation

Data Subject	shall take the meaning given in the Data Protection Legislation
Joint Controller	shall take the meaning given in the Data Protection Legislation
Personal Data	shall take the meaning given in the Data Protection Legislation
Process (and cognate terms)	shall take the meaning given in the Data Protection Legislation
Processor	shall take the meaning given in the Data Protection Legislation
Party	a party to this Agreement
Regulatory or Supervisory Body	<p>means any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including:</p> <ul style="list-style-type: none"> (a) CQC; (b) NHS Improvement; (c) NHS England; (d) the Department of Health; (e) NICE; (f) Healthwatch England and Local Healthwatch; (g) Public Health England; (h) the General Pharmaceutical Council; (i) the Healthcare Safety Investigation Branch; (j) Information Commissioner; (k) European Data Protection Board
Special Categories of Personal Data	<p>as defined in Article 9 of the GDPR - Personal Data revealing:</p> <ul style="list-style-type: none"> (a) racial or ethnic origin (b) political opinions (c) religious or philosophical beliefs (d) trade union membership

	<ul style="list-style-type: none">(e) genetic data or biometric data identifying a natural person(f) data concerning health(g) data concerning a natural person's sex life or sexual orientation
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- (a) Reference to any legislative provision shall be deemed to include any statutory instrument, bye law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re- enactment, amendment or replacement of the same.
- (b) The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- (c) References to clauses and Schedules are to be clauses and Schedules to this Agreement.