**Connection Agreement**

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

The Connection Agreement shall govern the connection to, and use by the Connecting Partyof, the services selected below (**"Services"**):

|  |  |  |
| --- | --- | --- |
| **Menu of Services : Tick which Services apply** | **Yes** | **No** |
| **NHS Digital SMSP-PDS (**[**https://developer.nhs.uk/library/systems/nhs-digital-smsp-pds/**](https://developer.nhs.uk/library/systems/nhs-digital-smsp-pds/)**)** |  |  |
| ***[Additional Services and Portal address to be added as available]*** |  |  |

By signing below the Connecting Party agrees to the terms of the Connection Agreement and confirms that it has read, understood and agrees to all the information on the Portal in relation to the Services selected above:

**WE ACCEPT**

Organisation:

|  |
| --- |
| Signed for and on behalf of the Connecting Party  by: |
| Signature: |
| Name: |
| Position: |
| Date: |

# **DEFINITIONS AND INTERPRETATION**

## In this Connection Agreement:

**"Clinical Safety Incident"** means any unintended or unexpected incident which could have led, or did lead, to harm for one or more patients receiving healthcare, where harm is: death, physical injury, psychological trauma and/or damage to the health or well-being of a patient;

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

* 1. **"Connection Criteria"** means the Requirements, the contents of the Test Pack, and all policies relating to the applicable Services as published on the Portal;
  2. **"Connection Method"** the technical method (for example an application program interface) of accessing or connecting to the Services, developed and/or used by the Connecting Party to meet the Connection Criteria;
  3. **"Confidential Information"** means all information which is disclosed before or after the Commencement Date by one party to the other however conveyed and which: (i) is marked confidential or which is accompanied by a written or oral statement saying that it is confidential or proprietary or (ii) ought reasonably to be considered confidential; and which relates to the business affairs of the party disclosing it (including, products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the party disclosing it (or other companies within a group of companies owned by or under common ownership of that party)), and all information derived from the above;

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

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

**"End User Organisation"** means the recipient of services from the Connecting Party directly or via a third party or an agent associated with the Connecting Party;

**"End User Organisation Policy"** means the terms to govern how End User Organisations shall use the Services;

**"End User Organisation Request"** means a request from an End User Organisation for information or advice of for a standard charge or for access to services from the Connecting Party, an associated third party or agent;

**"HSSI"** (or High Severity Service Incident) means an Incident defined or classified as severity level 1 or 2 in NHS Digital's published descriptions of the severity of impact that an Incident has or will have;

**"HSSI Manager"** meansan individual who shall be asingle point of contact for HSSIs and who possesses the skills, knowledge and experience to resolve incidents in the shortest possible timeframe, and has the authority to convene the relevant experts to meet the objectives of a Multi Party Intervention;

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

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

**"Minimum Data Set"** means the set of information that must be captured and recorded for an Incident so that it can be effectively triaged, analysed and resolved;

**"Multi Party Intervention"** means a real-time/live collaborative sharing of information using telephone, screen sharing and any other appropriate collaboration technologies, where the objective is to resolve in the shortest possible timescale an Incident caused by or impacting multiple parties accessing the Services;

**"Portal"** means NHS Digital's online landing page and supporting repository for each Service comprising the , Service Descriptions, Requirements (including the Target Operating Models), Test Pack, Special Terms, requirements for data sharing agreements, and all supplemental guidance, policies and other information relevant to the connection to and receipt of each Service;

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

**"Requirements"** means the suite of specifications, documents and information on the Portal, comprising the Target Operating Model(s) and supplemental guidance and policies, which collectively enables each Connecting Party to understand the Services available and the criteria to be fulfilled for connection to those Services;

**"Service"** means any of the services listed on the Portal and “**Services**” means more than one Service;

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

**"Special Terms"** means any supplemental terms identified as Special Terms on the Portal which shall be incorporated into this Connection Agreement;

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

**"Target Operating Model(s)"** means the guidance and self certification tool or otherwise as set out on the Portal which is used for assurance, onboarding, and lifecycle management for each Service;

**"Test Pack"** means the procedures, test data, test scripts and other information and criteria relating to assurance of the Connection Method as published on the Portal;

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

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

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

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

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

### words importing persons shall include natural persons, bodies corporate, unincorporated associations and partnerships (whether or not any of them have separate legal identity);

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

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

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

### reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same; and

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

# **TERM**

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

# **CONNECTION CRITERIA & REQUIREMENTS**

## In consideration of the provision of the Services by NHS Digital, the Connecting Party shall comply with its obligations as described in this Connection Agreement. In respect of any third party or agent using the Connecting Party's Connection Method and / or services reliant on its Connection Method (including circumstances where the Connecting Party works with an aggregation model for identification, onboarding and/or management of its End User Organisation base) the Connecting Party shall:

### ensure that any such third party or agent shall fulfil the obligations of the Connecting Party as set out in this Connection Agreement;

### be liable for each act and omission of such third parties and agents as if it were its own; and

### interact with NHS Digital on behalf of such third parties and agents unless set out otherwise on the Portal.

## It is a condition of this Connection Agreement that the Connecting Party shall develop and maintain a Connection Method in accordance with the Connection Criteria relevant to the Service and any applicable Special Terms as set out in the Portal.

## The Connecting Party shall comply at its own cost with the assurance processes set out in the Test Pack and all ongoing testing and assurance processes and criteria that are prescribed by NHS Digital via the Target Operating Model or otherwise on the Portal, including any remedial action, prior to using the relevant Service or to enable a suspension of such rights to be lifted and including any resubmission for assurance after an update to the relevant Connection Criteria is published or following completion of remedial work.

## NHS Digital shall from time to time publish into the public domain or to defined or selected recipients a catalogue of suppliers and their status in terms of compliance with the Connection Criteria and the terms governing the Services.

## The Connecting Party shall support End User Organisations to complete the Target Operating Model for the relevant Service unless the particular Service allows exceptions for specified phases of compliance processes.

## The Connecting Party shall ensure that information provided to meet a requirement of the Target Operating Model for the relevant Service is (and remains for the duration of the Service) accurate, current and complete at all times.

## The Connecting Party accepts that NHS Digital may request evidence of continuing compliance with the Target Operating Model and other requirements detailed on the Portal, and may request copies of documentation, design and relevant external certifications, and the Connecting Party shall fulfil such requests within the timescales requested provided the requests and timescales are reasonable. NHS Digital may make this request by written notice to the Connecting Party no more than once a year (unless there is a reasonable likelihood that non-compliance has occurred or will occur in which case the limit shall not apply) and the Connecting Party shall co-operate and provide all relevant assistance and reasonable further information in relation to such request.

## The Connecting Party shall notify NHS Digital and End User Organisations of, and provide details of, updates to the Target Operating Model.

## If an End User Organisation does not comply with the Target Operating Model, NHS Digital may require the Connecting Party to disconnect the End User Organisation and/or suspend the End User Organisation's access so that it cannot receive the benefit of the Services.

# **RESTRICTIONS**

## To protect the availability of the Services as a shared resource for the health and social care service in England, where (in its sole discretion) NHS Digital has concerns in respect of the clinical risk, security, information assurance or information governance arrangements of an organisation applying for access or a connection to a Service, or NHS Digital’s vires, it reserves the right subject to complying with any notice periods set out in this Connection Agreement and/or on the Portal as described in clause 14.2:

### modify a Service; or

### refuse access to a Service;

### restrict or modify access under a Service, or to NHS Digital’s systems, services or applications;

### suspend access to a Service;

### terminate a Service.

## The Connecting Party shall not use the Service in a manner that (in NHS Digital's reasonable opinion) constitutes excessive use beyond fair usage volumes and/or a breach of usage policies published by NHS Digital from time to time (and made available on the Portal) and/or otherwise fails to comply or is inconsistent with any reasonable instructions provided by NHS Digital from time to time, and/or the standards expected of a Connecting Party of clinical IT services in relation to security and/or Clinical Safety Incidents.

## Any person who makes use of the Services does so entirely at their own risk and NHS Digital assumes no duty of care or other legal liability or responsibility to any person who makes use of the Services for any loss or damage suffered by them as a result of such use nor shall NHS Digital be liable to contribute to or otherwise share in any liability to compensate any third party harmed as a result of the usage of the Services.

## The Services are provided on an “as is” basis without (to the extent permitted by law) any warranty or representation of any kind either express or implied (including the implied warranties of merchantability and fitness for a particular purpose).

## To the extent permissible by law, NHS Digital shall not be liable for any direct, special, indirect or consequential losses and/or damages nor for any loss (whether direct or indirect) of use, data, business or profits arising out of or in connection with this Connection Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not NHS Digital has been advised of the possibility of such loss or damage.

# **VERSIONS**

## NHS Digital shall publish on the Portal:

### the Connection Criteria and all new versions to apply to each Service from time to time; and

### details if available of the anticipated changes to versions of the Connection Criteria.

## Subject to any variation expressed on the Portal, NHS Digital shall for each Service provide Support to the Previous Version of the Connection Criteria for a minimum period of 12 months from the date it publishes the Current Version of the Connection Criteria.

## 

# **CHANGE MANAGEMENT**

## The Connecting Party shall, on reasonable notice and at as reasonable frequency, notify NHS Digital of all planned changes over the 12 months ahead to its systems and services to the extent such changes could reasonably be expected to impact the Services or its End User Organisations.

## The notification referred to in clause 6.1 shall be done where possible via the forward schedule change facility within NHS Digital's change management process.

## If NHS Digital notifies the Connecting Party of changes to the underlying systems, components or processes relevant to the Services which are managed by NHS Digital, the Connecting Party shall make any necessary changes to their systems and services through:

### liaising with NHS Digital and (under the direction of NHS Digital) other Connecting Parties in order to develop an implementation plan(s) with defined timescales for making the changes;

### executing, following agreement by NHS Digital of the implementation plan, their responsibilities in accordance with that agreed implementation plan; and

### informing, immediately upon completion of the implementation, NHS Digital of the outcome of the implementation.

# **END USERS**

## The identification, onboarding and management of End User Organisations shall be the responsibility of the Connecting Party.

## The Connecting Party shall ensure that all its customers enter into an end user agreement with NHS Digital via the End User Organisation Policy.

## The Connecting Party shall notify all End User Organisations of changes to the Services, the Connection Criteria and/or the Connection Method used by the Connecting Party.

## The Connecting Party shall be fully accountable and responsible for the service management and delivery of its services to End User Organisations.

# **SERVICE MANAGEMENT**

## The Connecting Party shall reasonably collaborate with NHS Digital and third parties also connecting to the Services to help investigate and resolve service Incidents.

## The Connecting Party shall provide an ITIL aligned service desk during support hours documented in the Target Operating Model for the reporting, management, and communication related to Incidents, End User Organisation Requests, complaints, and enquiries.

## The Connecting Party shall publish an appropriate escalation and complaints process for use by NHS Digital and third parties connecting to the same Services.

## The Connecting Party shall be responsible for the management and resolution of Incidents, including End User Organisation communication, relating to the products and services used by End User Organisations.

## If NHS Digital defines an Incident as a HSSI the Connecting Party shall co-operate and engage as required irrespective of their own definition and assessment of the severity of the Incident.

## The Connecting Party shall:

## a) notify NHS Digital of HSSIs which impact the Services and that notification shall include as a minimum the Minimum Data Set applicable; and

## b) provide NHS Digital with updates on the status of each reported HSSI and that update shall include as a minimum the Minimum Data Set applicable to the HSSI until resolution.

## The Connecting Party may request that NHS Digital convenes a Multi Supplier Intervention where, acting reasonably, the Connecting Party determines that it cannot reasonably bring all relevant and necessary parties together to resolve an Incident. The suppliers involved shall not be expected to work outside their normal support hours (documented in each supplier's Target Operating Model or equivalent document).

## The Connecting Party shall ensure that a HSSI Manager is available to cover their defined support hours documented in the Target Operating Model. Upon request from the NHS Digital support function, the 'Service Bridge', the Connecting Party's on duty HSSI Manager shall attend and contribute to a Multi Supplier Intervention within 30 minutes of notification by the Service Bridge.

## The Connecting Party may raise a complaint with NHS Digital where third parties connecting to the same Services persistently fail to meet their Incident management responsibilities as defined in the Connection Agreement.

## The Connecting Party shall during its defined support hours (documented in the Target Operating Model) report all Incidents to NHS Digital where it has been identified as a Clinical Safety Incident within 20 minutes of becoming aware of the Incident. NHS Digital will provide a recommendation to the Connecting Party if it deems that the Incident is not a Clinical Safety Incident.

## NHS Digital shall be entitled to publically publish details of service performance metrics and may also request the Connecting Party to provide and/or publish their own performance metrics relevant to End User Organisations.

# **LICENCES**

## The Connecting Party hereby grants to NHS Digital a non-exclusive, non-transferable, royalty free licence to use the Intellectual Property Rights relating to the Connection Method used by the Connecting Party solely for the duration of the Service for the purposes of assurance, with rights to sub-license for the same purposes and on the same terms.

## NHS Digital hereby grants to the Connecting Party a non-exclusive, non-transferable, royalty free licence to connect, access and use the Services solely for the duration of the Service. The Connecting Party shall comply with any further licence requirements set out on the Portal in relation to the relevant Service.

## The Connecting Party shall not (to the extent permitted by law) attempt to: (i) copy, adapt, duplicate, modify, create derivative works from or distribute all or any portion of any application program interface technology it accesses through the Service, except to the extent expressly set out in this Connection Agreement, or (ii) reverse compile, decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service, or (iii) make changes or error corrections to the Service in whole or in part.

## Where NHS Digital publishes as open source any software, code and/or specifications, the Connecting Party shall not be restricted to using the software, code and/or specifications in connection with use of the Services subject to: a) the Connecting Party complying with the associated open source licences, and b) NHS Digital having no obligations or liability in respect of that extended use.

# **INTELLECTUAL PROPERTY RIGHTS**

## All Intellectual Property Rights created and developed by NHS Digital which subsist or are used in, or in connection with, the Connection Method, Services and Portal will be the absolute property of and will vest and remain vested in NHS Digital. The Connecting Party shall do and execute or arrange for the doing or executing of each necessary act, document and thing that NHS Digital may consider necessary or desirable to perfect the right, title and interest of NHS Digital in and to those Intellectual Property Rights where this Connection Agreement and exercise of rights and obligations has created a conflict with the intended ownership of such Intellectual Property Rights by NHS Digital.

## Subject to clause 10.3, all Intellectual Property Rights created and developed by (or on behalf of) the Connecting Party which subsist or are used in, or in connection with, its Connection Method will be the absolute property of, and will vest and remain vested in the Connecting Party.

## Nothing in clause 10.2 will affect the ownership and licensing of Intellectual Property Rights already provided by any agreement between the Connecting Party and any End User Organisation or any other agreement between NHS Digital and the Connecting Party.

# **SECURITY AND DATA PRIVACY**

## The Connecting Party shall comply (and shall procure that all its contractors and subcontractors) with NHS Digital's cyber security policy set out or linked to the Portal.

## In relation to the processing of Personal Data (as defined in the Data Protection Act 1998 or successor legislation), the parties shall comply with the relevant data sharing agreement selected through the Portal and/or an appropriate data processing agreement or data controller instructions, depending on the roles taken by each party pursuant to the Data Protection Act 1998 or successor legislation.

## The Connecting Party shall ensure it has robust business continuity management plans and supporting procedures.

# **CONFIDENTIALITY**

## This Connection Agreement is not confidential and does not contain any Confidential Information. Each party may however give Confidential Information to the other party and in such cases, subject to other provisions in this Connection Agreement, all Confidential Information given by one party to the other, or otherwise obtained or developed by one party relating to the other, shall be kept secret and confidential by the receiving party for the duration of this Connection Agreement plus 3 years following its termination or expiry and shall not be used or disclosed without the prior written consent of the other party other than for the purposes of the proper performance of this Connection Agreement.

## The obligations of confidentiality in this clause 12 shall not extend to any matter which the receiving party can show:

### is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Connection Agreement;

### was independently disclosed to it by a third party entitled to disclose the same; or

### is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

## For the avoidance of doubt, NHS Digital may disclose the Connecting Party’s Confidential Information:

### to the Department of Health, NHS England, and to any other commissioners of patient care and/or any health or social care body or organisation;

### to any central government body;

### to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;

### if NHS Digital (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;

### on a confidential basis to exercise its rights or comply with its obligations under this Connection Agreement; and/or

### on a confidential basis to a proposed transferee, assignee or novatee of, or successor in title to, NHS Digital.

## References to disclosure ‘on a confidential basis’ will mean disclosure subject to a confidentiality agreement or arrangement containing the same obligations as those placed on NHS Digital.

## The reference in this clause 12 to central government bodies shall include the following sub categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

### Government Department;

### Non Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

### Non Ministerial Department; and

### Executive Agency.

## In relation to NHS Digital's obligations under the Freedom of Information Act 2000 and/or Central Government transparency requirements, the Connecting Party hereby gives its consent for NHS Digital to publish to the general public the Confidential Information. NHS Digital shall, prior to publication, take reasonable steps to consult with the Connecting Party on the manner and format of publication and to inform the Connecting Party of its decision regarding any redactions but NHS Digital shall have the final decision in its absolute discretion and the Connecting Party acknowledges that NHS Digital may be required to disclose Confidential Information without consulting the Connecting Party.

# **REMEDIATION**

## Where the Connecting Party fails to meet the compliance requirements set out in the Target Operating Model, updates to the Connection Criteria and/or is otherwise in breach of its obligations under this Connection Agreement, then the Connecting Party shall agree a remediation plan in reasonable timescales with NHS Digital and will provide evidence of the actions taken as part of the remediation plan at specified points during the period agreed for implementation of the remediation plan.

## Unless otherwise agreed, the period for implementation of the remediation plan shall be 30 days. If the breach is impossible to remedy within a 30 day period, NHS Digital shall extend the remedy period by a number of days which NHS Digital acting reasonably and objectively believes is proportionate to the circumstances. If NHS Digital reasonably believes that a remedy period should be shorter than 30 days, then a shorter period will be set.

# **TERMINATION**

## NHS Digital shall have the right to suspend and/or terminate the contract formed by this Connection Agreement and/or the Connecting Party's permission to access the Service with immediate effect by written notice if the Connecting Party:

### is, or is adjudicated or found to be, insolvent as set out in section 123 of the Insolvency Act 1986 (whether or not the company is registered or unregistered) or stops or suspends payments of its debts or is (or is deemed to be) unable to or has no real prospect of being able to or admits inability to pay its debts as they fall due or fails to satisfy any judgment debt in whole or in part within 14 days of the judgment date; or

### enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or

### passes a resolution or makes a determination for it to be wound up (without a declaration of solvency / except for the purposes of amalgamation or reconstruction); or

### has a winding-up order or bankruptcy order made against it; or

### has appointed to it an administrator or administrative receiver; or

### being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or

### suffers any event or step analogous to the events or steps set out in clauses 14.1.1 to 14.1.6 (inclusive) in any jurisdiction.

## The Special Terms shall set out the notice periods (if any) and / or criteria for defining notice periods which shall apply if NHS Digital serves written notice to the Connecting Party of its intention to terminate where there has not been a breach by the Connecting Party of obligations under this Connection Agreement. If a notice period is not specified then a reasonable notice period shall apply giving regard to the circumstances and type of Service.

## If the Connecting Party is in breach of obligations under this Connection Agreement then NHS Digital shall be entitled to suspend the Connecting Party's ability to on board new End User Organisations and/or suspend access to the Service and/or terminate any or all of the Services and/or terminate this Connection Agreement.

## If the Connecting Party is in breach of obligations under this Connection Agreement, then if the breach is capable of remedy, NHS Digital may agree a remediation plan to be implemented by the Connecting Party, in accordance with clause 13. If the applicable remedy period has been exceeded without a resolution to the underlying breach or its impact, then NHS Digital shall be entitled to suspend and/or terminate the Connecting Party's permission to access the relevant Service(s).

## NHS Digital's preference shall be to work with a Connecting Party to identity and rectify root cause clinical risk, security, impact issues to avoid terminating a Service where possible. However, if evidence emerges of activity or behaviour by a Connecting Party in relation to the use of Service that would undermine the availability of Service, damage the reputation of Service, the NHS or Her Majesty’s Government, or otherwise pose a security threat or clinical safety risk to the organisation or other Users or providers of Service, NHS Digital may have no choice other than to terminate and/or suspend the Service without notice.

## Where NHS Digital intends to terminate or suspend the Connecting Party's access to the Service(s), NHS Digital reserves the right to inform the Connecting Party's End User Organisations of the pending suspension and termination and/or include this information as part of published information described in clause 3.4.

## The termination or expiry of this Connection Agreement shall not affect any provision of the Connection Agreement which is expressly or by implication intended to come into or remain in effect on or after termination or expiry. The suspension or termination of a Service shall not affect the continuation of other Services to the Connecting Party if NHS Digital deems this to be appropriate.

# **NOTICES**

## All notices given by one party to the other under this Connection Agreement shall be in writing and sent to such email address as the relevant party shall nominate from time to time.

# **DISPUTE RESOLUTION**

## If a Dispute arises out of or in connection with this Agreement then the matter shall be escalated to authorised senior officers. If the escalation to authorised senior officers does not resolve the Dispute within 5 Working Days, then either party shall give to the other written notice of the Dispute, setting out its nature and full particulars, together with supporting documentation and shall attempt in good faith to resolve the Dispute.

## Nothing shall prevent either party from seeking urgent injunctive relief from the courts nor from following alternative dispute resolution such as mediation or expert determination to resolve a Dispute if the parties agree and/or if it is prescribed on the Portal as a process for Dispute resolution for the relevant Service(s).

## To the extent that a Dispute is between NHS Digital, the Department of Health, NHS England, and/or a health or social care body or organisation, then those parties shall follow the mandatory (if any) or best practice dispute resolution procedure in effect at that time for resolution of such Disputes.

## The Connecting Party shall operate an escalation procedure to deal with issues and complaints from End User Organisations, incorporating the following principles:

### the party raising the issue or complaint shall be kept informed of progress at an appropriate interval as agreed with that party;

### all escalated issues and complaints shall be managed to an appropriate conclusion with agreed remedial actions to prevent re-occurrence;

### all escalated issues and complaints shall not be closed without the agreement of the party that raised them;

### details of all escalated issues and complaints shall be retained for a period of two years; and

### remedial and preventative action shall be taken to mitigate re-occurrence of the escalated issues and complaints.

# **GOVERNANCE**

## Each Service shall have its own forum arrangements involving different Connecting Parties who connect to the Services and End User Organisations. The Connecting Party may participate in these arrangements, and if it does so shall contribute to and attend such meetings at its own cost.

## NHS Digital retains the right to limit attendee numbers at the forum arrangements referred to in clause 17.1 but shall endeavour to include as many relevant parties as possible.

# **RELATIONSHIP OF THE PARTIES**

## Nothing in this Connection Agreement is intended to create a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other.

## Except where otherwise expressly provided in this Connection Agreement, neither party shall have authority to make representations, act in name or on behalf of, or otherwise to bind the other.

# **WAIVER AND CUMULATIVE REMEDIES**

## No failure or delay by either party to exercise any right or remedy existing under, or in connection with, this Connection Agreement (collectively, any "**action**") will act as a waiver, or otherwise prejudice or restrict the rights of that party, in relation to that action or any other contemporaneous or future action.

## The rights and remedies arising under, or in connection with, this Connection Agreement are cumulative and, except where otherwise expressly provided in this Connection Agreement, do not exclude rights and remedies provided by law or otherwise.

# **THIRD PARTIES**

## Subject to clause 20.2, a person who is not NHS Digital or the Connecting Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Connection Agreement. This clause does not affect any right or remedy of any person which exists, or is available, other than pursuant to that Act.

## The rights of the parties to rescind or vary this Connection Agreement are not subject to the consent of any other person or entity.

# **SEVERANCE**

## If any provision of this Connection Agreement is or becomes illegal, invalid or unenforceable in any respect, it shall not affect or impair the legality, validity or enforceability of any other provision of this Connection Agreement.

## If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.

# **VARIATION**

## NHS Digital reserves the right to amend this Connection Agreement if necessary to comply with any applicable law or regulatory requirements. For changes which are not a requirement of applicable law or regulatory requirements, NHS Digital shall, acting reasonably, consult with the Connecting Party if the proposed variation or update could reasonably be considered a material change to this Connection Agreement.

## Any variation or update to this Connection Agreement shall be made available to the Connecting Party via the Portal from time to time, and any such variation or update shall take effect from the date of publication on the Portal, meaning that from that publication date the new version of the this Connection Agreement shall supersede all previous versions.

## If there is any conflict between the terms of this Connection Agreement and the Special Terms, then the Special Terms shall prevail.

# **ENTIRE AGREEMENT**

## This Connection Agreement and all documents referred to in it (including the Portal and repository of documents as updated from time to time) sets out the entire agreement and understanding between the parties in respect of its subject and supersedes any previous agreement, warranty, statement, representation, undertaking or understanding (in each case whether written or oral) given or made before the Commencement Date by, or on behalf of, the parties and relating to its subject matter.

## Each party confirms that it has not relied upon, and (subject to clause 23.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, undertaking or understanding made by any party (whether or not a party to this Connection Agreement) unless that agreement, warranty, statement, representation, undertaking or understanding is expressly set out in this Connection Agreement.

## Subject to clause 23.4, neither party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, undertaking or understanding whether or not it is set out in this Connection Agreement.

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

# **GOVERNING LAW AND JURISDICTION**

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