

*Practice Name: The Crane Surgery*

*Practice Code: G82605*

*CCG: West Kent*

## **Kent & Medway Diabetic Eye Screening Programme – HI Hub (Spectra Module)**

### **Sign-up Document for Data Supply, Sharing & Access Agreement (Data Sharing Agreement (DSA))**

**Date: 22<sup>nd</sup> May 2019**

**Version: 4.2**

## GUIDANCE NOTE

### Introduction

This guidance note is intended to provide your Practice with an explanation on the status and remit of the Kent and Medway Diabetic Eye Screening Programme (“**Kent & Medway DESP**”). The Secretary of State delegates a number of his/her public health functions to NHS England. The public health functions agreement 2017 – 2018 enables NHS England to commission certain public health services which will drive improvements in population health, and this agreement sets out the service specifications which are to be commissioned in order to satisfy those public health functions. One such service is the National Diabetic Eye Screening Programme, and so it is commissioned by NHS England in order to discharge part of their public health duties.

NHS England has responsibility to ensure that the Diabetic Eye Screening pathway is seamless from entry in primary care through to integration with NHS management, treatment and care including liaison with Acute Trusts/ Hospital Eye Services. A key element of the National Specification No 22 is for DESPs to work with GP Practices to create, validate and maintain, using national recommended electronic export solutions, a register of all people with diabetes mellitus (excluding gestational diabetes) age 12 and over who are eligible to be invited for screening.

This initiative follows a tender process by NHS England & NHS Improvement - South East (Kent, Surrey & Sussex) (“**NHSE**”) which resulted in the appointment of Health Intelligence Ltd (“**HI**”) on a 5-year contract to deliver the Kent & Medway DESP commencing on the 11<sup>th</sup> October 2019.

As part of the service, HI has been engaged to support GP Practices across Kent to export relevant patient data to maintain the diabetes register and share patient data with other relevant healthcare professionals.

This guidance note introduces the data supply, sharing and access agreement (sometime referenced as the Data Sharing Agreement) for these purposes (the “**Agreement**”). This document confirms how the diabetic eye screening record is formed from the supply of data from the Practice and other data controllers, for example, Ophthalmology Departments provide updates on patients with diabetes under their care for diabetic retinopathy. This is a crucial aspect of public health.

The Kent & Medway DESP service is provided for the following Clinical Commissioning Groups (“**CCGs**”) and their associated Practices and their registered patients:

- NHS Canterbury and Coastal
- NHS Ashford
- NHS South Kent Coast
- NHS Thanet
- NHS West Kent
- NHS Medway
- NHS Dartford Gravesham & Swanley
- NHS Swale

In order to provide the service, a single register of all patients with diabetes is established and maintained for the Kent & Medway DESP by HI on a Programme register, known as the Single Collated List (SCL). Accordingly with the agreement of your Practice, HI will provide a service to assist your Practice to ensure accurate registers and timely referral.

The Kent & Medway DESP will:

- a) Export and securely host patient data from your Practice’s clinical system to provide access to the Kent & Medway DESP for your eligible patients

- b) Provide referral pathway support and reports for your Practice, ensuring all relevant patients are identified and promptly referred in line with the targets for promptly inviting patients following their diagnosis.

### **Referral Procedure and Consent**

Once a Practice user has selected a patient diagnosed with diabetes for referral to the Kent & Medway DESP, the patient's administrative data will then be accessible to HI's Programme Administrators in order to generate a screening invitation letter. Practices may wish to discuss with their patients, their referral to the DESP at the time of diagnosis or prior to the referral or rely on the implied consent arrangements as detailed in national guidance. When the patient attends for their screening appointment, we will reference our Privacy Notice and confirm that the patient does wish to be screened. We will also confirm that their data will be processed and shared with other healthcare professionals involved in their care e.g. in support of a referral to Ophthalmology. The organisations that may access patient data (at various levels) are detailed in Schedule 2 of the Agreement.

Benefits of the approach include Practices having access to the following within HI Hub:

- **DESP Programme Functionality**: Delivers functionality to electronically, refer patients over into the DESP and maintain their status rather than the current manual and time-consuming process. This has the advantage of keeping the details of your patients current and will reduce administrative time and human error when re-keying data.
- **DESP Programme Reporting**: Access to DESP results and images and access to data quality reports that support Practices to identify patients who should be considered for inclusion in the DESP. For example, patients with diabetes procedure codes or being prescribed diabetes drugs / monitoring strips who have not yet been formally diagnosed.

### **Governance**

NHSE has reviewed these proposed arrangements to confirm their appropriateness. Whilst mandated in the National Specification No 22, it is, however, for each Practice to confirm they agree to participate in exports of data by entering into the Agreement. As a Data Controller of the personal data that you manage (alongside other Practices and providers of Ophthalmology services, who are Data Controllers in respect of the personal data which they manage), the Practice confirms in line with SCHEDULE 2 the organisations that may access the patient data exported from the Practice.

The Local Medical Committee are being consulted on the service to ensure that data hosted within HI Hub is agreed, data sharing arrangements are agreed, and utilisation of the data is agreed. It is, however, for each Practice to confirm they agree to participate in this initiative by entering into the Agreement. The Practice will remain in control of who may access patient data and at what level.

### **Legal Basis for Sharing**

#### The legal basis

The processing and sharing of data with other NHS Organisations is for medical purposes and is being initiated by the GP Practice. Health Intelligence will export the relevant patient data on behalf of the Practice; and host and process data as reflected by its contract with NHSE and the restrictions set out in this Agreement and similar documents with the other Data Controllers contributing to the DESP. Health Intelligence will ensure it only processes data as reflected by this and similar Agreements, and in accordance with the Data Protection Act 2018 ("DPA 2018") which incorporates the General Data Protection Regulation ("GDPR").

Personal data must be processed lawfully, fairly, and transparently. There must be a lawful basis for processing, as set out either under the DPA or GDPR by satisfying one of the conditions in Schedule 2 of the DPA/Article 6 of GDPR. In addition, as this involves data relating to a patient's health then it is a special category of personal data.

Under GDPR, Data Controllers who are public bodies cannot rely upon the legitimate interest basis for

processing unless they are acting outside of their functions as a public authority. They can, however, rely upon Articles 6(1)(c) and 6(1)(e) for processing which applies to tasks carried out in the public interest.

Moving onto the additional basis for processing required by special categories of personal data, provision of care and treatment can rely upon Article 9(2)(h) of GDPR apply similarly in that personal data can be processed where it is necessary to do so for the purposes of preventative 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 and social care systems / services.

The sharing of patient identifiable data (PID) will only take place with the Data Controllers who participate in the DESP service, however other organisations are able to access patient level, but Anonymised Data and Aggregate Only data (as detailed in SCHEDULE 2).

Under the DPA 2018 / GDPR, Data Controllers will be expected to be much more transparent with patients about how their data will be processed. For the reasons outlined above, you will not need patient consent to share and access information through the DESP. However, your Privacy Notice should explain that data will be shared with the DESP. The Practice's Privacy Notice could reference the Kent & Medway DESP Privacy Notice.

In addition to the requirements of the data protection legislation, any sharing of personal data must also take place in accordance with the common law duty of confidentiality. The duty does not require consent from a patient where the proposed use of their data is in the public interest (which it is here) as it directly benefits patient and public health. Good practice suggests that although consent is not required, patients should be told how their data will be used and this should be set out in your Privacy Notice (as referenced in the previous paragraph). This is a matter for all Data Controllers to address themselves.

The flow of patient identifiable data concerning patients who would benefit from the diabetic eye screening between General Practice and the Kent & Medway DESP occurs presently and is an established information flow.

Some aggregate only data (numbers and percentages only) and anonymised data will be shared with NHS England as part of their management of the service and for invoice validation. Whilst the DPA 2018/GDPR and Health & Social Care Act 2006 are concerned with the appropriateness of sharing patient identifiable data, anonymised or aggregate data are not subject to these Acts, provided that the patients cannot be identified from the data.

### **How the Data Export Works**

Support for MIQUEST is delivered under the GPSoc Framework contract which is due to terminate once the GP IT Future Framework contract is live. This is due to happen during 2019, however the timing of the withdrawal of support for MIQUEST is not clear. For as long as MIQUEST is available this will be the method used for exporting the relevant patient data from your Practice under this agreement.

Given the uncertainties regarding how long MIQUEST will continue to function, this agreement also confirms that we will make use of GP2DRS as a backup and contingency option, however only where the Practice has initiated this request on their clinical system.

### **Security Arrangements**

A key issue for all concerned is ensuring the security of patient data. The Agreement (along with this Guidance Note) has been reviewed by the NHSE.

HI is an ISO27001:2013 Security Management System certified company who undergo regular internal and external audits to ensure full compliance with data security regulations. Our Security Policy confirms the security, confidentiality and patient consent obligations. The Security Policy (as may be updated or amended from time to time) can be found on HI's website at [www.health-intelligence.com](http://www.health-intelligence.com).

The obligations imposed under this agreement also apply to any agreed extensions to the scope of data to be hosted.

#### **Information Governance Arrangements**

Another key issue is that of Information Governance in general and specifically compliance with the various Acts and NHS best practice associated with processing and sharing patient data. In support of the requirement to inform patients regarding the arrangements for hosting and processing their data, HI provide a Poster for display on patient notice boards within the Practice and also further information on the Kent & Medway DESP website ([www.kmdesp.co.uk](http://www.kmdesp.co.uk)).

Strengthened by the General Data Protection Regulation (GDPR) requirements and DPA 2018, it is the Practice's responsibility to be transparent about how patient data is being used and who it is being shared with. The Poster assists with meeting the Privacy Notice Arrangements in support of compliance with the DPA and GDPR. HI recommends that your Privacy Notice reflects the information sharing and processing which will take place under the Agreement.

#### **Confidentiality Arrangements**

The Agreement confirms who may access patient data, when such parties can access the patient data, and which specific level of access will be granted (for example, Aggregate Only (numbers and percentages), Patient Level but Anonymised or Patient Identifiable Data ("PID")).

Only the parties identified in SCHEDULE 2 of the Agreement (including, for example, your GP Practice or the Kent & Medway DESP) shall have access to patient data.

#### **Security Incidents:**

Any actual or perceived security incidents will be handled in line with the provisions of the Agreement and in line with the Department of Health's Information Security Management: NHS Code of Practice (2007).

#### **Who to contact for more information:**

If you have any specific questions around the Agreement, please feel free to contact HI's Support Desk on: (01270) 527 373.

#### **For further information please contact:**

Mr Michael Pennington,  
Data Protection Officer  
Health Intelligence Ltd  
Unity House  
Road Five, Winsford Industrial Estate  
Winsford  
Cheshire  
CW7 3RB

Email: [dpo@health-intelligence.com](mailto:dpo@health-intelligence.com)

Tel: 01270 765124

Alternatively, please email HI on: [supportdesk@health-intelligence.com](mailto:supportdesk@health-intelligence.com)

Please send your signed agreement to:

Ms Adelaide Mitchell,  
Support Services Team,  
Health Intelligence Ltd,  
Unity House, Road Five,  
Winsford Industrial Estate  
Winsford, Cheshire  
CW7 3RB

## DATA SUPPLY, SHARING AND ACCESS AGREEMENT

CONTRACT SHEET		
PARTIES		
<ul style="list-style-type: none"> <li>HEALTH INTELLIGENCE LTD a company incorporated in England with company number 03257228 whose registered office is at Beechwood Hall, Kingsmead Road, High Wycombe, Buckinghamshire, HP11 1JL (“HI”); and</li> <li>The Crane Surgery whose place of business is at Rectory Fields, Cranbrook TN17 3JB the “Participant”, (each a “party” and together the “parties”).</li> </ul>		
BACKGROUND		
<ul style="list-style-type: none"> <li>HI have been commissioned to provide the Kent and Medway Diabetic Eye Screening Programme for Kent and Medway (the “Service”) by NHS England &amp; NHS Improvement - South East (Kent, Surrey &amp; Sussex). Patient data will be registered and managed through the hosted software solution known as [HI Hub (Spectra module)] (the “HI Software”), owned and provided by HI.</li> <li>The parties have agreed to the supply, hosting, access and sharing of applicable patient data in accordance with the terms and conditions of this Agreement.</li> <li>Once this Contract Sheet is in agreed form and has been signed by both HI and the Participant, the parties will have a binding contract incorporating the attached terms and conditions. The Participant shall return its executed counterpart to HI at the address specified below, following which a copy of the fully executed and dated Agreement will be sent to the Participant at the address above.</li> </ul>		
<b>Participant Code:</b>	G82605	
<b>Practice Name:</b>	The Crane Surgery	
<b>CCG Area:</b>	West Kent	
<b>Clients:</b>	NHS England & NHS Improvement - South East (Kent, Surrey & Sussex)	
<b>HI Address:</b>	Support Services, Health Intelligence Limited, Unity House, Road Five, Winsford Industrial Estate, Winsford, Cheshire, CW7 3RB	
<b>Name of the Authorised Individual(s)</b> (who may authorise subsequent revisions to this Agreement whilst on-line)	Print Name of 1 <sup>st</sup> Authorised Person: <u>Dr David Hindmarsh</u> Print Name of 2 <sup>nd</sup> Authorised Person: _____ Print Name of 3 <sup>rd</sup> Authorised Person: _____	
SIGNATURE		
We confirm that we have read and agree to the terms and conditions attached below.		
<b>Signed for and on behalf of the Participant:</b>  <u>Dr David Hindmarsh</u> Print name   Signature of Senior Partner (or nominated representative)  Date <u>27/7/19</u>	<b>Signed for and on behalf of the Participant:</b>  <u>Julian Le Saux</u> Print name   Signature of Practice’s Caldicott Guardian/Information Governance Manager  Date <u>27/7/19</u>	<b>Signed for and on behalf of HI:</b>  _____ Print name  _____ Signature of Philip Kirby, Managing Director Health Intelligence Ltd  Date _____

**THE PARTIES AGREE AS FOLLOWS:**

**1 DEFINITIONS**

1.1 In this Agreement, the following expressions shall have the following meanings:

<b>“Agreement”</b>	Means the Contract Sheet and these terms and conditions
<b>“Audit”</b>	Has the meaning given to it in Clause 5.7
<b>“Business Functions”</b>	Means the Participant’s functions e.g. Provision of General Practice Services.
<b>“Client”</b>	Means the NHS organisation which has contracted with HI for the provision of the Service, as specified in the Contract Sheet.
<b>“Contract Sheet”</b>	Means the completed and executed contract sheet preceding these terms and conditions.
<b>“Contract”</b>	Means the agreement entered into between the Client and HI for the provision of the DESP
<b>“Data Protection Act 2018”</b>	The Data Protection Act 2018 came into force on 25 May 2018. The Act supplements the General Data Protection Regulation (GDPR) and incorporates it into UK law.
<b>“Data Protection Legislation”</b>	Means the Data Protection Act 2018 and the General Data Protection Regulation, and where <b>“Data Controller”</b> , <b>“Data Processor”</b> , <b>“Data Subject”</b> , <b>“Personal Data”</b> , <b>“Process”</b> or <b>“Processing”</b> are referred to in this Agreement, they shall have the meaning specified in the Data Protection Legislation.
<b>“Field Sets”</b>	Identify the range of care settings (primary care, outpatient care, inpatient care, welfare) and accompanying data which may be accessed by the Participant to perform its Business Functions appropriately.
<b>“FOIR”</b>	Means a request under the Freedom of Information Act 2000.
<b>“General Data Protection Regulation” or “GDPR”</b>	The regulations being adopted by the UK Government relating to the General Data Protection Regulation (GDPR) enacted in May 2018 and placing additional obligations on organisations regarding transparency, fair processing and additional rights for the data subject.
<b>“HI Software”</b>	Has the meaning given to it in the Contract Sheet.
<b>“HI”</b>	Means Health Intelligence Ltd, the organisation contracted to provide the Diabetic Eye Screening Programme.
<b>“Patient Data Sets”</b>	Means the Participant’s patient data (for current patients registered with the Participant) held on its clinical system, as specified in SCHEDULE 1 (and as may be extended by the agreement of the parties from time to time).
<b>“Record Set Restrictions”</b>	Means the parameters limiting the views that the Participant and/or its authorised users may have based upon Personal Data, e.g. “Current patients”, “referred/awaiting review”, “and alive”, “anonymised trend summary” as specified in SCHEDULE 3.
<b>“Security Manager”</b>	Means the individual within the organisation who takes ownership of information security /information governance matters.
<b>“Security Officer”</b>	Means the party appointed as such by the Participant.
<b>“Security Policy”</b>	Means the Department of Health’s Information Security Management: NHS Code of Practice (2007) and HI’s Security Policy.
<b>“Service”</b>	Has the meaning given to it in the Contract Sheet.
<b>“Support Desk”</b>	Means HI’s support desk in respect of the HI Software, contactable by Participants via email through <a href="mailto:supportdesk@health-intelligence.com">supportdesk@health-intelligence.com</a> or on (01270) 527 373.

- 1.2 In this Agreement, unless the context otherwise requires: (a) words in the singular include the plural and words in the plural include the singular and a reference to one gender shall include a reference to the other genders; (b) Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement; (c) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules; (d) references to Clauses and Schedules are to Clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule; (e) a **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality); (f) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument; and (g) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding such terms.

## **2 SUPPLY OF DATA**

- 2.1 HI shall:
- 2.1.1 Export data from the Practice Clinical System using MIQUEST. Data will flow only over the HSCN network in accordance with the provisions of this Agreement and the Security Policy.
  - 2.1.2 Where the Practice has initiated a request to share data via GP2DRS, process patient data via GP2DRS as a backup and contingency measure.
  - 2.1.3 Host the HI Software required for the Programme in accordance with the provisions of this Agreement and the Security Policy.
- 2.2 The Participant hereby agrees to:
- 2.2.1 The data export of the Patient Data Sets to HI for the purposes of this Agreement
  - 2.2.2 Ensure that it has complied with the DPA and GDPR regarding fair and lawful processing information, to support the supply, export and hosting of the Patient Data Sets to HI pursuant to Clause 2.2.1 above
- 2.3 Any extension to the content of the Patient Data Sets to be exported by HI shall be agreed between the parties, in the form of an addendum to this Agreement. HI shall submit an addendum to the Participant for any such extension and no such extension shall be effective or implemented until HI has received written/electronic confirmation by an authorised individual of its request from the Participant.
- 2.4 The Participant warrants that the Personal Data supplied by it to the HI Software was obtained by the Participant and provided to HI in compliance with the Data Protection Legislation.

## **3 DATA SHARING**

- 3.1 Subject to Clause 3.3, HI shall be entitled to access and use the Patient Data Sets for the purposes of complying with its obligations under this Agreement and in supporting and providing delivery of the Programme. HI shall not be entitled to use the contents of the Patient Data Sets for commercial purposes.
- 3.2 HI shall not access or use the Patient Data Sets exported to the HI Software before a referral to the Programme has been made by the Participant, unless the Participant requests support. Once

a referral has been made, HI shall be entitled:

- 3.2.1 To access only administrative data of the patient contained in the Patient Data Sets
  - 3.2.2 Provided the Privacy Notice has been provided and an opportunity to discuss the notice has been provided during screening, Personal Data will be accessed and used by healthcare professionals involved in their care, (including relevant clinical data) relating to the patient contained in the Patient Data Sets.
- 3.3 Subject to Clause 3.4, the Participant hereby agrees to grant access to use the Patient Data Sets to the third parties identified in SCHEDULE 2 for the purposes set out therein. HI shall comply with the provisions of this Agreement and the Security Policy in respect of any sharing of the patient data pursuant to this Clause 3.1.
- 3.4 No access shall be granted to the Patient Data Sets pursuant to Clause 3.3 above unless:
- 3.4.1 An agreement to appropriately control access to the data and restrict user accounts to relevant healthcare professionals has been entered into by HI with the applicable NHS or Social Care organisation identified in SCHEDULE 2.
  - 3.4.2 The healthcare professional requiring access to the data is an authorised user of the HI Software.
  - 3.4.3 The patient in question has provided consent for the purposes of access and use of their Personal Data by healthcare professionals involved in their care.
  - 3.4.4 Such patient consents are logged within the HI Software's applicable consent register.
- 3.5 Any changes to or extension of the access granted pursuant to Clause 3.3 above shall be agreed between the parties, in the form of an addendum to this Agreement. HI shall submit an addendum to the Participant for any such extension and no such extension shall be effective or implemented until HI has received written/electronic confirmation by an authorised individual of its request from the Participant.

#### **4 ACCESS TO THE HI SOFTWARE**

- 4.1 As a participant of the Programme, the Participant shall (and will ensure that any of its employees, officers, contractors, agents and authorised representatives shall) use the HI Software in accordance with the provisions set out in SCHEDULE 3 and the terms of this Agreement.
- 4.2 The Participant shall be entitled to access its Patient Data Sets contained within the HI Software for the purposes of the Programme. HI shall facilitate the provision of and reporting on such data to the Participant.
- 4.3 The Participant agrees that any information obtained from the HI Software shall:
  - 4.3.1 Only be disclosed to, and used by, users and employers who plan, govern and/or deliver healthcare or social care services under the directives of the Participant for its patients
  - 4.3.2 Only be used for the benefit of the applicable patient within the care of the Participant that is the Data Subject of the information in question
  - 4.3.3 Not be provided to any third parties so as to avoid the requirement of such third party

entering into a data access agreement with HI in respect of the Patient Data Sets

- 4.4 The Participant hereby agrees to:
- 4.4.1 If applicable, assign those Business Functions, Field Sets and Record Set Restrictions detailed in SCHEDULE 3 to its employees, contractors, link workers and other users
  - 4.4.2 Use all reasonable endeavours to ensure that the Client (or, if applicable, any of its assignees and/or successors) is not placed in breach of any of its obligations under the Contract by virtue of any act or omission by the Participant and/or any of its employees, officers, contractors, agents and authorised representatives
  - 4.4.3 Report any faults, issues or enhancement requests to HI's Support Desk
  - 4.4.4 Abide by the Security Policy and nominate a Security Officer and/or "Caldicott Guardian" to undertake the duties specified in the Security Policy
  - 4.4.5 Record and notify HI of all incidents capable of placing at risk or affecting the confidentiality, integrity and availability of data delivered to, via, or from the HI Software immediately upon such incidents occurring and to fully co-operate and liaise with HI's Security Manager on all such incidents.
- 4.5 The parties agree to co-operate and assist each other in complying with any subject access request by a Data Subject.
- 4.6 The Participant acknowledges and agrees that, in the event the Client is required to respond to a Freedom of Information Request (FOIR) relating to aggregate only data, HI shall be entitled to support and assist the Client as reasonably necessary in providing a response.

## **5 DATA PROCESSING**

- 5.1 The Participant and HI acknowledge and agree that, for the purposes of the Data Protection Legislation, the Participant is the Data Controller and HI is the Data Processor in respect of any Personal Data.
- 5.2 HI shall only Process the Personal Data in accordance with the Participant's instructions from time to time and shall not Process the Personal Data for any purpose other than those expressly authorised by the Participant, which shall include for the purpose of carrying out its obligations under this Agreement and as detailed within its contract with NHS England & NHS Improvement - South East (Kent, Surrey & Sussex), unless otherwise required by law in which case HI will inform the Participant of those obligations before such Processing takes place, unless HI is prohibited from so doing by the law on grounds of public interest.
- 5.3 The Participant warrants to HI that it shall comply with the provisions of the Data Protection Legislation in relation to this Agreement.
- 5.4 HI warrants that:
- 5.4.1 it shall process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments each with the force of law, and in accordance with the common law duty of confidentiality;
  - 5.4.2 having regard to the state of technological development and the cost of implementing any measures it shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to (i)

the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the Personal Data to be protected;

- 5.4.3 It will ensure that its employees and agents, comply with such measures and the Security Policy
- 5.4.4 It will, taking into account the nature of processing, assist the Participant in ensuring its compliance with Articles 32 to 36 of the GDPR.
- 5.5 The Participant acknowledges that HI is reliant on the Participant for direction as to the extent to which HI is entitled to use and Process the Personal Data. Consequently, HI will not be liable for any claim brought by a Data Subject arising from any action or omission by HI, to the extent that such action or omission resulted from the Participant's instructions. The Participant shall indemnify and keep indemnified and hold harmless HI from and against any and all claims, actions, demands or other proceedings brought against HI due to or resulting from the Participant's instructions in relation to the Personal Data or breach by the Participant of the provisions of this Clause 5.
- 5.6 HI agrees to indemnify and keep indemnified and defend at its own expense the Participant against all costs, claims, damages or expenses incurred by the Participant or for which the Participant may become liable due to any failure by HI or its employees or agents to comply with any of its obligations under this Agreement.
- 5.7 Subject to providing all reasonable notice to HI, the Client (and/or its authorised representatives) shall be entitled on behalf of the Participant to oversee an audit by HI of its compliance with the requirements of this Clause 5 (an "**Audit**") where required by the Data Protection Legislation. HI will provide the Client and the Participant with evidence of its compliance. In the event the Client does not exercise its rights of Audit under this Clause 5.7, the Participant shall be entitled to exercise such right, subject to receiving written authorisation to do so from the Client.
- 5.8 HI shall notify the Participant promptly if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data ("promptly" shall be construed by reference to the nature of the unauthorised or unlawful processing loss of, damage to or destruction of the Personal Data, and the time at which HI became aware of the same).
- 5.9 HI will keep a record of any processing of personal data it carries out on behalf of the Participant.
- 5.10 HI shall promptly comply with any request from the Participant requiring HI to amend, transfer or delete any inaccurate Personal Data.
- 5.11 If HI receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation (as such compliance relates to this Agreement) and the data protection principles set out therein, it shall promptly notify the Participant and it shall provide the Participant with co-operation and assistance in relation to any such complaint, notice or communication.
- 5.12 At the Participant's request, HI shall provide to the Participant a copy of all Personal Data held by it in the format and on the media reasonably specified by the Participant.
- 5.13 HI shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Participant.
- 5.14 Except as specified by the terms of this Agreement HI may not authorise any third party or sub-contractor to process the Personal Data.
- 5.15 HI shall notify the Participant within 72 hours if it receives a request from a Data Subject for access to that person's Personal Data.

- 5.16 HI shall provide the Participant with co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 5.17 HI shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Participant or as provided for in this Agreement.
- 5.18 On termination or expiry of the Contract, HI shall, following any necessary migration of data to a third-party replacement provider (as may be required by the Client), destroy all Personal Data provided by the Participant pursuant to this Agreement.

## **6 HI EMPLOYEES**

- 6.1 HI shall ensure that access to the Personal Data is limited to:
  - 6.1.1 Those employees of HI who need access to the Personal Data to meet HI's obligations under this Agreement, and
  - 6.1.2 In the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.
- 6.2 HI shall ensure that all employees:
  - 6.2.1 are informed of the confidential nature of the Personal Data; and
  - 6.2.2 have undertaken training in the laws relating to handling Personal Data; and
  - 6.2.3 are notified of HI's and their own duties and obligations under this Agreement.
- 6.3 HI shall take reasonable steps to ensure the reliability of any of HI's employees who have access to the Personal Data.

## **7 TERM**

- 7.1 This Agreement shall commence as specified in the Contract Sheet and shall continue until:
  - 7.1.1 The Contract has been terminated or expires; or
  - 7.1.2 HI has ceased to have any data of the Participant (including the Patient Data Sets) under its custody or control, whichever is the later
- 7.2 Either party shall be entitled to terminate immediately if the other party commits any material breach of this Agreement and fails to remedy that breach within thirty (30) days' written notice of that breach (the thirty (30) day period only applies where a breach is capable of remedy – if it is incapable of remedy, this Agreement may be terminated by written notice immediately).
- 7.3 Either party shall be entitled to terminate this Agreement, without clause, provided 3 months written notice is provided.
- 7.4 Termination or expiry of this Agreement shall not affect any accrued rights or obligations of either party arising out of this Agreement.

## **8 LIMITATION OF LIABILITY**

- 8.1 Neither party shall exclude or limit its liability under this Agreement for:

- 8.1.1 Death or personal injury caused by its negligence
  - 8.1.2 Fraud or fraudulent misrepresentation
  - 8.1.3 Any liability pursuant to an indemnity granted under this Agreement, namely the indemnities set out at Clauses 5.5 and 5.6 of this Agreement.
- 8.2 HI shall not be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss or corruption of data or information, pure economic loss, or any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
- 8.3 The Participant agrees that it will have no remedy in respect of any untrue statement or representation made to it (including those made negligently) upon which it relied in entering into this Agreement and that its only remedy can be for breach of contract (unless the statement was made fraudulently).
- 8.4 Each party's Contractual Liability to the other shall not exceed £10,000. "Contractual Liability" means the total liability howsoever arising under or in relation to the subject matter of this Agreement that is not (a) unlimited by virtue of Clause 8.1; or (b) excluded pursuant to Clauses 8.2 and 8.3.
- 8.5 For the avoidance of doubt, the limitation of Contractual Liability set out in Clause 8.4 is expressly subject to Clause 8.1 such that it does not limit any liability incurred in connection with any of the provisions set out in that Clause including any indemnified liability in Clauses 5.5 and 5.6.

## 9 CONFIDENTIALITY

- 9.1 Each party that receives ("**Receiving Party**") Confidential Information from the other ("**Disclosing Party**"), whether before or after the date of this Agreement shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this Clause 9; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Agreement ("**Permitted Purpose**").
- 9.2 The Receiving Party may disclose Confidential Information to its own officers, directors, employees, contractors, agents, and advisers who reasonably need to know such Confidential Information for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 9 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Agreement). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 8.
- 9.3 The terms of Clause 9.1 shall not apply to any information which: (i) is or becomes public knowledge other than by breach of this Clause 9; (ii) is independently developed without access to the Confidential Information; (iii) is in the possession of the Receiving Party prior to receipt from the Disclosing Party, other than by reason of a breach of this Clause 9 or any other obligation of confidence; or (iv) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 9.4 If required by law, the Receiving Party may disclose Confidential Information to a court of competent jurisdiction or applicable regulatory authority or agency, provided that the Receiving

Party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order providing for the confidentiality of such information to be maintained.

- 9.5 Neither party shall make any announcement or publicity statement relating to this Agreement or its subject matter without the prior written approval of the other party (except as may be required by law).

## 10 GENERAL TERMS

- 10.1 **Assignment:** Except for as provided in this Agreement, neither party shall assign, subcontract or otherwise transfer its rights or obligations under this Agreement in whole or in part without the prior written consent of the other party.

- 10.2 **No Waiver:** No failure or delay by either party to exercise any right, power or remedy shall operate as a waiver of that right, power or remedy nor shall any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

- 10.3 **Entire Agreement:** This Agreement supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.

- 10.4 **Notices:** All notices and other communications under this Agreement shall be delivered by hand, courier, or first class pre-paid mail (either recorded delivery or registered) and will be deemed to have been served (i) if by hand, when delivered, or (ii) if by courier or first class pre-paid mail, forty eight (48) hours after delivery to the courier or posting (as the case may be), provided that the parties may agree in writing to serve notices by fax and/or email. The addresses for service of notices under this Agreement shall be sent to the address of the recipient set out in the Contract Sheet, or to such other address as the recipient may have notified from time to time.

- 10.5 **Variation:** No variation of this Agreement shall be effective unless it is agreed by both parties in writing and signed by the parties' (or their authorised representatives).

- 10.6 **Severability:** Any provision of this Agreement which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms hereof.

- 10.7 **Remedies:** No right or remedy conferred by either party is exclusive of any other right or remedy contained in this Agreement or as any law may provide, but each shall be cumulative of every right or remedy given in this Agreement now or hereafter existing and may be enforced concurrently therewith or from time to time.

- 10.8 **Third Party Rights:** Except as expressly provided in this Agreement, the parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Agreement, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

- 10.9 **Relationship:** Nothing in this Agreement shall constitute or imply, or be deemed to 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. Nothing in this Agreement shall be deemed to constitute either party the agent of the other party, and neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

- 10.10 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which,

when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

10.11 **Jurisdiction:** This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England for the determination of any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

10.12 **Dispute Resolution:** The parties to this agreement will work together to promptly resolve any dispute regarding the terms of this Agreement. NHS England & NHS Improvement - South East (Kent, Surrey & Sussex) can be requested by either party to assist in the resolution of the dispute in the event that the parties cannot agree otherwise within 21 days.

## SCHEDULE 1

### Patient Data Sets

**Table 1 – Patient Data Set, Content of the Export and Hosting Service**

Patient Data Sets	Patient Identifiable Data to be Exported and Hosted on HI Hub	
	Recommended Data Sets	Participant Confirmed
1. Diabetic Eye Screening (incl. Health Equalities data)	Yes	✓

Information on the detailed data export criteria and data set to be exported can be requested.

A comprehensive document (DESP Data Export Definitions Document) noting all clinical codes to be exported, will be provided upon request. Given the number of different codes used and the creation of new codes, this document is actively maintained, with a new version likely to be produced every few months. No extension to the scope of the data will however be made without an addendum to this Agreement.

## SCHEDULE 2

### Data Sharing

**Table 1 – HI Hub Data Sharing**

**Key:**

**PID** – Patient Identifiable Data;    **APD** – Anonymised Patient Data;    **AO** – Aggregate Only Reports may be accessed (numbers and percentages only).

**APD** is defined as patient level data with the NHS Number, other identifiers, Names, Address, Date of Birth and Contact Details removed. Gender and Year & Month of Birth retained in the data set.

Entries highlighted with **Bold** text form the current Data Sharing arrangements that will be established and maintained by HI Hub.

Access Matrix	General Practice			Health Intelligence Ltd			NHS England & NHS Improvement - South East (Kent, Surrey & Sussex)			Clinical Commissioning Groups			NHS Trusts			Local Authority		
	PID	APD	AO	PID	APD	AO	PID	APD	AO	PID	APD	AO	PID	APD	AO	PID	APD	AO
1. Diabetes Register (including Patients Likely to have Diabetes)	Yes	N/A	Yes	No	No	Yes	No	No	Yes	No	No	No	No	No	No	No	No	No
2. Diabetic Eye Screening Programme	Yes	N/A	Yes	<b>Yes Note 1</b>	No	Yes	No	<b>Yes Note 3</b>	Yes	No	No	Yes	<b>Yes Note 2</b>	No	Yes	No	No	No

**Notes:**

1. HI, as part of its management of the Kent & Medway Diabetic Eye Screening Programme (DESP), will have access to the administrative records for patients with diabetes only once they have been referred over into the DESP. Once the patient attends for screening and the privacy notice has been discussed, HI will also have access to relevant diabetes clinical data to inform the delivery of the diabetic eye screening service (direct patient care).
2. NHS Trusts (including Foundation Trusts) receiving referrals from the DESP will be able to access the patient’s diabetes-related data, in support of your patient’s hospital care. Similarly Diabetologists, maternity services, podiatry and other healthcare professionals would benefit from access and can reinforce the importance of attending for screening. HI will enter into a Data Access Agreement with each applicable NHS Trust in accordance with Clause 3.4

3. Anonymised Patient data will be shared with NHS England & NHS Improvement - South East (Kent, Surrey & Sussex) as part of their management of the service and for invoice validation.

### SCHEDULE 3

#### Limitations on Use

**Table 1: HI Software Business Purposes for Participants who are General Practice Organisations**

The HI Software may be used by the Participant to support the business purposes detailed in the table below:

Business Purposes	Select by ticking the items
1. Diabetes Register	✓
2. Diabetic Eye Screening Programme	✓

**Table 2: Business Functions for Participants who are General Practice Organisations**

Business Functions	Select by ticking the items
1. Provision of General Practice Services	✓

**Table 3: Field Sets for Participants who are General Practice organisations**

The Field Sets identify the range of care settings (primary care, outpatient care, inpatient care, and welfare) and accompanying data that may be accessed to execute a Business Function appropriately.

Taken together with the Business Functions selected in Table 2 above, the Field Sets support the selection of data to be made available to different Participants. Individual users will be restricted within the specified range according to their function and role within the healthcare and social care provider community.

Field Sets	Select by ticking the items
1. General Practice Data	✓
2. Screening Data	✓
3. Hospital Eye Service Data (outpatient consultation data)	✓

**Table 4: Record Set Restrictions**

In respect of Table 4 below, Part A identifies the types of individuals (patients/clients) whose records the Participant would need to review. Part B identifies the level of detail that the Participant is empowered to view in accordance with the Data Protection Legislation and Health and Social Care Act (2001).

**Part A: Sets of patients for Participants who are General Practice Organisation**

Set of Patients	Select by ticking the items
1. Patients currently registered with the GP Practice	✓

**Part B: Level of Access to Data**

Set of Patients	Select by ticking the items
1. Patient Identifiable Data, administrative and clinical (including retinal image sets) – This data may have been provided by General Practice, the Screening Programme and the Hospital Eye Service.	✓

## DOCUMENT CONTROL

This page is provided to support version control and will detail all changes since this original version.

Version	Date	Description
4.2	22 <sup>nd</sup> May 2019	Original Version