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| **Joint Data Controller Agreement**  **Between**  **Devon County Council** of *County Hall, Topsham, Exeter, EX2 4QD*  *and*  **Plymouth City Council***, of Ballard House, W Hoe Road, Plymouth, PL1 3BJ*  *and*  **Torbay Council***, of Town Hall, Castle Circus, Torquay, TQ1 3DR*  *And*  **NHS Devon** *of County Hall, Topsham Road, Exeter, EX2 4QD* |

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This agreement (the Agreement) is made between:

**Devon County Council** *of County Hall, Topsham, Exeter, EX2 4QD* (1)

and

**Plymouth City Council***, of Ballard House, W Hoe Road, Plymouth, PL1 3BJ*

and

**Torbay Council**, *of Town Hall, Castle Circus, Torquay, TQ1 3DR*

and

**NHS Devon** *, of County Hall, Topsham Road, Exeter,*

Each organisation, hereafter, being a “Party” and together referred to as “the Parties”.

# Background

The One Devon Dataset (ODD), is the vehicle that is supporting the national roll out of the Population Health Management Programme (as set out in the service specification). A data sharing agreement has been set out and signed by all contributing organisations setting out the basis on which the data is shared with the joint controllers who are party to this agreement.

# Commencement and Duration

This agreement replaces all previous agreementsand shall continue until ended by way of the service of notice in writing.

# Definitions

The terms

* “data”, “personal data” and “special category data”;
* “controller”;
* “processor”;
* “data subject”;
* “data protection officer/DPO”;
* “personal data breach”; and
* “processing” (in the context of activities carried out in relation to personal data)

have the meaning given to them in Data Protection Law.

* “GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679).
* UK GDPR means the GDPR as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2019 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2020.

“Data Protection Law” means the UK General Data Protection Regulation and the Data Protection Act 2018, together with any subordinate legislation made under the Act.

# Scope of the agreement

4.1 The scope of the agreement is the control of personal data by or on behalf the Parties as joint controllers of the One Devon Dataset. This contains pseudonymised data provided by a range of contributing organisations across the Devon health & care community. The detail of the data contributed and the organisations providing it are set out in the ODD Information Sharing Agreement.

# Purpose of the agreement

5.1 The purpose of this agreement is to set out the responsibilities of the Parties in their joint management of personal data.

5.2 This agreement sets out how the parties will meet the UK GDPR requirement that joint controllers determine their respective responsibilities for compliance *“…in a transparent manner…by means of an arrangement between them…”.*

# Privacy information

6.1 The UK GDPR requires that the arrangement *“…shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.”*

6.2 The Parties will publish this agreement in their privacy notices with an explanation of the rationale behind it.

# Joint purposes

7.1 The following purposes have been identified for the use of the One Devon Dataset and are agreed as the core purposes for the use of the dataset by the joint controllers.

The legal basis for sharing the data is established in the One Devon Dataset Information Sharing Agreement. This sets out the basis on which each organisation contributes the data they individually control and the basis on which the joint controllers can process the data.

Access and use of the data will be managed by a use request process, overseen by the Use Request Board. The group will consist of representatives of all joint controllers. It will also invite participation from other representative groups to inform the decisions to be made by the joint controllers.

Requests will be compared to the agreed list of purposes below (from NHS England Secondary Uses Data Governance Tool - <https://data.england.nhs.uk/sudgt/>. Should a request not link directly to a purpose, then the joint controllers will decide if the purpose of that request is within the lawful powers of their organisations to authorise and is compliant with all other data protection requirements.

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| **Planning, implementing and evaluating population health strategy** |
| Comparing population groups, peers, national and international best practice |
| Defining and identifying relevant segments and cohorts within populations driving cost, utilisation and quality challenges including health inequality groups, preventable and existing conditions and gaps in care |
| Designing and evaluating effective risk stratification approaches |
| Identifying future population needs, spend, growth and drivers for change |
| Reviewing, evaluating and transforming current health and care service provision across and within populations |
| Understanding how health and care services impact on the health of populations |
| Understanding the impact of wider determinants of health on populations |
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| **Risk stratification for early intervention and prevention** |
| Allocating risk scores and stratifying populations for specified future adverse events causing poor health outcomes to individuals |
| Identifying individuals and groups within risk-stratified cohorts on which interventions will have the greatest impact |
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| **Managing Finances, Quality and Outcomes** |
| Managing quality of health and care services (inc. clinical audit) |
| Monitoring and evaluating effectiveness of care co-ordination processes |
| Monitoring and evaluating effectiveness of citizen-activation/empowerment processes |
| Monitoring service utilisation, pathway compliance, citizen experience and outcomes |
| Supporting budget planning, management and reporting |
| Calculating and monitoring financial allocations |
| Monitoring activity and cost compliance against contract and agreed plans |
| Comparing provider quality, demand, experience and service user outcomes against contract and agreed plans |
| Improving provider data quality |
| Comparing performance and managing variation across care professionals, services, providers, systems |
| Ensuring compliance with evidence and guidance |
| Maximising services and outcomes within financial envelopes within and across providers |
| Supporting benchmarking, comparisons, regulation and assurance at all levels of the health and care system |
| Producing regulatory compliance reports |
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| **UNDERTAKING RESEARCH** |
| Identifying and managing research cohorts |
| Generating and disseminating research reports |
| Targeting sites for research studies |
| Data-driven study planning |
| Conducting retrospective database studies |
| Combining primary and secondary data in research studies/clinical trials |
| Developing health care apps |
| Developing decision-support tools |
| Conducting time-critical surveillance research |
| Integrating additional data sources |
| Conducting commercial analytics |

# Lawful bases for processing

8.1 The Parties have a lawful basis to conduct these activities for the population they cover. This lawful basis arises from their statutory functions as Integrated Care Boards and Local Authorities (in respect of their public health and non-public health functions).

8.2 The specific powers that apply for each organisation type in relation to the purposes listed in section 7 can be found here: <https://data.england.nhs.uk/sudgt/activities>

* 1. The Parties’ lawful basis for processing for UK GDPR purposes is 6(1)(e) “…exercise of official authority…”, underpinned by these statutory powers.
  2. The Parties’ condition for processing special category data is Article 9(2)(h) “…health or social care…”. The Parties also acknowledge that the processing is consistent with the conditions of Article 9(2)(g) and Article 9(2)(j) of the UK GDPR.
  3. The Parties, following approval of a use request by the board, may share extracts of organisational patient IDs with provider organisations, for those providers to re-identify the patients that they are a service provider for, in order to support the provision of care to those individuals. The receiving organisations are the controller(s) for the extracts provided.

# Datasets to be processed

9.1 The Parties agree to share and jointly to process the datasets listed below with NHS Devon   
 approved by NHSX as the host:

9.2 pseudonymised data from provider care record systems as detailed in the national population health management programme and is supported locally by the One Devon Dataset Specification document, through a data sharing agreement with the providers involved

9.3 other pseudonymised data from health care providers such as General Practitioners that serve the population of Devon through a data sharing agreement with the general practices involved.

9.4The Parties will make arrangements for the data described in 9.2 and 9.3 to be pseudonymised by the providing organisation using an approved pseudonymisation tool as detailed in the One Devon Dataset. This will ensure that linkage between datasets can be achieved.

# Common law duty of confidentiality

10.1 The Parties agree only to process pseudonymised personal data for which they do not hold the key to enable linkage to the identities of subjects.

10.2 As a consequence of 10.1 the processing of personal data will not constitute breach of the common law duty of confidence, and no further provision is required to comply with common law requirements.

10.3 Any uses of the One Devon Dataset to provide analysis to support direct care, where the identity of individuals is to be re-established, will be done via a secure process, where only the relevant providers who are or will be providing the care can access identifiable data. The relevant providers will be controllers of the data in those extracts. Such control is outside the scope of this joint controller agreement and the relevant providers will be responsible for all controller responsibilities. Where a Local Authority is a provider of services in any direct care use of data, they will be a controller of that extract either as a sole controller or shared with other providers and such control will be outside of this joint controller agreement.

10.4 Identifiable data can be used if there is a Section 251 approval (from the National Confidentiality Advisory Group) or consent of the individuals (i.e. consented research). Such uses would be managed via the use request process and would confirm the support of S251 or consent to meet common law requirements.

# Responsibilities for instructing data processors

11.1 When instructing a processor, the Parties will enter in to a UK GDPR-compliant data processing agreement that lists all the Parties as controllers (Appendix 3).

# Accountability and demonstrating data protection compliance

12.1 The Parties will collaborate to ensure that their processing complies with Data Protection Law. This collaboration will include;

* Notification of details of respective data protection officers
* Jointly conducting data protection impact assessment (DPIA) prior to introducing new processing (Appendix 1)
* Implementation of policies and procedures to ensure the security of and controls over access to jointly processed personal data, including a use request and approval process
* Utilising the DPIA, policies, procedures and output of the use request/approval process to maintain the ‘records of processing activities’ for the One Devon Dataset and to be able to demonstrate compliance with legal requirements.
* Assurance of data processors engaged to process personal data on behalf of the Parties
* Immediate reporting of a personal data breach relating to personal data that is within the scope of this agreement to the other Parties, including any relevant organisation that has contributed data to the Dataset
* Publication of consistent online privacy information
* Assessing the quality of data submitted, linked and analysed. Where data quality issues are identified to investigate and determine remedial actions, engaging with contributing organisations as required.
* With reference to the rights of data subjects, as per article 89(2) (and DPA18 sch2, part 6, section 27), the rights of access, rectification and restriction do not apply to the processing of the pseudonymised dataset. With the inclusion of organisational patient ID in the dataset to enable organisational re-identification, the joint controllers would be able to respond to a subject access request if the subject was to provide that identity number. The right to object has more limited application than it does normally. If a data subject has grounds to object to this processing it can be overridden if the processing is necessary for a public interest task. As the data is strongly pseudonymised it does not require the application of opt-outs, so the National Data Opt Out and Type 1 GP opt outs (via the GP data extraction process) will not be applied to the One Devon Dataset. Re-identification will only be for direct care, by the provider who has the care relationship with the individual and the relevant organisational ID to perform re-identification. This is only for direct care purposes, so National Data Opt out and Type 1 opt out do not apply to such use.
* Whilst Article 26 of UK GDPR requires the essence of joint controller arrangements to be available to the data subject so that the subjects can exercise their rights, the current processing by the joint controllers means that the application of rights is limited. This will be reviewed as the dataset programme develops.

12.2 The individual Parties are responsible for;

* Recording jointly held information assets on their information asset registers, including details of data processors acting on their behalf where applicable
* Publication of online privacy information – which may link to a central notice for the collaborative
* Managing responses to subjects’ rights requests for personal data within the scope of this agreement. As noted above the pseudonymised data is not subject to this right, unless the data subject provides a means to identify themselves, however any agreed use that engages identification will make that data extract accessible to the relevant organisation(s) who will be controller of that data and have the relevant controller responsibilities.

# Invalidity

* 1. If any provision or part-provision of this agreement is or becomes invalid or illegal, it shall be deemed modified to the minimum extent necessary to make it valid and legal. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity of the rest of this agreement.
  2. If one Party gives notice to the others of the possibility that any provision or part-provision of this agreement is invalid or illegal, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal and valid, and, to the greatest extent possible, achieves the intended result of the original provision.

# Audit and specific rights

14.1 Each Party will permit the others to audit its compliance within the terms of this Agreement, on at least 14 days’ notice. A party that requests an audit under the terms of this agreement must communicate the scope in advance with each of the Parties. Each Party will provide the others with all reasonably assistance to conduct such audits.

# Liability

* 1. Nothing in this agreement is intended to limit any Party’s liability in respect of the exercise of any of its statutory functions or its obligations to comply with Data Protection Law.

# Dispute Resolution

* 1. The Parties will attempt to resolve any dispute between them in respect of this Agreement in good faith.
  2. In the event that the Parties are unable to resolve a dispute a Party may at any time serve written notice on the other parties, stating that a dispute exists and setting out the matters in dispute, and the dispute and the dispute shall then be referred to the One Devon Dataset Project Board and escalated where necessary to the Population Health Management Oversight Group, which is accountable to the ICS Partnership Board (Chief Officers and Directors from Devon Health & Social Care organisations).

# Termination and Variation

* 1. This Agreement will terminate in the event of any Party giving not less than 6 months’ notice to the other Parties
  2. Termination of this agreement shall not affect 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 the agreement which existed at or before the date of termination.
  3. No variation of this agreement will take effect unless it is in writing and signed on behalf of the Parties.

# Project governance

* 1. The One Devon Dataset Project Board is responsible for ensuring ongoing governance of the One Devon Dataset infrastructure and will be responsible for maintaining documentation such as policies, procedures and protocols concerning the project.
  2. The One Devon Dataset Project Board reports to the Population Health Management Oversight Group (PHMOG) and is responsible for the establishment of the One Devon Dataset Use Request Board that shall be operational at the point of implementation.

# Signatories

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| Signed byfor and on behalf of **[Devon County Council]**: |  |  |
|  |  | Name and Role (PRINT) |
|  |  | Signature |
|  |  | Date |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signed by for and on behalf of **[Plymouth City Council]**: |  |  | | |
|  |  | Name and Role (PRINT) | | |
|  |  | Signature | | |
|  |  | Date | | |
|  |  |  | | |
| Signed by for and on behalf of **[Torbay Council]**: | | |  |  | |
|  | | |  | Name and Role (PRINT) | |
|  | | |  | Signature | |
|  | | |  | Date | |

|  |  |  |
| --- | --- | --- |
| Signed by for and on behalf of **[NHS Devon ]**: |  |  |
|  |  | Name and Role (PRINT) |
|  |  | Signature |
|  |  | Date |

# Change Management and Version Control

This document is subject to ODD Change Management Process.

Changes should be managed and recorded in adherence with this process

**Document Reference**: 11

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| **Ver** | **Status** | **Change(s)** | **Author** | **Approved by and Date** | **Date Operational** | **Date Retired** |
| Original | Current | Original version | Clare Doble (Devon STP) | Jan 2020 | Jan 2020 |  |
| 2.0 |  | Main changes:  (i) Change model of data control for ODD  (ii) Address DPO issues regarding original version  (iii) Ensure consistency with specification and other IG documentation and new change management approach for ODD documentation  (iv) Ensure appropriate for ongoing use of ODD beyond PHM Programme with Optum  (v) Changed approach to opt-outs  **This version consistent with ODD Specification, available from the ODD Librarian or** [here](https://teams.microsoft.com/_#/files/Document%20Repository?threadId=19%3Aa8f9748087dc45dca31c29c1e63140a1%40thread.tacv2&ctx=channel&context=ODD%2520Specification&rootfolder=%252Fsites%252FOneDevonDataset%252FShared%2520Documents%252FChange%2520Management%252FODD%2520Specification) | Adam Tuckett  (SW CSU) | Project and Operations Board  03 Feb 21 | TBC |  |
| 2.1 |  | Minor refinements | Adam Tuckett |  |  |  |
| 2.2 |  | Minor refinements following consultation | Adam Tuckett |  |  |  |
| 2.3 |  | Prep for signature |  |  |  |  |
| 2.4 | DRAFT | Updated to cover re-identification | Adam Tuckett |  |  |  |
| 2.5 |  | Update following consultation | Adam Tuckett |  |  |  |
| 2.6 | Current | References to CCG removed and replaced with NHS Devon | M Spry |  |  |  |