CWHHE Clinical Commissioning Groups

Information Sharing Agreement for the Purposes of Direct Patient Care

Memorandum of Understanding

November 2013
Information Sharing Agreement

Document Version Control

Title: CWHHE Information Sharing Agreement

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Author</th>
<th>Change</th>
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<td>v0.1</td>
<td>16.10.2013</td>
<td>Linda Williamson</td>
<td>Initial draft for discussion</td>
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<td>v0.2</td>
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<td>Linda Williamson</td>
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<td>v0.3</td>
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<td>Linda Williamson</td>
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<td>v0.5</td>
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<td>Linda Williamson</td>
<td>Amendments after feedback from Alan Hassey, senior clinical advisor, HSCIC</td>
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<td>v0.6</td>
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<td>Linda Williamson</td>
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<td>05.03.2014</td>
<td>Linda Williamson</td>
<td>Amendments to Section 4, timeframes and hyperlink</td>
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<tr>
<td>V0.9</td>
<td>10.04.2014</td>
<td>Dr Laurie Slater</td>
<td>Amendments to section 9</td>
</tr>
<tr>
<td>V0.10</td>
<td>01.05.2014</td>
<td>Linda Williamson</td>
<td>Added Appendix B, endorsement from IIGOP</td>
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</tbody>
</table>

The purpose of this document
To agree a set of principles, standards and governance which will enable the partner organisations listed to share patient* records for the purposes of direct care.

Agreement timeframe
Start date: March 2014
Review date: September 2014

Note:
*the term patient includes service user. See glossary of terms, Appendix A
Table of contents

National context .......................................................................................................................... 44
Purpose and overview of this document ....................................................................................... 44
Local context ................................................................................................................................. 55
1. Overarching principles ............................................................................................................... 55
2. Key legislation and common law .............................................................................................. 66
3. Requirements placed on partners for IG and security assurance ........................................... 66
4. Governance ............................................................................................................................... 77
5. System supplier standards ........................................................................................................ 77
6. Data retention standards .......................................................................................................... 88
7. User authentication standards .................................................................................................. 88
8. Data quality standards ............................................................................................................ 88
9. Patient information & consent ................................................................................................. 88
10. Subject access ......................................................................................................................... 99
11. Freedom of Information ......................................................................................................... 99
12. Audit trail ............................................................................................................................... 99
13. Roles under the data protection act 1998 ............................................................................... 99
14. Out of scope .......................................................................................................................... 1040
Signature page ............................................................................................................................. 1141
Individual Data Sharing agreements ............................................................................................ 1747
Appendix A .................................................................................................................................. 1848
Appendix B .................................................................................................................................. 2020
NATIONAL CONTEXT
The operating model published by NHS England “Everyone counts: Planning for Patients 2013/14” and the recent announcement by the Secretary of State for a paperless NHS by 2018 both make a distinct policy move to improve access to medical records held across multiple organisations.

Integrated care and interoperability feature strongly on both the Health and Social Care Act 2010-12 and the NHS Information Strategy -The power of information. The Caldicott 2 report recognised the importance of cross agency data sharing within the NHS and Social Services. Fiona Caldicott said that “We’ve come as far as to suggest a new Caldicott principle, which is that information should be shared when that is in the patient interest”

To succeed, the national strategy must be underpinned by commitment and action within local health economies. This document outlines how this will be implemented within NHS Hammersmith & Fulham and its partner organisations.

PURPOSE AND OVERVIEW OF THIS DOCUMENT
Information sharing is a key enabler of effective services for patients particularly where a co-ordinated approach across agencies is required. The aim of this document is to provide a consistent approach to the sharing of information that will benefit patients and services whilst protecting the patient’s confidentiality.

This document outlines a two level framework. The first level states the key principles and standards that will enable partner organisations to have confidence that any data shared will be protected by robust information governance. The second level provides the detail of the mechanisms for enabling the sharing.
LOCAL CONTEXT
CWHHE Clinical Commissioning Groups Collaborative serves over 1.9 million patients in partnership with healthcare organisations, some of which are listed below.

<table>
<thead>
<tr>
<th>Partner Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CWHHE Clinical Commissioning Groups Collaborative (NHS Central London CCG, NHS</td>
</tr>
<tr>
<td>Ealing CCG, NHS Hammersmith and Fulham CCG, NHS Hounslow CCG, NHS West</td>
</tr>
<tr>
<td>London CCG) (CWHHE is the host organisation for this MOU)</td>
</tr>
<tr>
<td>Member GP Practices within the constituent CCGs of CWHHE</td>
</tr>
<tr>
<td>Ashford and St Peter’s NHS Foundation Trust</td>
</tr>
<tr>
<td>BOC Healthcare UK</td>
</tr>
<tr>
<td>Care UK</td>
</tr>
<tr>
<td>Central and North West London NHS Foundation Trust</td>
</tr>
<tr>
<td>Central London Community Healthcare NHS Trust</td>
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<tr>
<td>Chelsea &amp; Westminster Hospital NHS Foundation Trust</td>
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<tr>
<td>Ealing Hospital NHS Trust</td>
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<tr>
<td>Greenbrook Healthcare</td>
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<tr>
<td>Guy’s and St Thomas’ NHS Foundation Trust</td>
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<tr>
<td>Harnoni</td>
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<tr>
<td>Hounslow and Richmond Community Healthcare Trust</td>
</tr>
<tr>
<td>Imperial College Healthcare NHS Trust</td>
</tr>
<tr>
<td>InHealth</td>
</tr>
<tr>
<td>London Central and West Unscheduled Care Collaborative</td>
</tr>
<tr>
<td>Public Health England</td>
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<tr>
<td>The Doctors Laboratory</td>
</tr>
<tr>
<td>The Hillingdon Hospitals NHS Foundation Trust</td>
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<tr>
<td>The North West London Hospital NHS Trust</td>
</tr>
<tr>
<td>The Royal Brompton &amp; Harefield NHS Foundation Trust</td>
</tr>
<tr>
<td>The Royal Marsden NHS Foundation Trust</td>
</tr>
<tr>
<td>University College London Hospitals NHS Foundation Trust</td>
</tr>
<tr>
<td>West London Mental Health NHS Trust</td>
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<tr>
<td>West London Mental Health NHS Trust</td>
</tr>
<tr>
<td>West Middlesex University Hospital NHS Trust</td>
</tr>
</tbody>
</table>

1. OVERARCHING PRINCIPLES
1.1. The partner organisations recognise that direct patient or client care from many multi-agency services cannot be effectively delivered without the exchange of personal information and so agree to exchange, in a manner which is compliant with their legal responsibilities, personal, identifiable information about individual patients.

1.2. Information shared through this agreement may not be shared with any other organisation outside this agreement without prior consent of the relevant data controller, typically the partner organisation from which the data was first shared. The patient must be given an opportunity to make an informed decision to consent or dissent to sharing of information if such another organisation is seeking access to the patient’s medical records.

1.3. Internal organisation access to shared information must be limited to those that have a legitimate and appropriately approved need to see the data.

1.4. All partners must adhere to robust Information Governance processes and data quality standards to protect their partner organisations from exposure to risk and
ensure data is shared with confidence. This should be supported by regular audits, and an openness and accountability within the governance group.

1.5. By signing up to this document the organisation is not relinquishing any responsibilities and existing governance frameworks around Information Governance. They will continue as they have before.

2. KEY LEGISLATION AND COMMON LAW

2.1. The key legislation and guidance affecting the sharing and disclosure of personal information are

- The Data Protection Act 1998
- The Caldicott Principles
- The Human Rights Act 1998
- Freedom of Information Act 2000
- Health and Social Care Act 2012
- Mental Health Act 1983
- Children Act 2004 (“CA2004”) and the Information Sharing Index
- Mental Health Capacity Ace 2005 Code of Practice
- The Access to Health Records Act 1990
- The Crime and Disorder Act 1998
- The Criminal Procedures and Investigations Act 1996

The principles and procedures embodied in this document are based upon the rights of the individuals under the aforesaid legislation and best practice according to (but not limited to) the following pieces of key guidance:

NHS Constitution
The confidentiality NHS Code of Practice
The GMC Duties of a Doctor
The GMC Codes of Confidentiality
The common law duty of confidentiality
The NHS Care Record Guarantee for England
The Records Management NHS Code of Practice
The Information Security NHS Code of Practice
Code of Practice on Protecting the Confidentiality of Service User Information 2012
Caldicott 2 Report
HSCIC guide to confidentiality in Health and Social Care

3. REQUIREMENTS PLACED ON PARTNERS FOR IG AND SECURITY ASSURANCE

3.1. Each partner is required to keep up to date its registration with the Information Commissioner under the Data Protection Act 1998.

3.2. Each partner agrees that they will maintain independent and annual audited compliance or be working towards compliance and will provide evidence of plans and progress to Level 2 of the Information Governance Toolkit relevant to their organisations type.
3.3. Each partner will maintain and follow a documented procedure for allowing access to users and issuing passwords on a basis of a legitimate relationship underpinned by the Caldicott Principles.

3.4. Each partner will share the annual scores, plans and progress made of the independent audit of their Information Governance Toolkit with the other partner organisation.

3.5. Where a data loss or potential data loss of any data specified in the Data Handling Agreements has occurred, the responsible party will inform all other parties immediately and outcomes of their investigation.

3.6. If any partner cannot or may not be able to comply with the above requirements, the partner should inform the Governing Group immediately. The Governing Group will undertake an urgent review and may, at its discretion and when in accordance with the law authorise derogation from the above requirements subject to such conditions as it deems appropriate.

4. GOVERNANCE
The governing group will provide information governance and coordination within the memorandum of understanding and for any subsequent and specific data sharing agreements between partners signed up to the MoU. Each partner organisation will have representation on the group and the group will meet annually, at minimum. Patient representation will also be on the group through Healthwatch representation. The group shall be hosted by CWHHE and terms of reference agreed.

The group shall have the power to:
• Approve new healthcare organisations to this agreement
• Determine that an organisation should cease to be a party to this agreement for a specific period of time or permanently
• Maintain an information conduit between organisations within the data handling agreement
• Maintain a channel of liaison with pan-London personal information sharing initiatives and any NHS and local authority national initiatives
• Investigate breaches of the agreement and require the partner organisations to take remedial actions
• Monitor each partner organisations IG Toolkit self assessment, plans and progress in reaching Level 2 compliance
• Approve the common patient communication materials

5. SYSTEM SUPPLIER STANDARDS
System suppliers should operate on the NHS N3 network and have ITK accreditation where appropriate, thus assuring their system specifications and standards meet the agreed interoperability standards for the NHS. Any non-compliance must be explained, documented and agreed by the governing group. Click here to view information on ITK Compliance: http://systems.hscic.gov.uk/interop/background/itk
6. DATA RETENTION STANDARDS
Data that is shared by partner organisations under this agreement should be retained in accordance with the Records Management: NHS Code of Practice.

7. USER AUTHENTICATION STANDARDS
All partner organisations systems under this agreement must use smartcards or two factor authentication which authenticate with the NHS spine and use role-based access controls.

8. DATA QUALITY STANDARDS
Each partner organisation is responsible for ensuring the accuracy of the data for which it is the Data Controller and which is shared under this agreement. Partner organisation should have processes in place for managing any inaccurate data they receive.

The use of the NHS number is mandatory in order to have a unique patient identifier. Where possible, systems under this agreement should connect to the Personal Demographic Service to ensure the NHS numbers are accurate and demographic data synchronised at the point of registration of the patient.

9. PATIENT INFORMATION & CONSENT
Patients determine whether their information should be shared with other organisations.

Partner organisations should make patients aware that they have the right to opt out of sharing their record. In some cases patients may be able to agree that their record is shared but mark some part of their record as private. Note: not all organisations will have the ability to mark parts of a record as private.

Patients should be made aware of any benefits or disadvantages of sharing their data in a balanced way, to support them in making an informed decision about the consent to share their medical record between organisations providing services for and within the NHS.

Organisations have a variety of channels to communicate to their patients regarding data sharing, including at patient registration, referrals into other services and using patient involvement groups. Leaflets/posters regarding data sharing would be made available to patients at point of care. The information should make clear the differences between different data sharing initiatives.

Organisations only have authority to seek consent on behalf of their own organisation. Consent must be recorded but can be obtained verbally or in writing.

Clinicians should use their professional judgement regarding the best process for managing patients with limited capacity to give their consent. More information can be found in the Mental Capacity Act Code of Practice

*For General Practice only.* Member practices if or when they have the facility to do so, may exercise as a default status their authority of implied consent for sharing and receiving patient information to and from those organisations that are providing direct medical care for their registered patients. Where the opportunity arises (such as during consultation or at registration) practices will seek and record (either verbal or written) explicit consent from the patient or an individual with the authority to act on behalf of the patient on this matter. Obtaining explicit consent opportunistically remains good practice and is recommended as a
maintenance process but its absence should not be an obstacle to enabling the flow of information from or to the GP practice.

For all other organisations providing direct care for the patient. They may exercise as a default status an implied consent to make available patient information recorded in their own organisation to the wider medical record as used by those organisations that are providing direct medical care for their registered patients. However, these organisations should as a matter of routine seek and record explicit consent (either verbal or written) from the patient to access their wider medical records at the time of first registration and at each subsequent interaction where access to the wider medical record is required. Access to the wider medical record of the patient (containing information from a breadth of organisations caring for the patient) may only be obtained after the express explicit consent of the patient. Alternatively, when that is not possible then from an individual with the authority to act on behalf of the patient or where that also is not possible, and based on sound professional judgement that access to the wider record will contribute towards providing high quality care for the patient the care provider can act on behalf of the patient in compliance with organisational policies.

Obtaining meaningful consent is a dynamic undertaking, not simply a tick box exercise and patients may choose to reconsider their decision at any time. In areas of potential sensitivity, even where a patient may have already agreed to share their record, clinicians should discuss consent and make patients aware of their ability to withhold the whole record or a specific piece of information when this facility is available.

10. SUBJECT ACCESS
The Data Protection Act 1998 states that a person may request and have copies of any personal information held about them by any organisation. As part of the IG Toolkit accreditation each partner organisation must have a designated Data Protection Officer or Information Governance Manager who will be responsible for subject access requests.

Access requests from third parties (e.g. police forces) for data available to organisations under this agreement are to be directed to the relevant data controller organisation.

11. FREEDOM OF INFORMATION
Partner organisations that are a public authority are subject to the Freedom of Information Act 2000 and are required to respond to requests from the public within 20 days of a request. Any Freedom of information requests relating to this agreement should be immediately forwarded to the relevant designated officer for processing.

12. AUDIT TRAIL
All partner organisation system audit trails must include the information below. Data breaches will be reported to the Governing Group; however remedial action should be taken immediately by the relevant organisations...

- Job role and name of staff member accessing the system
- Organisation name
- What actions were performed
- The date and time the information was viewed

13. ROLES UNDER THE DATA PROTECTION ACT 1998
Data Controller & Data Controller In-Common
All partner organisations are party to the agreement as a data controller and where appropriate as data controller in common. Each partner organisation must be registered as a data controller in their own right, and have assured itself of its own compliance with relevant legislation.

14. OUT OF SCOPE
This agreement covers the use of data for the purposes of direct patient care. It excludes data being shared for secondary purposes for example commissioning and invoice validation.
<table>
<thead>
<tr>
<th>Organization</th>
<th>Signature</th>
<th>Signed by Caldicott Guardian</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central and North West London NHS Foundation Trust</td>
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<tr>
<td>Imperial College Healthcare NHS Trust</td>
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<tr>
<td>Chelsea &amp; Westminster Hospital NHS Foundation Trust</td>
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<tr>
<td>The Royal Marsden NHS Foundation Trust</td>
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<tr>
<td>Central London Community Healthcare NHS Trust</td>
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<td></td>
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</tr>
<tr>
<td>London Central West Unscheduled Care Collaborative</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>West London Mental Health NHS Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
NHS Hammersmith & Fulham CCG
GP Practices

Park Medical Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Richford Gate Medical Practice
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Bush Doctors
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

The New Surgery
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Brook Green Medical Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Brook Green Surgery

Information Sharing Agreement Document: November 2013
v0.10
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Hammersmith Surgery
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Lillie Road Health Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Munster Road
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Lilyville Surgery
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Sands End
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Old Oak Surgery
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________
Salisbury Surgery
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Shepherds Bush Medical Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

The Fulham Centre For Health
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Lillie Road
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Sterndale
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

North End Medical Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Ashchurch
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________
Medical Centre - Ollgar Close
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Greenbrook Heston
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Bridge House
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Cassidy Road Medical Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Ashville Surgery
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Fulham Medical Centre
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

White City Health Centre – Uppal
Signature: ______________________________________________
Signed by Caldicott Guardian
Date_____________________

Information Sharing Agreement Document: November 2013
v0.10
Westway Surgery

Signature: ____________________________________________
Signed by Caldicott Guardian
Date______________________

White City Health Centre – Dandapat

Signature: ____________________________________________
Signed by Caldicott Guardian
Date______________________

White City Health Centre – Kukar

Signature: ____________________________________________
Signed by Caldicott Guardian
Date______________________

Fulham Cross Medical Centre

Signature: ____________________________________________
Signed by Caldicott Guardian
Date______________________

Palace Road Surgery

Signature: ____________________________________________
Signed by Caldicott Guardian
Date______________________

Canberra Centre For Health

Signature: ____________________________________________
Signed by Caldicott Guardian
Date______________________

This agreement is valid until October 2014
This agreement may be extended by further signing of all parties.

Please return this agreement to: Farid Fouladinejad, Head of IT Strategy, Address TBC
INDIVIDUAL DATA SHARING AGREEMENTS
The register below records where individual data sharing agreements between partner organisations are still required.

<table>
<thead>
<tr>
<th>Project/Initiative</th>
<th>DHA Ref</th>
<th>Data Sets</th>
<th>Partner organisations involved</th>
<th>System suppliers</th>
<th>Frequency</th>
<th>Principle reason for sharing</th>
<th>Copy of signed DHA</th>
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<tbody>
<tr>
<td>Urgent Care/MIG integration pilot</td>
<td>DHA1</td>
<td>GP record</td>
<td>GP Practices, LCW</td>
<td>TPP, EMIS, INPS,</td>
<td>Real-time</td>
<td>Shared record for patient</td>
<td>See attached</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Advance, Healthcare Gateway</td>
<td></td>
<td></td>
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</tbody>
</table>
## Glossary of terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit trail</td>
<td>An audit trail (or audit log) is a record of everyone who has looked at or changed a record, why and when they did so and what changes were made</td>
</tr>
<tr>
<td>Caldicott Guardian</td>
<td>A senior person responsible for protecting the confidentiality of patient and service users information and enabling appropriate information sharing by providing advice to professionals and staff</td>
</tr>
<tr>
<td>Consent</td>
<td>Definition of consent – consent is the approval or agreement for something to happen after consideration. For consent to be legal valid, the individual must be informed, must have the capacity to make the decision in question and must give consent voluntarily. This means the individual should know and understand how their information is to be used and shared (there should be ‘no surprises’) and they should understand the implications of their decision, particularly where refusing to allow information to be shared is likely to affect the care they receive. This applies to both explicit consent and implied consent.</td>
</tr>
<tr>
<td>Explicit Consent</td>
<td>Explicit consent is unmistakable. It can be given in writing or verbally, or conveyed through another form of communication such as signing. A patient may have capacity to give consent, but may not be able to write or speak. Explicit consent is required when sharing information with staff that are not part of the team caring for the individual. It may also be required for a use other than for which the information was originally collected, or when sharing is not related to an individual’s direct health and social care.</td>
</tr>
<tr>
<td>Implied Consent</td>
<td>Implied consent is applicable only within the context of direct care of individuals. It refers to instances where the consent of an individual patient can be implied without having to make any positive action, such as giving their verbal agreement for a specific aspect of sharing information to proceed. Examples of the use of implied consent includes doctors and nurses sharing personal confidential data during handovers without asking for the patients consent. Alternatively, a physiotherapist may access the record of a patient who has already accepted a referral before a face-to-face consultation on the basis of implied consent.</td>
</tr>
<tr>
<td>Data</td>
<td>Qualitative or quantitative statements or numbers that are (or assumed to be) factual. Data maybe raw or primary data (e.g. direct from measurement) or derivative of primary data, but are not yet the product of analysis or interpretation other than calculation</td>
</tr>
<tr>
<td>Data breach</td>
<td>Any failure to meet the requirements of the Data Protection Act, unlawful disclosure or misuse of personal confidential data and an inappropriate invasion of peoples privacy</td>
</tr>
</tbody>
</table>

Information Sharing Agreement Document: November 2013
v0.10
| **Data controller** | A person (individual or organisation) who determines the purposes for which and the manner in which any personal confidential data are or will be processed. Data controllers must ensure that any processing of personal data for which they are responsible complies with the Data Protection Act.  
- Data controllers in common agree to pool data and are both responsible for how it is used but each may process the data independently for its own purposes. All of the data controllers in common are still responsible for ensuring it is adequately protected. |
| **Direct care** | A clinical, or social or public health activity concerned with the prevention, investigation and treatment of illness and the alleviation of suffering of individuals. |
| **Information governance** | How organisations manage the way information and data are handled within the health and social care system in England. It covers the collection, use, access and decommissioning as well as requirements and standards organisations and their suppliers need to achieve to fulfil the obligations that information is handled legally, securely, efficiently, effectively and in a manner which maintains public trust. |
| **Legitimate relationship** | The legal relationship that exists between an individual and the health and social care professionals and staff providing or supporting their care. |
| **Patient records** | Patient records (or care records) are personal records. They comprise of documentary and other records concerning an individuals (living or dead) who can be identified from them and relates to  
- To the individual physical or mental health  
- To spiritual counselling or assistance given or to be given to the individual; or  
- To counselling or assistance given or to be given to the individual, for the purposes of their personal welfare, by any voluntary organisation or by any individual who:  
  - By reasons or the individuals office or occupation has responsibilities for their personal welfare or  
  - By order of a court has a responsibility for the individuals’ supervisions. This record may be held electronically or in a paper file or a combination of both. |
| **Primary care** | Primary care refers to services provided by GP practices, dental practices, community pharmacies and high street optometrists. |
| **Service user** | Any person receiving health or social care. |
| **Third party** | In relation to personal data, any person other than the subject of the data, the data controller, or a data processor. |
APPENDIX B

Attached is the endorsement of this memorandum of understanding from IIGOP, Independent Information Governance Oversight Panel, chaired by Dame Fiona Caldicott.

Endorsement from Dame Fiona Caldicott of section 9.pdf