

## **Data Sharing with Local Authority Public Health Teams**

**22 June 2020**

### **1. Agreed Terms / Interpretation**

“Covid-19 Purposes”: The purposes for processing confidential patient information as specified in the ‘Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002’ from the Secretary of State for Health and Social Care to Local Authorities in England dated 20 March 2020.

### **2. Objectives for Processing**

The Data shall be processed for the purpose of delivering services to patients, clinicians, the health services and adult social care services workforce and the public about and in connection with Covid-19, including the provision of information, fit notes and the provision of health care and adult social care services. Specifically, this will enable:

- a) understanding Covid-19 and risks to public health, trends in Covid-19 and such risks, and controlling and preventing the spread of Covid-19 and such risks;
- b) identifying and understanding information about patients with Covid-19 and collecting information about services in relation to testing for Covid-19;
- c) monitoring and managing the response to Covid-19 by health and social care bodies in relation to testing for Covid-19;
- d) research and planning in relation to testing for Covid-19.

### **3. Termination Date**

30 September 2020 or until such time as the ‘Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002’ from the Secretary of State for Health and Social Care to Local Authorities in England dated 20 March 2020 is extended.

### **4. Legal Gateway (common law duty)**

Regulation 3 of the Health Service (Control of Patient Information) Regulations 2002 in accordance with the ‘Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002’ from the Secretary of State for Health and Social Care to Local Authorities in England dated 20 March 2020.

### **5. Lawfulness of Processing (GDPR)**

All processing must be carried out in accordance with the Data Protection Act 2018, GDPR and any associated codes of practice issued by the ICO.

More particularly, the legal bases for any processing are:

Article 6.1.(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; and

Article 9.2.(i) – processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or

ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy.

## 6. Obligations on Local Authority

For the processing of personal data and special category personal data (as detailed in Schedule 1) the Local Authority must comply with GDPR and PHE must be assured that the transfer of data is both lawful and legitimate. In short, each Local Authority that received personal data and special category personal data from PHE must demonstrate the following:

1. in line with Articles 13 and 14 of GDPR, the Local Authority must ensure that their privacy notices are clear and provide sufficient information to the data subjects for them to understand what of their Personal Data is shared, details the rights of the data subject, the circumstances in which it was shared, the purposes for the data sharing and the identity of the Controller;
2. in line with Chapter 3 of GDPR, the Local Authority must have policies and procedures in place to comply with the rights of the data subject including but not limited to the rights of access, rectification and profiling;
3. in line with Article 5(1)(f) of GDPR, the Local Authority must ensure appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures; and
4. in line with Article 24 of GDPR, the Local Authority must ensure that they have implemented appropriate data protection policies across the organisation

### Schedule 1: Detailed Data Specification (personal data)

Field name	Description
Record ID	Unique record identifier
Sex	Patient sex
Age	Patient age in years
Postcode	Patient place of residence postcode
Ethnic Group	Patient ethnic group (not initially included, pending a quality / completion review?)
Occupation	Patient occupational group
Key Worker	Patient key worker status
Test Date	Date of Covid-19 test or specimen test
Pillar	Covid-19 test location type (laboratory, mobile testing station, home test)



Protecting and improving the nation's health

# Public Health England - COVID-19 Testing Rapid Data Sharing Contract

## Part 1: Front Sheet

<b>Reference:</b>	PHE COVID-19
<b>Title:</b>	Leicester City Council – Covid-19

### Parties

This Contract is made between:

**Public Health England (“PHE”), an Executive Agency of the Department of Health and Social Care, of Wellington House, 133-155 Waterloo Road, London SE1 8UG, United Kingdom;**

And;

The party whose details are set out below (“**Data Recipient**”):

<b>Name:</b>	Ivan Browne on behalf of:
<b>Organisation or Company (including company number if relevant):</b>	Leicester City Council
<b>Department/position</b>	Director of Public Health and Sports Services
<b>Address:</b>	Leicester City Council, City Hall, 115 Charles Street, Leicester, LE1 1FZ

### Term of this Contract

This Contract shall commence on the Start Date specified in the table below and shall continue, unless terminated earlier in accordance with the terms of this Contract (Clause 13) until the End Date in the table below.

<b>Start Date</b>	24 <sup>th</sup> June 2020	<b>End Date</b>	On expiry of the Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002 (currently 30 <sup>th</sup> September 2020)
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**Status of this Contract**

This Data Sharing Contract (**Contract**) comprises this Part 1 (Front Sheet), Part 2 (Terms and Conditions) and Part 3 (Purpose) – including Objectives for Processing, Special Conditions, and the Schedules. It sets out the terms on which PHE agrees to share the Data with the Data Recipient.

This Contract sets out the legally binding terms and conditions that will apply to each and every occasion PHE agrees to share data with the Data Recipient for the Purpose. It addresses any residual privacy risks and documents the actions taken to identify, address and mitigate those risks wherever possible.

This Contract specifically:

- clarifies the responsibilities and commitments of the parties in relation to the Data, including any specific terms that will apply to the Processing of the Data;
- imposes confidentiality requirements on the Data Recipient;
- outlines the data security principles and requirements with which the Data Recipient must comply;
- sets out the audit rights of PHE; and
- stipulates arrangements for termination of this Contract and deletion of the Data.

**By signing this Part 1, the parties agree to be bound by the terms of this Contract.**

<b>Signed for and on behalf of the Data Recipient:</b>	
<b>Organisation Name:</b>	Leicester City Council
<b>Signature:</b>	
<b>Name:</b>	Ivan Browne
<b>Position in organisation:</b>	Director of Public Health and Sports Services
<b>Date:</b>	24 June 2020

<b>Signed for and on behalf of the Public Health England:</b>	
<b>Name:</b>	Dr Sue Ibbotson
<b>Signature:</b>	
<b>Role:</b>	PHE Regional Director for the Midlands, and NHS Regional Director of Public Health
<b>Date:</b>	24.6.20



**Part 2: Terms and Conditions****1 Interpretation**

- 1.1. Capitalised words and expressions used in this Contract shall bear the meanings given to them in Schedule 1. The rules of interpretation set out in Schedule 1 shall apply to this Contract.

**2 PHE Responsibilities**

- 2.1 PHE will transfer the Data to the Data Recipient (or, if specified, the Data Processor authorised by PHE) using the data transfer method as set out in Part 3 of this Contract.

**3 Licence and Intellectual Property**

- 3.1 PHE shall share the Data with the Data Recipient and the Data Recipient agrees to only Process the shared Data in the Territory for the duration of the Term of this Contract, solely for the Purpose and only in accordance with the terms and conditions of this Contract.
- 3.2 In the event that the Data Recipient wishes to share the shared Data with a third party by, or for the purposes of, subcontracting the processing of shared Data and/or granting a third party Controller access to the shared Data, the Data Recipient shall ensure that:
- 3.2.1 any such sharing occurs pursuant to a written agreement between the Data Recipient and third party ("**Third Party Agreement**"); and
  - 3.2.2 each Third part Agreement complies with the requirements of article 28(3) of the GDPR and contains provisions which are substantially the same as the terms set out in this Contract; and
- 3.3 Each Third Party Agreement must specifically;
- 3.3.1 not contain any provision which enables the third party to share the Data with another third party;
  - 3.3.2 contain third party rights to permit and enable PHE to have direct rights to audit and to exercise remediation rights  
ensure that Third Party Agreement automatically terminates on termination or expiry of the Contract; and
  - 3.3.3 permit notification of such Third Party Agreement to PHE (by reporting in a form and frequency to be determined by PHE from time to time), and provisions permitting PHE to publish details of such Third Party Agreement.
- 3.4 The Data Recipient acknowledges and shall ensure, in respect of any Third Party Agreement that PHE may require the Data Recipient to provide a copy of any such Third Party Agreement at any time.
- 3.5 If PHE becomes aware that any such Third Party Agreement does not comply with requirements under Article 28(3) of the GPDR and/or other mandatory or statutory terms stipulated in this Contract this may constitute a material breach of this Contract.
- 3.6 If PHE becomes aware of a breach of any of the terms of any such Third Party Agreement by the Data Recipient or the third party this may constitute a material breach of this Contract.

- 3.7 Notwithstanding any provisions of this Contract, the Data Recipient shall remain liable to PHE for the acts and omissions of a third party.
- 3.8 Nothing in this Contract shall affect the ownership of any intellectual property rights or know-how exclusively owned by a party or existing prior to this Contract. No right or license under any intellectual property owned by PHE or the Data Recipient is granted or implied under this Contract.
- 3.9 The Data Recipient must acknowledge the contribution of PHE in any such publication resulting from the Data shared in this Contract (as defined in Part 3 of this Contract).

#### **4 Data Recipient Responsibilities**

- 4.1 Where the Data Recipient obtains Data from PHE:
- 4.1.1 if the Data constitutes Personal Data, the Data Recipient shall hold the Data as an independent Data Controller, unless otherwise specified in this Contract; or
  - 4.1.2 if the Data constitutes Non-Identifiable Data, but then the Data becomes Personal Data in the hands of the Data Recipient, the Data Recipient shall be an independent Data Controller.
- 4.2 The Data Recipient agrees to Process the Data only for the purposes agreed with the PHE in Part 3 of this Contract.
- 4.3 The Data Recipient shall comply at all times with:
- 4.3.1 terms of this Contract, including any Special Conditions contained in this Contract;
  - 4.3.2 the Data Security Requirements set out in Schedule 2; and
  - 4.3.3 the Data Protection Legislation (to the extent that the Data includes Personal Data or becomes Personal Data in the hands of the Data Recipient), the common law duty of confidentiality and all other Applicable Laws and Department of Health and Social Care directives covering issues of data sharing, including but not limited to those listed in Schedule 3.
- 4.4 The Data Recipient shall not contact any individual that could be identified from the Data, except where:
- 4.4.1 such contact is expressly permitted as part of the Purpose and confirmed in the Special Conditions of this Contract; and either:
    - (a) the individual concerned has already consented in writing to such contact; or
    - (b) there is legal authority for the Data to be used to contact the individual concerned without such consent.
- 4.5 The Data Recipient shall ensure that all staff, prior to Processing Data, are made fully aware of, and comply with, the terms and conditions set out in this Contract.
- 4.6 The Data Recipient shall notify any Data Breach to PHE within 24 hours of the Data Recipient discovering any potential or actual Data Breach and:
- 4.6.1 where the Data Recipient is obliged to complete the Data Security and Protection Toolkit, the Data Recipient shall assess whether a Serious

Incident Requiring Investigation (as defined in the Data Security and Protection Toolkit) report needs to be made; or

- 4.6.2 where the Data Recipient is not obliged to comply with the Data Security and Protection Toolkit, the Data Recipient shall assess whether to notify the Information Commissioner's Office of the Data Breach, in accordance with the Information Commissioner's guidance on breach notification.
  - 4.6.3 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Breach in an expeditious and compliant manner.
- 4.7 Subject to clause 4.6 such notification to PHE shall as a minimum:
- 4.7.1 describe the nature of the Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Data records concerned;
  - 4.7.2 communicate the name and contact details of Data Recipient's data protection officer or other relevant contact from whom more information may be obtained;
  - 4.7.3 describe the likely consequences of the Data Breach; and
  - 4.7.4 describe the measures taken or proposed to be taken to address the Data Breach.
- 4.8 Where required under Data Protection Legislation, the Data Recipient shall cooperate with PHE to inform the Data Subjects of any Data Breach.
- 4.9 The Data Recipient shall immediately notify PHE if it no longer has a legal basis on which to Process the Data.
- 4.10 Unless specified in the Purpose or otherwise authorised explicitly by PHE in writing, the Data Recipient must not combine the Data with any other data held by the Data Recipient and must not use or manipulate the Data in any way that re-identifies any individual from the Data.
- 4.11 If the Data Recipient is obliged to respond to requests under the Freedom of Information Act 2000 (FOIA) and a request is received regarding the Data, the Data Recipient must consult with PHE prior to any release of the Data.
- 4.12 The Data Recipient shall ensure that any data Processing involving Data provided by PHE must have regard for the Code of Practice on confidential information. This Contract will require the Data Recipient to have regard to the Code
- 4.12.1 Code of Practice on Confidential Information: <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/code-of-practice-on-confidential-information>
- 4.13 The Data Recipient shall ensure that any publication derived from the Data by any party complies with the following guidance (as may be updated or superseded from time to time):
- 4.13.1 Anonymisation Standard for Publishing Health and Social Care Data: <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and->

[collections/isb1523-anonymisation-standard-for-publishing-health-and-social-care-data](#);

- 4.13.2 Anonymisation: managing data protection risk code of practice (“the ICO Anonymisation Code”): <https://ico.org.uk/media/1061/anonymisation-code.pdf>.
- 4.14 Before undertaking any publishing activity using the Data or any derived information, the Data Recipient must undertake an organisational risk assessment exercise to ensure compliance with the terms of this Contract. The Data Recipient must conduct the risk assessment in accordance with the standards set out in the Anonymisation Standard for Publishing Health and Social Care Data.
- 4.15 Without prejudice to its rights under Clause 12 of this Contract, PHE shall be entitled to suspend the supply or use of Data to the Data Recipient under this Contract without incurring any liability to the Data Recipient if, in the reasonable opinion of PHE, the Data Recipient may be in material breach of any of its obligations under this Contract.

## **5 Data protection**

- 5.1 Each party shall ensure that it complies with and shall not breach the provisions of the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), the provisions of Schedule 3, and any other obligations which arise in connection with this Contract.
- 5.2 Notwithstanding the general obligation in clause 5.1, to the extent that any of the Data constitutes Personal Data, the Data Recipient shall Process the Data at all times:
- 5.2.1 as an independent Data Controller in its own right;
- 5.2.2 in accordance with the Data Protection Legislation; and
- 5.2.3 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Data, and to guard against unauthorised or unlawful Processing and/or against accidental loss or destruction of, or damage to, the Data).
- 5.3 Where the Data includes Personal Data, the Data Recipient shall:
- 5.3.1 store and Process the Data securely, and permanently destroy/delete or erase it when it is no longer needed for the Purpose;
- 5.3.2 maintain good information governance standards and practices, meeting or exceeding the Data Security and Protection Toolkit standards required of its organisation type;
- 5.3.3 take reasonable steps to ensure the reliability of each of its Personnel who have access to the Data;
- 5.3.4 inform PHE immediately if it receives any communication from the Information Commissioner's Office which relates to the Data; and
- 5.3.5 ensure access to the Data is managed, auditable and restricted to those needing to Process the Data.
- 5.4 The Data Recipient shall not transfer the Data to another Territory outside the European Economic Area except with the express prior written consent of PHE and only in circumstances when such transfer is permitted under, and complies with the

requirements of the Applicable Laws.

- 5.5 Where express written permission has been granted further to clause 5.4 the Data Recipient shall not disclose or transfer the Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Data.
- 5.6 Where applicable under Data Protection Legislation, both Parties shall, in respect of the Data, ensure that their privacy notices are clear and provide sufficient information to Data Subject to aid understanding of the circumstances in which the Data will be shared and the purpose(s) for data sharing.
- 5.7 In the event of any change to Applicable Laws or regulations subsequent to the date of signature of this Contract, the Data Recipient shall take such steps (including, agreeing to additional obligations and/or executing additional documents) as may be requested by PHE to ensure that the transfer to the Data Recipient, and the Processing by the Data Recipient, of the Personal Data complies with such Applicable Laws.

## **6 Confidentiality**

- 6.1 The Data Recipient shall be responsible for any unauthorised disclosure or use of the Data made by any of its Personnel and shall take all reasonable precautions to prevent such unauthorised disclosure or use.
- 6.2 The confidentiality obligations contained in this Clause 6 shall continue indefinitely following termination or expiry of this Contract.

## **7 Audit and specific rights**

- 7.1 PHE (or their appointed auditors) shall be entitled at any time during the term of this Contract to audit the Data Recipient's use of the Data should PHE have any concerns that the terms of this Contract are not being adhered to.
- 7.2 The Data Recipient shall provide such information as PHE reasonably requests in order to verify its compliance with the terms of this Contract.

## **8 Data Release Register**

- 8.1 On release of the Data, PHE shall be entitled to publish details of Data Recipient's use of the Data in the PHE Data Release Register.

## **9 Warranties**

- 9.1 The Data Recipient warrants that:
- 9.1.1 it has the full right and authority to enter into this Contract;
  - 9.1.2 it shall use the Data in accordance with all Applicable Laws.

## **10 Liability**

- 10.1 Neither party excludes or limits liability to the other party for:
- 10.1.1 death or personal injury resulting from the negligence;
  - 10.1.2 fraud or fraudulent misrepresentation; or
  - 10.1.3 any other liability that cannot be excluded or limited as a matter of law.
- 10.2 Nothing within the Contract relieves either Party of their own direct responsibilities and liabilities under the Data Protection Act 2018 and the GDPR.

- 10.3 Subject to clause 10.1, PHE shall not be liable to the Data Recipient for any and all claims arising under or in connection with this Contract regardless of form of action and whether in contract, tort (including negligence and breach of statutory duty).
- 10.4 Other than any warranties expressly set out in this Contract, all warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded except to the extent the exclusion is prohibited by law.

## **11 Indemnity**

- 11.1 The Data Recipient shall indemnify PHE in full for any liabilities, losses, demands, claims, damages, amounts agreed in settlement, costs and expenses incurred which arise from or in connection with:
- 11.1.1 any loss of the Data by the Data Recipient;
  - 11.1.2 unauthorised or unlawful use of the Data beyond the Purpose by the Data Recipient;
  - 11.1.3 any breach of this Contract by the Data Recipient, whether arising in negligence, contract or otherwise; and
  - 11.1.4 any monetary penalty notice imposed on PHE by the Information Commissioner under Data Protection Law as a result of the Data Recipient's breach of this Contract.

## **12 Term and termination**

- 12.1 This Contract shall, subject to prior termination in accordance with this Clause 12, continue for the period set out in Part 1.
- 12.2 If the Data Recipient wishes to retain the Data beyond the expiration date of this Contract, it must have submitted an application to PHE not less than one month prior to the End Date to seek an extension to this Contract. Under no circumstances shall the Data Recipient retain the Data without an extant Contract in place which relates to that Data.
- 12.3 PHE may terminate this Contract by giving to the Data Recipient not less than one month's prior written notice.
- 12.4 On or at any time after the occurrence of an event specified in Clause 12.5, PHE shall be entitled to terminate this Contract with immediate effect by written notice to the Data Recipient.
- 12.5 PHE may terminate this Contract if:
- 12.5.1 the Data Recipient is in material breach of this Contract and that breach cannot be remedied;
  - 12.5.2 the Data Recipient is in material breach of this Contract which can be remedied but the Data Recipient fails to do so within 30 days starting on the day after receipt of written notice from PHE;
  - 12.5.3 in respect of Personal Data, the Data Recipient no longer has the legal basis to Process this Data;
  - 12.5.4 the Data Recipient stops payment of its debts or is unable to pay its debts as they fall due;
  - 12.5.5 the Data Recipient is dissolved;
  - 12.5.6 the Data Recipient becomes or is declared insolvent or a resolution is

passed for the winding up of the Data Recipient, or the Data Recipient convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or a liquidator, an administrative receiver, a receiver, manager, trustee or administrator or analogous officer is appointed in respect of all or any part of its property, undertaking or assets, or the Data Recipient becomes subject to any bankruptcy procedure or analogous insolvency procedure in any jurisdiction, or any person files a notice of intention to appoint an administrator or a notice of appointment of an administrator or applies to court for an administration order in respect of the Data Recipient;

- 12.5.7 it becomes unlawful for the Data Recipient to perform all or any of its obligations under this Contract;
  - 12.5.8 there is a change in Applicable Law which materially affects PHE's powers to provide Data to the Data Recipient; or
  - 12.5.9 the Data Recipient (being a natural person) shall die or become mentally incapacitated.
- 12.6 Without prejudice to PHE's rights under Clauses 12.3 and 12.4, where the Data Recipient either (i) commits any breach of this Contract, or (ii) an event specified in Clause 12.5 occurs, PHE shall be entitled to suspend this Contract without incurring any liability to the Data Recipient, with immediate effect by written notice to the Data Recipient.
- 12.7 The Data Recipient may terminate this Contract at any time by notifying PHE in writing.

### **13 Consequences of termination**

- 13.1 On or before the effective date of termination or End Date of this Contract, the Data Recipient must ensure that all Data provided under this Contract is securely and permanently destroyed or erased such that it cannot be recovered or reconstructed, together with all hard or soft copies of the manipulated or derived data generated from the Data that does not comply with the requirements for anonymisation described in the Anonymisation Standard for Publishing Health and Social Care Data;
- 13.2 Certify to PHE that such destruction or erasure has been adequately completed in the form of a Certificate of Destruction within ten (10) working days of the date of termination or End Date of this Contract.
- 13.3 Any provision of this Contract that expressly or by implication is intended come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.

### **14 Assignment**

- 14.1 The Data Recipient shall not assign, novate, transfer, charge, dispose of or deal in any other manner with this Contract, or any of its rights or beneficial interests under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Contract, without the prior written consent of PHE.
- 14.2 PHE may assign, transfer, charge, dispose of or deal in any manner with its rights and obligations under this Contract. Where it does so, PHE shall notify the Data Recipient of such change.

**15 Notices**

- 15.1 Except where any provision of this Contract states otherwise, all notices and communications sent pursuant to this Contract shall be in writing and shall be deemed to have been duly given:
- 15.1.1 when delivered, if delivered by hand;
  - 15.1.2 if sent by email, when the sender receives a reply email confirming delivery; or
  - 15.1.3 on the second working day after mailing, first class postage pre-paid.
- 15.2 Notices shall be addressed to the addresses provided in Part 1 of this Contract or to such other address as the parties may notify in writing from time to time. Each party shall notify the other party in accordance with this Clause 15 if the address specified in Part 1 of this Contract is no longer an appropriate address for the service of notices and communications.

**16 Miscellaneous**

- 16.1 Nothing in this Contract or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party.
- 16.2 No amendment or variation of the terms of this Contract shall be effective unless agreed in writing by duly authorised representatives of the parties to this Contract. Any such amendment shall specify all relevant consequential changes to this Contract.
- 16.3 If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Contract which shall remain in full force and effect to the extent permitted by law.
- 16.4 The rights and remedies provided by this Contract are cumulative and (unless otherwise provided in this Contract) are not exclusive of any rights or remedies provided by law.
- 16.5 The Parties shall attempt to resolve any dispute arising from this Contract informally and promptly by officers who have day-to-day responsibility for the operation of this Contract. If the dispute cannot be resolved within 60 days of it arising, the matter shall be referred to the Chief Executive (or the corresponding individuals) of the Parties.
- 16.6 This Contract does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it (except that a person who is a permitted successor to or assignee of the rights of a party to this Contract shall be deemed to be a party to this Contract).
- 16.7 PHE shall not be liable to the Data Recipient for any delays in performance, non-performance or breach of any of its obligations under this Contract caused by matters beyond its reasonable control. Such matters shall include (without limitation) industrial disputes, acts of God, insurrection or civil disorder, war or military operations, national or local emergency, epidemics or pandemics, acts of government or acts or omissions of third parties.
- 16.8 PHE shall be entitled to publish the terms of this Contract and the results of any audit of the Data Recipient's compliance with the terms of this Contract.

**17 Governing law and jurisdiction**

- 17.1 This Contract and any dispute or claim arising out of or in connection with it or its

subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

- 17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this Contract, its subject matter or formation.

**18 Entire agreement**

- 18.1 This Contract constitutes the entire agreement and understanding of the parties, and supersedes any previous agreement(s) between the parties relating to the Data but without prejudice to the rights and liabilities of the parties accrued before the date of this Contract.
- 18.2 Nothing in this Clause 18 shall operate to limit or exclude any liability for fraud.

**Part 3: Purpose**

**19 Objectives for Processing**

- 19.1 The Data Recipient agrees to process the Data only for the purposes agreed with PHE.

<b>Processing Activities:</b>
<p>The confidential patient information of Data Subjects who test positive for COVID-19 is provided to Local Authority Public Health Teams to fulfil their responsibilities to take action to manage and mitigate the spread and impact of the current outbreak of Covid-19. These responsibilities are as set out in the 'Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002' dated 20 March 2020 from the Department of Health and Social Care on behalf of the Secretary of State for Health and Social Care.</p> <p>The Data shall be processed for the following Covid-19 Purposes specified in the Regulation 3(4) Notice:</p> <ul style="list-style-type: none"> <li>a) understanding Covid-19 and risks to public health, trends in Covid-19 and such risks, and controlling and preventing the spread of Covid-19 and such risks;</li> <li>b) identifying and understanding information about patients or potential patients with or at risk of Covid-19, information about incidents of patient exposure to Covid-19 and the management of patients with or at risk of Covid-19 including: locating, contacting, screening, flagging and monitoring such patients and collecting information about and providing services in relation to testing, diagnosis, self-isolation, fitness to work, treatment, medical and social interventions and recovery from Covid-19;</li> <li>c) understanding information about patient access to health services and adult social care services and the need for wider care of patients and vulnerable groups as a direct or indirect result of Covid-19 and the availability and capacity of those services or that care;</li> <li>d) monitoring and managing the response to Covid-19 by health and social care bodies and the Government including providing information to the public about Covid-19 and its effectiveness and information about capacity, medicines, equipment, supplies, services and the workforce within the health services and adult social care services;</li> </ul>

<p>e) delivering services to patients, clinicians, the health services and adult social care services workforce and the public about and in connection with Covid-19, including the provision of information, fit notes and the provision of health care and adult social care services; and</p> <p>f) research and planning in relation to Covid-19.</p>
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**20 Legal gateway**

Common law	
<input type="checkbox"/>	Direct care
<input type="checkbox"/>	Informed consent
<input checked="" type="checkbox"/>	Regulation 3 (4), Health Service (Control of Patient Information) Regulations 2002
<input type="checkbox"/>	Regulation 5, Health Service (Control of Patient Information) Regulations 2002
<input type="checkbox"/>	Other (please specify): De-personalised in accordance with the ICO Anonymisation Code
GDPR	
	Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
	Article 9(2)(i) – processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy.

**21 Data Classification**

21.1 The classification below together with the detailed specification(s) included in Schedule 4 sets out the details of the Data that will be provided by PHE to the Data Recipient under this Contract.

- Personal Data (as defined by Data Protection Legislation)
- De-personalised data (in line with ICO)
- Anonymised data (in line with ISB)

**22 Territory of Processing**

22.1 The Data shall only be processed in the following Territory:

- UK
- EEA

**23 Method of data transfer**

23.1 The Data is categorised as restricted and will be transferred to the Data Recipient by PHE in accordance with the [“Guidelines on Use of Encryption to Protect Person Identifiable and Sensitive Information.”](#)

## Data Transfer Procedure:

1. All Data will be encrypted to AES 256 standard
2. All Data will be transferred by electronic transfer (if possible) or removable media (if necessary)
3. Decryption password will be communicated by alternative method to data transfer, i.e. telephone.

**Schedule 1**  
**Interpretation**

1. In this Contract the following expressions have the following meanings:

"Applicable Law"	all laws, regulations, orders, guidance (including codes of practice and guidance issued by the Information Commissioner), directions or determinations that are applicable to the obligations of the Data Recipient under this Contract; including by way of example but not limited to those identified in Schedule 3.
"Certificate of Destruction"	a certificate signed by an authorised representative of the Data Recipient or specialist third party engaged to securely destroy the Data, which certifies that the Data and all hard and soft copies thereof held by the Data Recipient have been securely and permanently destroyed.
"Data"	any data that is provided by PHE to the Data Recipient under this Contract and in particular as set out in Schedule 4.
"Data Breach"	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
"Data concerning health"	Personal data relating to the physical or mental health of an individual, including the provision of health care services, which reveal information about his or her health status. It expressly covers both physical and mental health.
"Data Controller"	a data controller as defined in Article 4 of GDPR.
"Data Processor"	a data processor as defined in Article 4 of GDPR.
"Data Recipient"	A data recipient, in relation to this Contract means an employee or agent of the data controller to whom the data are disclosed.
"Data Protection Legislation "	means EU Directive 95/46/EC, as transposed into domestic legislation of the UK and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR ; including where applicable the guidance and codes of practice issued by the Information Commissioner.
"FOIA"	means the Freedom of Information Act 2000.
"Data Security and Protection Toolkit"	the Department of Health's information governance toolkit (previously known as the IG Toolkit), which includes the policies and standards required by the Department of Health, and which can be accessed from <a href="https://www.dsptoolkit.nhs.uk">https://www.dsptoolkit.nhs.uk</a>

"Intellectual Property Rights" or "IPR"	all intellectual property rights including copyright, database rights, trademarks and trade names, patents, topography rights, design rights, trade secrets, know-how and all rights of a similar nature or having similar effect which subsist anywhere in the world, whether or not any of them are registered and applications for registrations of any of them.
"Non-Identifiable Data"	data rendered anonymous in such a way that the data subject is no longer identifiable, in accordance with the requirements established by (1) Anonymisation Standard for Publishing Health and Social Care Data; or (2) ICO Anonymisation: managing data protection risk code of practice.
"Personal Data"	personal data as defined in Article 4 of GDPR.
"Personnel"	all employees, agents and contractors of the Data Recipient who may have access to the Data.
"Process" and "Processing"	have the meaning set out in Article 4 of GDPR.
"Publish(ing)"	to make available to third parties in any form, including the production of hard copy materials, soft and/or electronic copies, e-mails and posting online.
"Purpose"	the purpose(s) for which the Data Recipient is permitted to use the Data, as set out in this relevant Contract.
"Special Conditions"	the special conditions for Processing the Data as set out in the Contract.
"Territory"	the territory specified in this Contract.

2 In this Contract:

- 2.1 any gender includes any other gender and the singular includes the plural and vice versa;
- 2.2 references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
- 2.3 any reference to a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it.
- 2.4 any reference to codes of practice, policies and guidance is a reference to such codes of practice, policies and guidance as amended or extended from time to time

## Schedule 2

### Data Security Requirements

- 1 Without prejudice to the Data Recipient's general obligations under this Contract, the Data Recipient understands and accepts that:
  - 1.1 it becomes a Data Controller for Personal Data received from PHE. As such the Data Recipient is responsible for Processing the Data in accordance with the Data Protection Act 2018 and the GDPR and maintaining good information governance standards and practices; and
  - 1.2 it shall be responsible for the security and protection of Non-Identifiable Data received from PHE. The Data Recipient shall Process such Non- Identifiable Data in accordance with all Applicable Laws.
- 2 To provide assurance that good information governance practices are being maintained, the Data Recipient must demonstrate, and will allow PHE to audit, that it:
  - Meets or exceeds the **Data Security and Protection Toolkit** standards required for their organisation type; or
  - 2.2 Is certified against international security standard **ISO 27001**; or
  - 2.3 Has **other assurance** in place.
- 3 In cases where the Data Recipient does not complete a Data Security and Protection Toolkit assessment and where the Data Recipient is not ISO 27001 certified, the Data Recipient must ensure that it meets the requirements set out in paragraph 4 of this section of Schedule 2, which PHE reserves the right to audit.
- 4 Where the Data Recipient has indicated that **other assurance** is in place, and without prejudice to the Data Recipient's general obligations under this Contract, the Data Recipient shall:
  - 4.1 Process Personal Data only for purposes described in this Contract, and which are consistent with the purposes recorded in the Data Recipient's data protection registration with the Information Commissioner's Office;
  - 4.2 request and Process the minimum data necessary (e.g. using age range rather than age if sufficient);
  - 4.3 deploy secure processes, procedures, practice and technology for storage and access, commensurate with the Personal Data being Processed;
  - 4.4 ensure the rights of individuals are met, such as satisfying subject access requests received, ensuring data accuracy and correcting errors, and handling objections and complaints;
  - 4.5 permanently destroy/delete or erase the Data once it is no longer required for the purpose for which it was collected and confirm destruction to PHE;
  - 4.6 ensures all Personnel with access to Personal Data provide a written undertaking that they understand and will act in accordance with Applicable Law, will not share passwords, and will protect the confidentiality of the Personal Data;
  - 4.7 report immediately to PHE any security incidents relating to the Data, and any instances of breach of any of the terms of this Contract; and

**Schedule 3****List of relevant legislation and standards**

- The Data Protection Act 2018
- General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)
- British (International) Standard ISO 27001
- The Caldicott Report 1997
- Information: To share or not to share? The Information Governance Review March 2013
- The Freedom of Information Act 2000
- Section 251 of the NHS Act 2006 (originally enacted under Section 60 of the Health and Social Care Act 2001)
- Statistics and Registration Service Act 2007 (“SRSA”)
- Confidentiality: NHS Code of Practice 2003
- NHS Records Management Code of Practice (Part 1, 2006 & Part 2, 2009)
- Health and Social Care Act 2012
- The NHS Information Security Management Code of Practice 2007
- The Computer Misuse Act 1990
- The Electronic Communications Act 2000
- The Regulation of Investigatory Powers Act 2000
- The Copyright, Designs and Patents Act 1988
- The Human Rights Act 1998
- The NHS Care Record Guarantee 2011 (Version 5)
- The Social Care Record Guarantee 2009
- Anonymisation Standard for Publishing Health and Social Care Data
- Anonymisation: managing data protection risk code of practice (ICO 2012)
- A guide to confidentiality in health and social care (HSCIC 2013)
- Code of Practice on confidential information

**Schedule 4**  
**Detailed Data Specification**

For all positive tests recoded from the 1st June, assigned to the local authority, PHE will provide the following data items on a weekly basis:

<b>Field name</b>	<b>Description</b>
Record ID	Unique record identifier
Sex	Patient sex
Age	Patient age in years
Postcode	Patient place of residence postcode
Ethnic Group	Patient ethnic group (pending a quality / completion review)
Occupation	Patient occupational group
Key Worker	Patient key worker status
Test Date	Date of Covid-19 test or specimen test
Pillar	Covid-19 test location type (laboratory, mobile testing station, home test)