**Health and Social Care Data**

**DATA SHARING AGREEMENT**

**Final V1.0**

**DP20210393**

Between



a national body created under section 2 of the [National Health Service (Scotland) Act 1978](https://www.legislation.gov.uk/ukpga/1978/29/contents)**,** having their Head Office at Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB

 **‘Disclosing Party’**

and



**Scottish Commission for Learning disability**

a Scottish Charitable Incorporated Organisation (SC032846), having their offices at Suite 5.2, Stock exchange Court, 77 Nelson Mandela Place, Glasgow, G2 1QY.

**‘Data Recipient’**

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Introduction

1. This Data Sharing Agreement (DSA) has been produced in order to allow the sharing of Learning Disability data from Public Health Scotland (the Disclosing Party) to the Scottish Commission for Learning Disability (the Data Recipient) and pertains to ongoing data collections from 2020/21. In 2019 it was agreed that Learning Disability data would become part of the wider Source (social care) dataset and be incorporated as an additional section in the data recording guidance (section 8). From 2021, partnerships submitted an agreed Learning Disability section and the current Social Care submission process was applied.
2. This DSA relates to the sharing of an extract of the Learning Disability data (Learning Disability Statistics Scotland) collected by Local Authorities (LAs) and shared with the Disclosing Party through the Social Care Data Collection. The Disclosing Party will then share a subset of the LDSS with Data Recipient (highlighted variables within Appendix 1).
3. The Disclosing Party will retrospectively collect and validate LDSS data as part of the Source (social care) return. Data will be received from partnerships and shared with the Data Recipient on an annual basis.

Background

The Parties (Disclosing Party and Data Recipient) propose to share information under this Agreement (defined below) in order for the Data Recipient to develop and maintain a publication of Learning Disability data on an annual basis.

It is the intentions of the Parties are that they shall each be independent Data Controllers in respect of the Data that they process under this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. Definitions
	1. In construing this Agreement, capitalised words and expressions shall have the meaning set out opposite:

	**“Agreement”** means this Data Sharing Agreement, as amended from time to time in accordance with its terms, including the schedule;

**"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday throughout Scotland;

**"Data"** means the information which contains personal data described in Schedule Part 1;

**“Controller"** has the meaning set out in Data Protection Law;

**"Data Protection Law"** means Law relating to data protection, the processing of personal data and privacy from time to time, including:

(a) the General Data Protection Regulation (UK) 2016/679;

(b) the Data Protection Act 2018

(c) the Privacy and Electronic Communications Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and

(d) any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union;

**"Data Recipient"** means any of the Parties named in this Agreement to whom Data is disclosed;

**"Data Subject"** means any identifiable living individual to whom any Data relates: and the categories of data subjects within the scope of this Agreement are listed in Part 1;

**"Data Subject Request"** means a request of any Party as Data Controller by or on behalf of a Data Subject to exercise any rights conferred by Data Protection Law in relation to the data or the activities of the Parties contemplated by this Agreement;

**"Disclosing Party"** means any of the Parties as named in this Agreement disclosing Data (or on behalf of whom Data is disclosed to the Data Recipient);

**“Episode of Care”** means a period of support and/or rehabilitation for visual impairment.

**“FOISA"** means the Freedom of Information (Scotland) Act 2002;

**"Information Commissioner"** means the UK Information Commissioner and any successor;

**"Law"** means any statute, directive, other legislation, law or regulation in whatever form, delegated act (under any of the foregoing), rule, order of any court having valid jurisdiction or other binding restriction, decision or guidance in force from time to time;

**"Legal Basis"** means in relation to either Party, the legal basis for sharing the Data as described in Clause 2.3 and as set out in Part 2;

**"Purpose"** means the purpose referred to in Part 2;

**"Representatives"** means, as the context requires, the representative of the Council and/or the representative of PHS and/or the representative of NHS Board as detailed in Part 4. The same may be changed from time to time on notice by the relevant Party to the other Party;

**“Role Based Access”** means that permissions to access Globalscape and the process of sending data to the SCLD.

**"Schedule"** means the Schedule in 6 Parts annexed to this Agreement and a reference to a "Part" is to a Part of the Schedule;

**"Security Measures"** has the meaning given to that term in Clause 2.4.4

**“Service Providers”** means local authorities and third sector partners who provide support and/or rehabilitation to Service Users; and

**“Service User”** means an individual in receipt of services/support due to their learning disability.

* 1. In this Agreement unless the context otherwise requires:
		1. words and expressions defined in FOISA or Data Protection Law shall have the same meanings in this Agreement so that, in the case of Data Protection Law, words and expressions shall be interpreted in accordance with:
1. the UK Data Protection Act 2018 and
2. the UK General Data Protection Regulations
	* 1. more generally, references to statutory provisions include those statutory provisions as amended, replaced, re-enacted for the time being in force and shall include any bye-laws, statutory instruments, rules, regulations, orders, notices, codes of practice, directions, consents or permissions and guidelines (together with any conditions attached to the foregoing) made thereunder;
		2. words used in the singular will be interpreted to include the plural and vice versa and words which refer to one gender will be interpreted to include other genders;
		3. the words "include" and "including" shall each be construed without limitation to the words following;
		4. **"disclose"** includes permitting a person to access Data or imparting that Data orally or by demonstration including directly or indirectly giving that person or arranging for that person to have access to that Data in any manner and in any format whatsoever and **"disclosure"** and **"disclosed"** will be interpreted accordingly;
		5. references to Clauses and Parts are to the relevant Clauses and Parts respectively;
		6. the headings of Clauses do not affect their interpretation;
		7. any reference to a "sub-contractor" of a Party will be deemed to include any agent, consultant, or contractor of that Party; and
		8. in the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the Schedule, the provision contained in the body of this Agreement shall take precedence.
3. Data Sharing

**Purpose and Legal Basis**

* 1. The Parties agree to share the Data for the Purpose in accordance with the provisions of Part 2.
	2. Save as provided for in this Agreement, the Parties agree not to use any Data disclosed in terms of this Agreement in a way that is incompatible with the Purpose.
	3. Each Party shall ensure that it processes the Data fairly and lawfully in accordance with Data Protection Law and each Party as Disclosing Party warrants to the other Party in relation to any Data disclosed, that such disclosure is justified by a Legal Basis.

**Parties Relationship**

* 1. The Parties agree that the relationship between them is such that any processing of the Data shall be on a Data Controller to Data Controller basis. The Data Recipient agrees that:
		1. it is a separate and independent Data Controller in respect of the Data that it processes under this Agreement and that the Parties are not joint Data Controllers.
		2. it is responsible for complying with the obligations incumbent on it as a Data Controller under Data Protection Law (including responding to any Data Subject Request);
		3. it shall comply with its obligations under Part 6;
		4. it shall not transfer any of the Data outside the United Kingdom except to the extent agreed by the Disclosing Party and, provided that where the Data has been transferred outside the United Kingdom, the Disclosing Party may require that the Data is transferred back to within the United Kingdom
		at any time in the event of a change in Law which makes it unlawful for the Data to be processed in the jurisdiction outside the United Kingdom where it is being processed;
		5. it shall implement appropriate technical and organisational measures including the security measures set out in Part 5 of the Schedule (the "Security Measures"), so as to ensure an appropriate level of security is adopted to mitigate the risks associated with its processing of the Data, including against unauthorised or unlawful processing, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or damage or access to such Data.
	2. The Disclosing Party undertakes to notify the other Party as soon as practicable if an error is discovered in Data which has been provided to the Data Recipient, to ensure that the Data Recipient is then able to correct its records. This will happen whether the error is discovered through existing Data quality initiatives or is flagged up through some other route (such as the existence of errors being directly notified to the Disclosing Party by the Data Subjects themselves).
	3. The Data Recipient agrees that they will not publish any identifiable information, that could identify a specific individual when linked to other data items within the dataset. Disclosure control processes will be carried out by the Data Recipient in order to prevent identifiable data being released.

**Transferring Data**

* 1. Subject to the Data Recipient’s compliance with the terms of this Agreement, the Disclosing Party undertakes to endeavour to provide the Data to the Data Recipient on a non-exclusive basis in accordance with the transfer arrangements detailed in Part 3.
1. Freedom of Information
	1. The Parties acknowledge that the existence of this Agreement may be subject to requests made pursuant to FOISA and, subject to any applicable exemptions as determined by the Party receiving the FOISA request, the content of this Agreement may be disclosed pursuant to FOISA.
	2. If either Party considers it necessary to discuss and consult with the other in respect of an FOISA request relating to this Agreement, Data sharing activity or any processing of Data contemplated by this Agreement then it may do so, but neither are required by the terms of this Agreement to do so.

1. Breach Notification

The Parties will advise relevant party/parties about any security, or suspected security breach where it deems there may be either a security or reputational risk to the party/parties”.

The rights conferred under this Clause are without prejudice to any other rights and remedies for breach of this Agreement whether in contract or otherwise in law.

1. Duration, Review and amendment
	1. This Agreement shall come into force on the date of signature by the Parties and will continue, until terminated by either Party on giving twenty-eight (28) days prior written notice to the other Party, unless terminated earlier by the Disclosing Party in accordance with Clause 5.5.
	2. This Agreement will be reviewed three years after it comes into force and every three years thereafter until termination or expiry in accordance with its terms.
	3. Without prejudice to Clause 5.5, the Parties will also review this Agreement and the operational arrangements which give effect to it, if any of the following events takes place:
		1. the terms of this Agreement have been breached in any material aspect, including any security breach or data loss in respect of Data which is subject to this Agreement;
		2. if one of the Parties is of a view that there has been a substantive change to the data sharing that takes place between the Parties under this Agreement; or
		3. the Information Commissioner or any of his or her authorised staff recommends that the Agreement be reviewed.
	4. Any amendments to this Agreement will only be effective when contained within a formal amendment document which is formally executed in writing by all Parties.
	5. In the event that the Disclosing Party has any reason to believe that the Data Recipient is in breach of any of its obligations under this Agreement, the Disclosing Party may at its sole discretion:
		1. suspend the sharing of Data until such time as the Disclosing Party is reasonably satisfied that the breach will not re-occur; and/or
		2. Terminate this Agreement immediately by written notice to the Data Recipient if the Data Recipient commits a material breach of this Agreement which (in the case of a breach capable of a remedy) it does not remedy within five (5) Business Days of receiving written notice of the breach.
	6. Where the Disclosing Party exercises its rights under Clause 5.4, it may request the return of the Data (in which case the Data Recipient shall, no later than seven (7) days after receipt of such a written request from the Disclosing Party, at the Disclosing Party’s option, return or permanently erase/destroy all materials held by or under the control of the Data Recipient which contain or reflect the Data and shall not retain any copies, extracts or other reproductions of the Data either in whole or in part), save that the Data Recipient will be permitted to retain one copy for the purpose of complying with, and for so long as required by, any law or judicial or administrative process or for its legitimate internal compliance and/or record keeping requirements
2. Dispute Resolution
	1. The Parties hereby agree to act in good faith at all times to attempt to resolve any dispute or difference relating to the subject matter of, and arising under, this Agreement.
	2. If the Representatives dealing with a dispute or difference are unable to resolve this themselves within twenty Business Days of the issue arising, the matter shall be escalated to the following individuals in Part 4 identified as escalation points who will endeavour in good faith to resolve the issue.
	3. In the event that the Parties are unable to resolve the dispute amicably within a period of twenty (20) Business Days from date on which the dispute or difference was escalated in terms of Clause 6.2, the matter may be referred to a mutually agreed mediator.
	4. If mediation fails to resolve the dispute or if the chosen mediator indicates that the dispute is not suitable for mediation, and the Parties remain unable to resolve any dispute or difference in accordance with Clauses 6.1 to 6.3, then either Party may, by notice in writing to the other Party, refer the dispute for determination by the courts in accordance with Clause 8.
	5. The provisions of Clauses 6.1 to 6.4 do not prevent either Party from applying for an interim court order whilst the Parties attempt to resolve a dispute.

**SIGN OFF**

We the undersigned agree to the details recorded in this Data Sharing Agreement; are satisfied that our representatives have carried out the preparatory work set out in the Information Sharing Tool-kit for Scotland and are committed to the ongoing monitoring and review of the scope, purpose and manner of the information sharing.

**SIGNED** on behalf of **Public Health Scotland (the Disclosing Party)** by:

|  |  |
| --- | --- |
| **SIGNATORY** | **WITNESS** |
| Name:  | Name:  |
| Position: | Position:  |
| Date:  | Date:  |
| Signature:  | Signature:  |

**SIGNED** on behalf of **Scottish Commission for Learning Disability (the Data Recipient**) by:

|  |  |
| --- | --- |
| **SIGNATORY** | **WITNESS** |
| Name:  | Name:  |
| Position:  | Position:  |
| Date:  | Date:  |
| Signature:  | Signature:  |

**THIS IS THE SCHEDULE REFFERED TO IN THE FOREGOING DATA SHARING AGREEMENT BETWEEN PUBLIC HEALTH SCOTLAND (the Disclosing Party) and SCOTTISH COMMISSION FOR LEARNING DISABILITY (the Data Recipient)**

Schedule Part 1 – DATA

The parties agree this is the minimum amount of data needed to properly fulfil the purposes of this agreement. Failure to process these data items can have a significant detrimental impact on data subjects in the event of a recall

1. **Description of the information to be shared**

|  |  |  |
| --- | --- | --- |
| Data | Data Controller status | Personal Data |
| The dataset will include the following person identifiable items:* Postcode\*
* Gender
* Ethnic Group
* Date of Birth (DoB)\*\*
* For the full dataset please see highlighted items in appendix 1.

Any amendments to the dataset will be agreed by SCLD, PHS and the Scottish Government. | Each Party is a data controller for data relating to their own purposes | Yes |

\*This is converted into geographies before analysis takes place.

\*\* This will be destroyed by SCLD after age has been calculated.

1. How data/information is to be accessed, processed and used

|  |  |
| --- | --- |
| **Data use description** | **Associated work instructions, policies, or procedures.** |
| The Disclosing Party will collect data from the LA’s in accordance with the definitions and recording guidance document.Submission from LAs to the Disclosing Party for learning disability data will occur once per annumThe Disclosing Party will collect and validate the LDSS data to ensure that the data is of a high standard so that it can be used to facilitate service planning | Guidance is available via the definitions and recording guidance document.  |
| The Data Recipient will be able to securely access an extract of identifiable data as set out in section 1a above, to allow for data quality checks and publication.This will help plan services, identify where there are unmet needs and monitor the progress of the recommendations of “The same as you?” report and other policies. To make sure any policies are being implemented on time, and in the right way and compare information across areas to see what is happening nationally. | Quality Assurance Reporting Routine reporting specificationNational reporting specification |

1. Data Subjects

The Data Subjects referred to in this document are service users who have been identified as having a learning disability by their Local Authority.

Schedule Part 2: Purpose and Legal Basis for Processing

1. Purpose

The collection of learning disability data has been designed to enable comprehensive, high quality data collection at a local and national level to support the monitoring, quality improvement, management, national policy development and service planning.

|  |
| --- |
| Purpose description |
| An extract of the social care data collection relating to learning disability data will be shared with the Data Recipient for the purposes of data quality checks and publication by the Data Recipient of learning disability data in order to* help plan services
* identify where there are unmet needs
* monitor the progress of the recommendations of “The same as you?” report and other policies to make sure policies are being implemented on time, in the right way and
* compare information across areas to see what is happening nationally.
 |

1. Legal Basis

**Legal Basis for the operation of Learning Disability data:**

The data to be shared in terms of this Agreement is being shared on the following bases:

| **Legal condition(s) for personal data [see Guidance Notes]** | **Legal conditions for any special categories of personal data [see Guidance Notes]** |
| --- | --- |
| Conditions applicable for the Disclosing Party:**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)(h) – Processing is necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professionalArticle 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 healthcare and of medicinal products or medical devices.Article 9(2)(j) - processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with [Article 89](https://gdpr-info.eu/art-89-gdpr/)(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject |
| Conditions applicable for the Data Recipient:**Article 6(1)(f)** – processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*.* | Article 9(2)(j) - processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subjectArticle 9(2)(h) - processing is necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professional |

1. Data Subjects Rights

**Subject access request, and data portability.**

Individuals have the right to access their personal information and should, in the first instance, approach their current LA who will follow their local procedures for access. The LA may have more information on the individual.

For personal information held by:

PHS (the Disclosing Party), the individual can approach the PHS Data Protection Officer using the contact details within the [PHS Privacy Notice](https://www.publichealthscotland.scot/our-privacy-notice/organisational-background/)

SCLD (the Data Recipient) the individual can approach the Evidence and Data Adviser for SCLD (Ruth.C@scld.co.uk)

Individuals have the qualified right to data portability in certain circumstances. However, as the personal data described in this agreement is being processed under the lawful bases as described in Schedule 2(b) which are neither based on consent nor on performance of a contract, the right to portability does not apply.

**Objection or restriction to processing, rectification and erasure.**

Individuals have the qualified right to object, restrict, rectify and erase their personal information. To exercise this qualified right, individuals should, in the first instance contact their current LA who will follow their local procedures.

**The Disclosing Party:**

Requests will be considered on a case-by-case basis, however, it is highly unlikely that such a request will be upheld. This is because the Disclosing Party rely on the lawful basis of public task as the processing of personal data is necessary for the performance of a task carried out in the public interest. In addition, the Disclosing party relies on lawful processing operations for scientific, historical research and statistical purposes.

To object, restrict, rectify or erase personal information, the individual can approach the PHS Data Protection Officer using the contact details within the [PHS Privacy Notice](https://www.publichealthscotland.scot/our-privacy-notice/organisational-background/).

**The Data Recipient:**

Requests will be considered on a case-by-case basis. It is important to note that personal identifiers are permanently deleted two months after LDSS is published, at which point we are not able to identify the data for a particular individual.

To object, restrict, rectify or erase personal information, the individual can approach the individual can approach the Evidence and Data Adviser for SCLD (Ruth.C@scld.co.uk)

**Rights related to automated decision making, including profiling.**

No automated decisions are involved in this agreement – in the context of this agreement, “Automated decisions” refer to decisions made using shared information **with no human** intervention.

No profiling (automated processing of personal data to evaluate certain things about an individual) is involved in this agreement.

**Direct Marketing**

No direct marketing is involved in this agreement

Schedule Part 3 - Data Transfer Rules

1. Information exchange can only work properly in practice if it is provided in a format which the recipient can utilise. It is also important that the Data is disclosed in a manner which ensures that no unauthorised reading, copying, altering or deleting of personal data occurs during electronic transmission or transportation of the Data. The Parties therefore agree that data will only be exchanged through the secure file transfer mechansm.
2. The data subset that the Data Recipient will be receiving will be accessed through a secure file transfer mechanism (Globalscape). The access to Globalscape will be managed by NHS National Services Scotland (NSS) ID firewalls and only https service shall be allowed through the firewalls.

Schedule part 4 – Security measures

The Parties shall each implement an organisational information security policy aligned to ISO 27001.

1. **Physical Security**
	1. Any use of data processing systems by unauthorised persons must be prevented by means of appropriate technical (keyword / password protection) and organisational (user master record) access controls regarding user identification and authentication. Any hacking into the systems by unauthorised persons must be prevented. Specifically, the following technical and organisational measures are in place:
* The parties will access locally stored data using secure individual logins,
* A lock screen is in place with password activation (windows)
* The system will lock if left idle for 30 minutes or more and will require a password to gain access to the system (windows).
1. **Access and approvals**
* Access to submission protocols (Globalscape) will be requested by the Disclosing party and confirmed as a named contact.
* Access will be controlled by individual user accounts and passwords. The account will be linked to a security profile that will define the level of access. Access will be granted by the Disclosing Party.
* Employees of both Parties should be made aware of local confidentiality and security guidelines and will have undergone local Information Governance training. Retention and disposal periods for Social care data have been entered into the Disclosing Party’s Records Management, Document Storage and Retention policy schedule.
1. **Disposal of Assets**
	1. Where information supplied no longer requires to be retained, good practice recommends that any devices containing Personal Data should be physically destroyed or the information should be destroyed, deleted or overwritten using techniques to make the original information non-retrievable rather than using the standard delete or format function.
2. **Malicious software and viruses**
	1. Each Party must ensure that:
		1. PCs used in supporting the service are supplied with anti-virus software and anti-virus and security updates are promptly applied.
		2. All files received by one Party from the other are scanned to ensure that no viruses are passed.

The Parties must notify each other of any reportable virus infections that could affect their systems on Data transfer with respect the learning disability extract

Data Protection Impact assessments

Data Protection Impact Assessments have been completed.

