

**North East Sector Integrated
Care Record Programme:
Information Sharing Agreement**

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Dated: 29th February 2016

INFORMATION SHARING AGREEMENT

In relation to the North East Sector Integrated Care
Record Portal

VERSION	AMENDMENTS MADE	DATE
DRAFT V0.1	Issued to NES Integrated Care Record IG sub Group for comment	January 2016
DRAFT V0.2	Issued to Legal Advisors incorporating comments from the IG Group	January 2016
DRAFT V0.3	Re-issued to NES Integrated Care Record IG Sub Group incorporating Legal advice comments	February 2016
DRAFT V0.4	Re-issued to Legal Advisors incorporating comments from the IG Group	February 2016
FINAL V1.0	Issued to Participating Organisations	29th February 2016

- C. The intention is that such access will support the delivery of a more timely, efficient and joined up approach to managing patient care for the NES population.
- D. The facilitated sharing will support the provision of co-ordinated, integrated care and a better patient experience by all agencies involved with a patient, including helping to facilitate, where applicable, the sharing of Patient preferences with other Parties easily.
- E. The Parties represent key NHS, social and independent care providers in the NES, as well as key charity and voluntary organisations, relevant to the delivery of a health and social care service to the Patient.
- F. The first stage, through this agreement, is to enable access by all Parties to this agreement to select data from the primary care record of NES General Practices. Patients will be requested to provide prior explicit consent to a Party wishing to gain access to such data from their NES General Practice at the point of access. Patients are also able to opt out of the programme if they wish.
- G. This stage of the programme will be delivered via the use of a software solution (which shall be the subject of a separate agreement¹) that will allow each of the Parties access to the primary care record of NES General Practices.
- H. The software solution will be provided by “HealthCare Gateway” and is known as the Medical Interoperability Gateway (“MIG”).
- I. Other health or social care providers involved with the patient care pathway of the NES may wish to join this programme. Should any such provider seek to gain access to the primary care record of NES General Practices, they will be required to confirm their agreement to be bound by this Information Sharing Agreement before any such use will be permitted.

1 DEFINITIONS

- 1.1 In this Agreement except where the context otherwise requires the following words and expressions shall have the following meanings:

¹To check appropriate rights are included to allow full access/use as anticipated by this Agreement and to clarify ownership of copyright in software/consequences if source code owned by a third party that becomes insolvent.

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Authorised System User means an employee, officer, sub-contractor, agent or professional advisor who has been authorised to access the Data by the Party who has employed or engaged them in accordance with clause 3.12 and **Authorised System Users** shall be construed accordingly

Business Day means any day on which banks are generally open for business in the City of London (other than Saturdays, Sundays or public holidays) and the expression Business Days shall be construed accordingly;

Commencement Date means the date of this Agreement;

Confidential Information means all information owned or controlled by one Party and supplied to or obtained by the other Party (including but not limited to Data and all information relating to the business of the providing Party) in whatsoever form which is marked or communicated as being confidential when it is supplied and which is of a confidential or proprietary nature;

Consent means an informed and unambiguous indication of agreement.

Data means the information contained at Schedule 3 comprising data sets from the primary care record of NES General Practices, such records to consist partly or wholly of Personal Data;

Data Controller has the meaning set out in the DPA;

Data Subject has the meaning set out in the DPA and **Data Subjects** shall be construed accordingly;

DPA means the Data Protection Act 1998 save that any references to the DPA in this Agreement shall also be read to refer to corresponding provisions in any data protection legislation that may supersede and replace the DPA;

EEA means the European Economic Area;

Emergency Override means the process of accessing patient data as set out at clause 4.1.3 where Consent cannot be obtained or provided;

ICO means the Information Commissioner's Office or the equivalent and appropriate body overseeing the application and enforcement of data protection law and regulation in any other jurisdiction;

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Legitimate Relationship means a connection between two individuals formed as a result of one individual directly carrying out or directly assisting in relation to the Purposes for the benefit of the other individual

MIG means Medical Interoperability Gateway which is the software system through which Use of Data under this Agreement is enabled;

NES means North East Sector of Greater Manchester;

Patient means a person who is receiving care and/or treatment from one or more of the Parties;

Personal Data has the meaning set out in the DPA;

Privacy Officer means an individual or individuals appointed on behalf of a Party in accordance with the process set out at clause 4.1.3;

Purposes means the purposes set out in the Privacy Impact Assessment which has been carried out by the Parties and is set out in Schedule 1 and includes the provision of medical care and treatment, or of social care services, by a Party to a Patient; and

Use means viewing to inform and support the Purposes and includes copying or otherwise recording any information viewed to the extent necessary to enable appropriate standards of record keeping to be maintained in respect of the Patient's care records and **Using** shall be interpreted accordingly.

1.2 The singular includes the plural and vice versa.

1.3 Unless the context otherwise indicates, references to clauses, sub-clauses and recitals are to clauses and sub-clauses of and recitals to this Agreement.

1.4 Headings to clauses in this Agreement are included for the purposes of ease of reference only and shall not have any effect on the construction or interpretation of this Agreement.

2 LICENCE

2.1 In consideration of the mutual obligations set out in this Agreement each Party grants to the other a royalty-free licence to Use the Data provided to it for the Purposes and in accordance with the provisions of and for the duration of this Agreement.

- 2.2 The Parties shall use their best endeavours to ensure that the Data contains all information necessary to enable any receiving Party to undertake the Purposes.
- 2.3 The Parties shall use their best endeavours to ensure that the Data is accurate and to update Data where inaccuracies are brought to its attention, marking such updates clearly to maintain an audit trail.

3 WARRANTIES

Each Party hereby warrants that it:

- 3.1 has legally obtained and has appropriate authorisations to enable it to disclose, receive, store and otherwise process Data for the Purposes set out in this Agreement, including but not limited to:
- 3.1.1 provision of fair processing notices to Data Subjects at the time Data is collected and at appropriate periodic intervals;
 - 3.1.2 provision of appropriate information to Data Subject on the potential disclosure of their Data pursuant to this Agreement and to use it for the Purposes;
- 3.2 has provided appropriate information to all Data Subjects to whom this Agreement may apply about their ability to opt out from the use of their Data in accordance with this Agreement and made such information reasonably accessible upon request and through public notices;
- 3.3 has blocked any Data from being accessible to any Party pursuant to this Agreement through MIG where any Data Subject has exercised their right to opt out, or where a Data Subject subsequently exercises their right to opt out, within 24 hours of receiving confirmation of such opt out;
- 3.4 has taken reasonable steps to draw to the attention of any Party Using the Data any known concerns that a Party has that any Data should not be disclosed either to a particular Data Subject or to another third party and the reasons for those concerns and of any known preferences of the Patient relevant to the Purposes;
- 3.5 is able to give the warranties and fulfil the obligations set out in this Agreement;
- 3.6 has in place appropriate technical and organisational measures to prevent unauthorised or unlawful processing, accidental loss or destruction, or

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damageto Data (including but not limited to physical protection and use of suitable encryption and password protection as required and expected in accordance with industry standards);

- 3.7 will investigate where any unauthorised processing, loss, destruction or damage to Data occurs in accordance with the Party's published procedures for such investigations, appropriately reporting such issues to the ICO and any other relevant supervisory or regulatory authority where required and using reasonable endeavours to share and implement the lessons from any such investigation to ensure the risk of reoccurrence is minimised;
- 3.8 has in place adequate security procedures to ensure that unauthorised persons will not have access to the Data or to equipment used to process the Data including but not limited to:
 - 3.8.1 where a Party is within the scope of the Information Governance Toolkit developed and maintained by the Health and Social Care Information Centre, achievement and maintenance of a minimum level 2 compliance (or working to a detailed documented action plan to achieve such compliance); or, alternatively,
 - 3.8.2 achievement or progress working towards ISO 27001 or equivalent level of information assurance and security.
- 3.9 has appointed a Caldicott Guardian or Senior Officer of equivalent standing and purpose;
- 3.10 has undertaken all pre-employment checks of employees to verify the identity, honesty, trustworthiness and general suitability of employees, including Disclosure and Barring Service checks where lawful and appropriate;
- 3.11 has included appropriate confidentiality clauses in employment contracts and has processes in place to take disciplinary sanctions against employees in the event of deliberate or reckless breach of the DPA and associated legislation and guidance;
- 3.12 has only granted authorisation for its employees, officers, sub-contractors, agents or professional advisors to access the Data through MIG where such persons have or are expected to have a Legitimate Relationship towards Patients ("Authorised System Users") and that Authorised System Users will respect and maintain the confidentiality and security of the Data as if

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they were personally a Party to this Agreement using, wherever reasonably possible:

- 3.12.1 Role based access controls;
 - 3.12.2 User authentication;
 - 3.12.3 Network, hardware, database and application security controls;
 - 3.12.4 System monitoring and audit trails;
 - 3.12.5 Intrusion detection and prevention controls including system generated alerts in the event of users by-passing access controls and/or suspected inappropriate use of the Emergency Override functionality;
- 3.13 has in place appropriate training, supervision and audit arrangements to ensure that all authorised persons are appropriately trained on the requirements of this Agreement and that appropriate steps are taken to assure compliance with this Agreement, including disciplinary action as required and appropriate to the circumstances;
- 3.14 shall comply at all times with the DPA and associated legislation, regulations, Codes of Practice and guidance including (but not limited to) requirements as to subject access, ensuring Data is accurate, data storage, retention and disposal of the Data;
- 3.15 has in place procedures to deal specifically with complaints about non-compliance with the DPA and associated legislation, regulations, Codes of Practice and guidance; and
- 3.16 shall process any and all Data only within the EEA and will not transfer, store or otherwise make available any Data to any entity which subsists outside the EEA or who may store or host Data outside the EEA without the explicit Consent of individual Data Subject(s) and written agreement of all Parties.

4 UNDERTAKINGS

Each Party undertakes that:

- 4.1 on each occasion that it wishes to Use the Data, it will only do so where:

- 4.1.1 A Patient has provided explicit Consent for the Party to do so; or
- 4.1.2 Where the Patient lacks capacity to make that decision themselves, Consent has been given in accordance with the exercise of parental responsibility and/or in accordance with the Mental Capacity Act 2005 it is determined that such access is in the Patient's best interests, or authorised by a valid and applicable Lasting Power of Attorney or a Court appointed deputy, as applicable; or
- 4.1.3 Where Consent cannot be provided by or on behalf of a Patient, an Emergency Override may be used where a Legitimate Relationship exists between the Authorised System User and the Patient and where Use of the Data is lawful and necessary without Consent from the Patient, having due regard to the DPA, common law duty of confidence and appropriate legal requirements and professional codes of conduct. For the avoidance of doubt, an Emergency Override cannot be used where a Patient has explicitly refused Consent and has not withdrawn such Consent

and that it will record the grounds for each such Use in accordance with this clause.

- 4.2 it will use Data received from any other Party solely for the Purposes;
- 4.3 it will only record and store Data in such a manner as to ensure compliance with the DPA;
- 4.4 it will notify the relevant Data Controller of the respective Party of any breaches of this Agreement or other failure to comply with or breach of the DPA or common law duty of confidence in relation to any Data originating from that Party within 24 hours of becoming aware of any such breach or failure to comply;
- 4.5 it will notify the relevant Data Controller of the respective Party of any known inaccuracies within any Data originating from that Party within 24 hours of becoming aware of any such inaccuracy;
- 4.6 it will permit any of the other Parties to audit its compliance with its obligations under this Agreement, including by an independent external auditor agreed between the Parties, upon reasonable request and written notice. The Parties may agree upon a third party to receive and coordinate all requests for any

such audits and to provide advice to the Parties as to what may be a reasonable request;

4.7 it will provide upon request to any Data Subject (and offer to provide at the point of any contact, assessment and care provision):

4.7.1 The identity of the Parties to this Agreement and the Data Controllers of the Data that may be covered by this Agreement. If the Party has nominated a representative such as a Caldicott Guardian for the purposes of ensuring compliance with the DPA 1998, the identity of that representative;

4.7.2 The purpose or purposes for which Data are intended to be processed and shared under this Agreement;

4.7.3 Information on the rights of Data Subjects under the DPA 1998, particularly in relation to sensitive personal data;

4.7.4 Details of the Party's procedures to enable Data Subjects to access their records, including audit trails, as regards access to their data;

4.7.5 Details of the Party's procedures which may have to be initiated when the Party suspects that a Data Subject has been or is at risk of abuse including when personal data will be shared and how it will be used;

4.7.6 Details of the Party's complaints procedures to follow in the event that a Data Subject believes personal information about him or her has been inappropriately disclosed;

4.7.7 Details of how personal information provided to the Party will be recorded, stored and the length of time it will be retained and on what lawful basis it is held; and

4.7.8 Any further information which may be reasonably required to ensure that processing in respect of the Data Subject is fair.

5 COMPLAINTS AND CLAIMS

5.1 In the event of any complaint received, including notification of a complaint to the ICO, or claim made against any of the Parties by a Data Subject or any third party in respect of the Data, including any Use thereof, under this Agreement, each Party agrees to notify the other Party or Parties from whom the Data was

obtained and, in such circumstances, such Party or Parties shall cooperate with any reasonable requests for information made by the Party against whom the complaint or claim has been made.

6 MAINTAINING THE CONFIDENTIALITY AND SECURITY OF DATA

- 6.1 Each of the Parties will ensure that all Use of the Data will be in accordance with the security measures and degree and standard of care that would be expected in relation to a Patient's care records created and maintained by that Party.
- 6.2 Unless expressly permitted or required pursuant to this Agreement or otherwise by law, no Party shall disclose, sell or transfer any Data to any third party.

7 USE OF DATA

- 7.1 The Parties agree that the Data Controller of the Data remains the Party from whom the Data originates except insofar as a Party's Use of the Data in accordance with this Agreement results in the creation of additional records held by that Party, in which case that Party is the Data Controller of that new record.
- 7.2 Each Party undertakes not to use any Data for any purpose other than in connection with the Purposes whether during or after the termination of this Agreement.
- 7.3 For the avoidance of doubt, Use of any Data under this Agreement is not intended to replace appropriate assessment of a Patient including seeking a medical history and undertaking a professional examination or assessment as required. Use of Data under this Agreement is provided to assist in the delivery of the Purposes and not as a substitute for the exercise of clinical or other professional judgement.

8 DISCLOSURE OF CONFIDENTIAL INFORMATION

- 8.1 Each Party undertakes not to disclose any Confidential Information to any third Party except that it may disclose Confidential Information:
- 8.1.1 to those of its employees, officers, sub-contractors, agents or professional advisors (**Authorised Recipients**) as are necessary to enable it to carry out its obligations in relation to, or to consider undertaking, the Purposes; or

- 8.1.2 if disclosure is required or permitted by law, by any court of competent jurisdiction or by any other regulatory body.
- 8.2 In the case of clause 8.1.2, where reasonable, the disclosing Party shall notify and consult with the Party from whom the Data originates of such disclosure.
- 8.3 Where disclosure of Confidential Information is made to an Authorised Recipient, the Party disclosing the Confidential Information shall ensure that the Authorised Recipient is subject to obligations equivalent to those set out in this Agreement.
- 8.4 Each Party shall use all reasonable efforts to prevent the disclosure of any of the Confidential Information except as referred to in clauses 8.1 and will inform the Party from whom the Confidential Information originates immediately that it becomes aware that any of the Confidential Information has been disclosed except as referred to in clauses 8.1.
- 8.5 Each Party shall procure that any person to whom Confidential Information is disclosed pursuant to this Agreement complies with the terms of this Agreement as if that person was a Party hereto.
- 8.6 This Agreement shall not apply to any Confidential Information:
- 8.6.1 to the extent that it is or comes into the public domain other than through a breach of this Agreement; or
- 8.6.2 which the relevant Party can show by its records was in its possession prior to receiving it from the other Party and which it had not previously obtained from that other Party or from a third party on its behalf under an obligation of confidence; or
- 8.6.3 is required to be disclosed by law or by a court of competent jurisdiction.

9 TERM, TERMINATION AND WITHDRAWAL

- 9.1 Subject to the provisions of clause 9.2 to 9.4 (inclusive), this Agreement shall commence on the Commencement Date and shall continue in full force and effect until terminated in accordance with this Agreement.

- 9.2 The Parties may agree to terminate this Agreement (without prejudice to its other rights and remedies) in writing at any time, subject to such terms and conditions as may be agreed between the Parties.
- 9.3 Any Party may decide to withdraw from this Agreement (without prejudice to its other rights and remedies) by 30 days' written notice to the other Parties via:
- North East Sector IM&T Sub Group
IM&T Building
Pennine Acute Hospitals NHS Trust
North Manchester General Hospital
Delauneys Road
Crumpsall
M8 5RB
- 9.4 Without affecting any other right or remedy available pursuant to this Agreement, a Party (the Defaulting Party) may be expelled from this Agreement upon 30 days' written notice by unanimous agreement of all of the other Parties that:
- 9.4.1 The Defaulting Party has committed a material breach of a term of this Agreement which is irremediable or (if such breach is remediable) the Defaulting Party has failed to remedy that breach to the other Parties' reasonable satisfaction within a period of 30 days after being notified in writing by any other Party to do so; or
- 9.4.2 The Defaulting Party has repeatedly breached one or more of the terms of this Agreement in such a manner as to reasonably justify the other Parties' unanimous opinion that its conduct is inconsistent with the Defaulting Party having the intention or ability to give effect to the terms of this Agreement.
- 9.5 In the event of termination of this Agreement, to the extent that any Party has copies of any Data, other than as part of a Patient's medical or social care record held by that Party, that Party shall return all documents and other material in its possession, custody or control that bear or incorporate any Data to the Party from which it originates within 30 days of the termination.
- 9.6 Upon withdrawal of one Party to the Agreement:
- 9.6.1 to the extent that the withdrawing Party has copies of any Data, other than as part of a Patient's clinical or social care record held by that Party, it shall return all documents and other material in its

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possession, custody or control that bear or incorporate any Data to the Party from which it originates within 30 days of serving its written notice of the withdrawal;

9.6.2 to the extent that any Party has copies of any Data originating from the withdrawing Party, other than as part of a Patient's clinical or social care records belonging to that Party, it shall return all documents and other material in its possession, custody or control that bear or incorporate any Data to the withdrawing Party within 30 days of receiving written notice of the withdrawal; and

9.6.3 the withdrawing Party's access to MIG will be withdrawn.

9.7 Termination of, or withdrawal from, this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or withdrawal, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or withdrawal.

10 LIABILITY

10.1 Subject to Clause 10.2, each Party will indemnify the other Parties against all costs, claims, damages or expenses incurred or for which any Party may become liable due to the indemnifying Party's failure or the failure of its employees, agents or sub-contractors to comply with any of its obligations under this Agreement.

10.2 No Party will be liable for any financial loss or other damages incurred by other Parties as a result of any information being wrongly disclosed by any such Party or as a result of any negligent act or omission by another Party.

10.3 Nothing in this Agreement seeks to limit any Party's liability for death or personal injury arising from its negligence or the negligence of its employees or agents.

11 GENERAL

11.1 Variation

No variation of this Agreement shall be valid and effective unless it is in writing and signed by each of the Parties or by a duly authorised representative on behalf of each Party.

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11.2 Waiver

11.2.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

11.3 Severance

11.3.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

11.3.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Third party rights

11.4.1 Except as expressly provided in clause 10.4, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

11.4.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

11.5 Force Majeure

11.5.1 No Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. In such

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circumstances, the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure.

12 TRANSFER OF RIGHTS AND OBLIGATIONS

Each Party is entering into this Agreement for its benefit and not for the benefit of another person. A Party may not assign or transfer or purport to assign or transfer a right or obligation under this Agreement without having first obtained the other Parties' written Consent (such Consent not to be unreasonably withheld or delayed).

13 NOTICES

13.1 A notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class pre-paid post:

13.1.1 Where a Party intends to withdraw from this Agreement, to the address set out at Clause 9.3 above; or

13.1.2 In the event of any other notice or communication, to the Party due to receive the notice or other communication, at its address as set out in this Agreement or to such other address as a Party may have notified to the other Parties by not less than five Business Days prior notice.

13.2 In the absence of evidence of earlier receipt, service of a notice or other communication is deemed to have been effected as follows:

13.2.1 if delivered personally, at the time when left at the address referred to in clause 13.1; and

13.2.2 if sent by first class prepaid post, on the second Business Day after it is put in the post.

13.3 In proving service under this clause 13, it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted.

13.4 Email notice shall not be valid for the purpose of this Agreement.

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14 GOVERNING LAW AND JURISDICTION

14.1 This Agreement is governed by, and shall be construed in accordance with, English law.

14.2 The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each Party irrevocably submits to the jurisdiction of the courts of England.

15 COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

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In witness whereof the Parties have caused this Agreement to be executed as a deed in the day and year written below:

EXECUTED AS A DEED by:

To be completed for each party as required by the SFIs (or equivalent) of each organisation as to who can sign a deed

Organisation Name:			
Organisation Address: (or Stamp)			
Organisation NACS/Organisation code (If applicable):			
Name of Responsible Officer (PRINT)	Title/Role	Signature	Date

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SCHEDULE 1

PURPOSES

Privacy Impact Assessment



PIA_NES_ICRPv1.0.
docx

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SCHEDULE 2

GP Practices

- **NHS Bury CCG Member Practices:**



Bury CCG Practice
List.xls

- **NHS Heywood, Middleton and Rochdale CCG Member Practices:**



HMR CCG Practice
List.xls

- **NHS Oldham CCG Member Practices:**



Oldham CCG Practice
List.xls

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Schedule 3 Data sets

Datasets:

The Data Set to be available from GP systems in relation to End of Life Care are:



MIG Supportive CareNorth_West_EPaCCS
Dataset.pdf



dataset(Amd11-20

The Data Set to be available from GP systems in relation to COPD (HMR only) are:



MIG COPD
Dataset.pdf

The Data set that will be available from GP systems (the 10 views) are:



MIG Content Model
Record Elements Rea