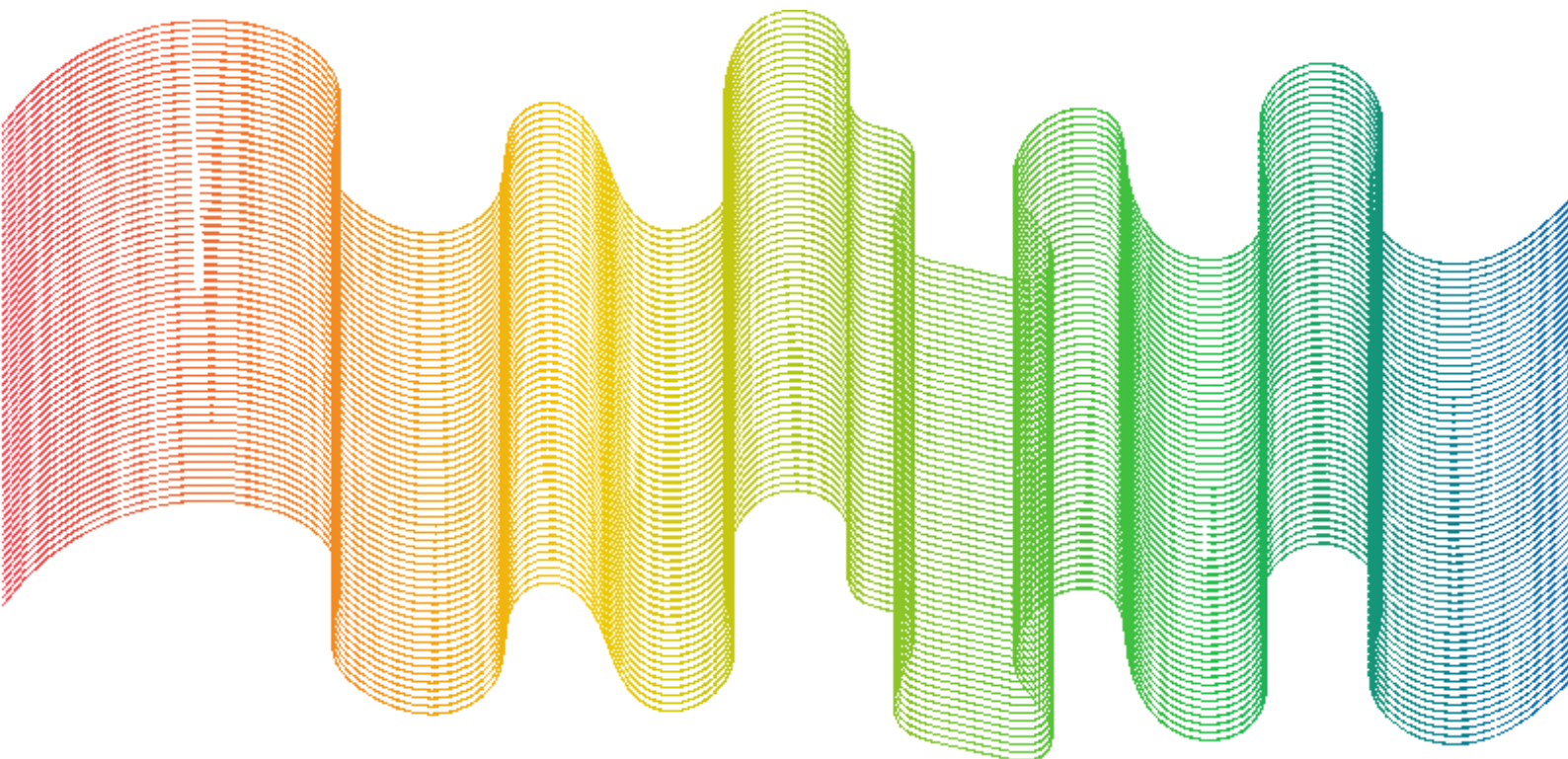




Benchmarking Network

Terms of Membership from September 2023



1. Background

This Terms of Membership should be read in conjunction with the NHS Benchmarking Network Constitution, Terms of Reference for the Steering Group, associated Reference Groups and User Groups which may exist from time to time. Between them these documents establish a governance structure for the effective and efficient operation of the Network. The Terms of Membership provides certainty about each Members' rights and obligations and protects the Members, including the Host of the Network. An annual subscription paid by each Member to the Host Organisation in respect of the Network, acknowledges the Terms of Membership as legally binding

This Terms of Membership is an agreement between the host organisation (from 1st April 2013) East London NHS Foundation Trust and those Members of the NHS Benchmarking Network ("the Network") as at the date a Member's admission is confirmed by the Network Support Team. Each, the Host and each Member (including the Host as a Member) is a "Party" to this Agreement.

Any obligations of the Members in this Agreement to the other Members and to the Host shall be several and not joint obligations so that each Member shall only be liable for its own actions or failure to comply with those obligations.

Where the Network Support Team is referred to in this Agreement, it is acting on behalf of the Host, as set out in clause 8.2, irrespective to whether this is specified, unless such reference expressly states otherwise (i.e. that they are not acting on behalf of the Host).

A. The Network has been set up as an alliance between the Members with the principal objectives as set out in the Network's Constitution.

B. The Members wish to enter into this Agreement to record the terms agreed between them relating to the Network.

Definitions

The definitions and rules of interpretation in this Clause apply to this Agreement.

Benchmarked Data	Analytical and/or statistical data to Members in terms of Clause 14 generally consisting of a summary of the Members position benchmarked against the national position over a range of measures.
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Confidential Information	<p>means any information:</p> <ul style="list-style-type: none"> • which any Member may have or acquire (whether before or after the date of this Agreement) in relation to the customers, patients, business, programmes, products, services, assets or affairs of the Network or another Member, including for the avoidance of doubt Member Data, Member Identifiable Data and Benchmarked Data, as a consequence of the negotiations relating to this Agreement or the performance of this Agreement; or • which relates to the contents of this Agreement or the Constitution or any agreement or arrangement entered into pursuant to this Agreement. <p>Information is not Confidential Information if:</p> <ul style="list-style-type: none"> • it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement; or • any Member can establish to the reasonable satisfaction of the other Members that it found out the information from a source not connected with the other Members and that the source was not under any obligation of confidence in respect of the information; or • any Member can establish to the reasonable satisfaction of the other Members that the information was known to it before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or • the Members agree in writing that it is not confidential.
Constitution	<p>Constitution of the Network containing the objectives and governance rules and procedures of the Network, as adopted by the Members on or around the date of this Agreement but as subsequently amended from time to time in accordance with the Constitution;</p>

Data Protection Legislation	All applicable data protection legislation, regulations and definitions contained therein including, without limitation, the Data Protection Act 2018; the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679)); the Privacy and Electronic Communications Regulations 2003; and any other applicable national laws, regulations and secondary legislation relating to the processing of personal data as amended, replaced or updated from time to time;
Financial Year	Each period of 12 calendar months ending on 31 March in each year;
Host	East London NHS Foundation Trust or such other Member as shall from time to time agree to become the Host in accordance with the terms of this Constitution;
Intellectual Property Rights	All intellectual and industrial property rights of any kind whatsoever, including patents, know-how, trademarks, designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition, copyright and neighbouring and related rights, database rights, topography rights, rights in confidential information and any other rights in any invention, discovery or process, in each case whether registered or unregistered in all countries in the world and together with all applications renewals, extensions, continuations, divisionals, reissues, re-examinations and substitutions and all similar or equivalent rights which subsist now or in the future;
Members	Those Members of the Network as at the date of this Agreement set out in Schedule 1 together with any other eligible organisation admitted to membership in accordance with this Agreement;

Member Account	The account created by the Member when being admitted as a Member of the Network and which grants access to the Benchmarked Data;
Member Data	Non person identifiable data that is provided by Members for benchmarking purposes and from which Benchmarked Data is produced under the terms of clause 14;
Member Identifiable Data	Benchmarked Data that identifies the Member that provided the data
Network	The NHS Benchmarking Network, an alliance between the Members committed to the promotion and development of benchmarking for publicly funded health and social care services;
Network Account	A separate, designated, bank account of the Host, designated as the Network account;
Network Support Team	The organisation contracted by the Host to provide research and associated support services to the Network;
Non-Submitting Member	Those Members of the Network that have stated they do not wish for their individual Benchmarked Data to be presented as Member Identifiable Data as outlined in Clause 14;
Objectives	The objectives of the Network, as set out in the Constitution;
Personal Data	Has the meaning given under Data Protection Legislation;
Steering Group	The Steering Group of Elected Members acting on behalf of the Host appointed in accordance with and having the powers set out in the Constitution.
Submitting Member	Members of the Network whose individual Benchmarked Data is presented as Member Identifiable Data as outlined in Clause 14;
Reference Group	The Reference Group of nominated Members acting on behalf of the Members appointed in accordance with and having the powers set out in the Constitution.



2. Commencement

- 2.1. This Agreement shall come into force on and take effect from the date a Member Account is activated.
- 2.2. The Term is for the duration a members subscription remains current.

3. Admission as Members

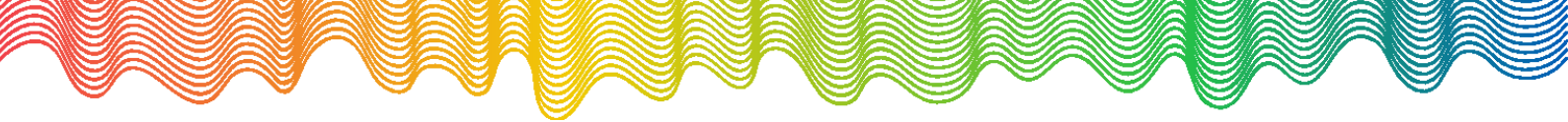
- 3.1. Each Member shall be admitted as a member in the Register of Members to be maintained by the Steering Group upon the date which that Member pays the Host or the Network Support Team on behalf of the Host its annual subscription fee for membership.
- 3.2. Application for and admission as a Member shall be governed by the Constitution.

4. No Distribution of Profits

- 4.1. The Network shall not, in pursuit of its Objectives or otherwise, distribute any profit or surplus from its activities to its Members. But will be reinvested.

5. Members' Undertakings

- 5.1. Each Member covenants with the other Members that, for so long as it remains a Member or until the termination of this Agreement, it will:
 - 5.1.1. Act in good faith towards the other Members;
 - 5.1.2. Pay its annual subscription fee for membership;
 - 5.1.3. Promptly notify the other Members of any matters of which it becomes aware which may materially affect the Network;
 - 5.1.4. Generally do all things necessary to give effect to the terms of this Agreement;
 - 5.1.5. Observe and comply at all times with the Constitution;
 - 5.1.6. take all reasonable steps to ensure that all consents and authority it requires to continue its membership and comply with this Agreement and the Constitution are obtained and maintained for so long as it remains a Member;
 - 5.1.7. Acknowledge that all decisions made by the Steering Group are made on behalf of everyone and all members are equally responsible for decisions of the Steering Group.



5.2. The Host acknowledges that each Member has its own distinctive sense of purpose and identity. Nothing in this Agreement shall oblige the Member to do anything or refrain from doing anything which would constitute an unlawful exercise of its duties or powers.

5.3. The undertakings of each Member under this Clause shall in each case be several so that each Member shall only be liable for its own actions or failures to act in accordance with them, and none of them shall be liable for a failure to procure anything required by this Clause where such failure is attributable to any action or failure to act by another Member, but without prejudice to the liability of such other Member.

6. Funding of the Network

6.1. Each Member agrees to subscribe for membership by way of an annual membership subscription determined by the Steering Group and paid to the Host or the Network Support Team on behalf of the Host.

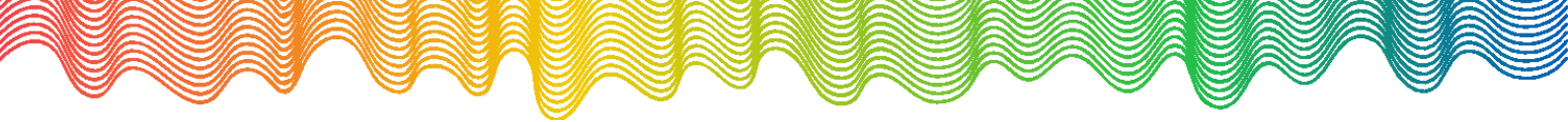
6.2. The membership subscription shall be payable on a date agreed by the Member and the Host Organisation or the Network Support Team on behalf of the Host Organisation. Membership is renewed automatically on the 1st of April each year unless notice of cancellation is received 30 days prior to subscription renewal.

6.3. The Members agree that subject to Clause 6.4, the aggregate amount of any actual liability incurred by any or all of them shall be borne by them in equal proportions and each shall indemnify and keep indemnified the others accordingly.

6.4. If any liability incurred is solely or partially attributable to the default of one Member to comply with the terms proposed by the Steering Group or the terms of this Agreement then, notwithstanding Clause 6.3 the whole of such liability or the part of such liability attributable to the default of such Member shall be borne by that Member who shall indemnify and keep indemnified the other Members accordingly.

6.5. All funding raised by the Network shall be used by the Host towards achieving the objectives of the Network, including the procurement of the provision of services and functions on behalf of Members and paying any expenses the Host incurs in relation to the business of the Network. Reimbursement will also be given to any Departing Host as defined in the Constitution.

6.6. Member subscription will be due for payment 30 days after the date of invoice. If debts go over 60 days old, the member will be sent a warning that access to the members' area of the Network will cease if the debt is not paid by 90 days. The member's access will be denied when debts become more than 90 days overdue.


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- 6.7. Cancellation fee: Cancellation of membership within the first financial quarter of the new subscription year will be accepted with a full refund of the annual membership fee. Cancellation of membership in the second and third financial quarters will incur a cancellation fee calculated pro-rata to the length of time membership has been for that year. In the final quarter, the annual membership fee will be payable in full with no refund.
- 6.8. Member mergers: Notice of mergers where a formal and agreed date is in place happening during a financial year must be given 3 months prior to the start of that financial year (i.e., by 31st December of the preceding year).
- 6.9. Where notice has been given and meets the requirement of Clause 6.8, organisations will be billed separately, pro rata, to the date of the merger and then as one organisation, pro rata, for the remainder of the year.
- 6.10. Where notice has been given and does not meet the requirement of Clause 6.8, organisations will be billed separately for the full financial year in which the merger occurs and as one organisation in subsequent years.
- 6.11. Merged organisations membership fee will be set to balance the impact to the Network, financial and project demands and the size of the newly formed organisation.

7. Management of the Network

- 7.1. The management of the Network shall be vested in the Steering Group, which shall be composed and which shall have the powers, subject to the restrictions, set out in the Constitution.
- 7.2. The Network Support Team will be responsible for the benchmarking services and for the data that it is required to process to perform such services in accordance with appropriate legislation or national guidance and as specified in Clause 14 below.


8. The Host's Obligations

- 8.1. The Parties acknowledge and agree that the rights and obligations of the Network Support Team under this Agreement are the rights and obligations of the Host, represented by the Network Support Team [on the terms of the Constitution].
- 8.2. In consideration for the obligations of the Members in Clause 5, the Host, in its capacity as Host, covenants with the other Members that, for so long as it remains the Host or until the termination of this Agreement, it will:
- 8.2.1. comply with the directions of the Steering Group except where this would place the Host in breach of any legislation or guidance or the Host's provider licence

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- issued by Monitor (including its constitution, Standing Orders and Standing Financial Instructions) or any regulatory requirement;
- 8.2.2. sub-contract performance of the duties of the Host including where appropriate to the Network Support Team;
- 8.2.3. enter into and comply with contracts on behalf of the Network;
- 8.2.4. host the Network organisationally as a separate unit from the Host's own business;
- 8.2.5. hold all assets of the Network (including in particular the Network IP, Members' subscriptions, cash, surpluses) on trust for the Members equally between them provided that any Members' subscriptions may at the discretion of the Host be held by the Network Support Team on behalf of the Host;
- 8.2.6. maintain accurate and complete:
- 8.2.6.1. accounting and other financial records for each Financial Year in accordance with the requirements of all applicable laws and generally accepted accounting practices applicable in the United Kingdom in relation to the Host and the Network;
 - 8.2.6.2. statements and records of all transactions for the Network Account, and make these available on request to any Member.
 - 8.2.6.3. prepare monthly management accounts and reports in relation to the Network containing such information as the Steering Group shall require and which shall be delivered to the Steering Group within 10 days of the end of each calendar month

9. Liability and Risk Sharing

- 9.1. Each Member accepts that, during the Term, all members of the Network will be required to share jointly and severally the risks and liabilities undertaken by the Host in its role as host member of the Network. Accordingly, each Member agrees that, where the Host incurs any losses, costs or liabilities, the Members shall jointly and severally fully indemnify and keep indemnified the Host from and against such losses, costs or liabilities. Members shall indemnify for and hold harmless the Host from any losses, liabilities, costs or liabilities incurred by to the Host in connection with or arising from the breach by any Member of the terms of this Agreement (including without limitation, clause 14).
- 9.2. For the avoidance of doubt, the intention of the indemnities set out in Clause 9.1 is to ensure that the Host is in no worse position as host of the Network than it would have been in had it not been host of the Network.


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- 9.3. The Host agrees that the indemnities in Clause 9.1 shall not apply where any such liability has been incurred wholly and directly as a result of the Host failing to comply with the terms of this Agreement or the Constitution, including in particular any contracts entered by the Host on behalf of the Network, or failing to comply with any written direction or demand of the Steering Group
- 9.4. The resignation or removal and appointment of the Host shall be governed by the Constitution.

10. Intellectual Property and Branding

- 10.1. It is acknowledged that all Intellectual Property Rights in Member Data shall belong to and remain vested in that Member and the Intellectual Property Rights in the Benchmarked Data shall belong to and remain vested in the Host. Should the role of Host move to another Member of the Network, the Intellectual Property Rights in Member Data shall be, automatically assigned by the Member who no longer carries out the role of “Host” to the new Host of the Constitution.
- 10.2. No right to use any Intellectual Property Rights belonging to another Member is granted or implied by this Agreement and any use must be expressly licensed by the relevant Member in writing.
- 10.3. Any Intellectual Property Rights created by Members which are derived from the Benchmarked Data, unless otherwise agreed in writing by the Steering Group, be assigned by that Member to the Host and held on trust by the Host for the Members in equal proportions. Any Intellectual Property Rights created in the aforementioned manner shall be deemed to be licensed to the Host in accordance with Clause 14.3.

11. Termination of the Agreement

- 11.1. This Agreement shall terminate when:
- 11.1.1. all the Members agree in writing to its termination; or
 - 11.1.2. there is only one Member of the Network.
- 11.2. A Member shall cease to be a Member if:
- 11.2.1. they resign as a Member by giving at least [12 months’] prior written notice of their resignation to the Steering Group;
 - 11.2.2. they cease to exist in the form in which they exist when they are admitted as a Member;
 - 11.2.3. they merge with another organisation;
 - 11.2.4. they are expelled from membership by resolution of at least [75%] in number of the Members;



11.2.5. they commit a material breach of any of the terms of this Agreement and (if such a breach is remediable) fail to remedy that breach within thirty (30) days of being notified in writing of the breach.

11.3. The following provisions of this Agreement remain in full force after termination: Clauses 1, 9, 10, 13, 14, 15, 17, 19, 21 and 30.

11.4. Termination of this Agreement shall not affect any rights or liabilities that a Member has accrued under it.

12. Restrictive Covenants

12.1. Each of the Members covenants with each of the other Members that such Member will not, without the prior consent in writing of the Steering Group, whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person during the Relevant Period:

12.1.1. solicit or entice, or endeavour to solicit or entice, away from the Host or any other Member or employ any person employed by, or who is or was a consultant to, the Host or any other Member at any time during the Relevant Period;

12.1.2. be engaged, concerned or interested in any business which supplies goods and/or services which are competitive with or of the type supplied by the Network;

12.1.3. use in connection with any business which is competitive with the business of The Network any name (in whatever form) which includes the name “NHS Benchmarking Network” or any trading style or get up which is confusingly similar to that used by the Network from time to time during the Relevant Period.


12.1.4. In this Clause 12:

12.1.4.1. “Relevant Period” means the period commencing on the date of this Agreement and ending on the Relevant Date;

12.1.4.2. “Relevant Date” means the date on which the relevant Member ceases to be a Member of the Network.

12.1.5. Each of the Members agrees that it considers the undertakings contained in this Clause 12 are reasonable and are entered into for the purpose of protecting the goodwill of the business of the Network.

12.1.6. Each of the undertakings contained in this Clause 12 will be, and is, a separate undertaking by each of the Members and will be enforceable by the other Members separately and independently of each other and if one or more of the undertakings contained in Clause 12.1 is held to be against the public interest or unlawful or in any way an unreasonable restraint of trade the remaining undertakings will continue to bind each of them.



12.1.7. If any undertaking contained in Clause 12.1 would be void as drawn but would be valid if the period of application were reduced or if some part of the undertaking were deleted, the undertaking in question will apply with such modifications as may be necessary to make it valid and effective.

13. Warranties

13.1. Each Member warrants to the other Members that it has full power and authority and has obtained the consent of any person (including its own governing body or executive Steering Group) necessary, to enter into, be bound by and perform this Agreement in accordance with its terms.


14. Data Sharing

14.1. Members shall benefit from the benchmarking services provided under this Agreement as amended from time to time in consultation with the Steering Group and Reference Groups (the “Benchmarking Services”) in accordance with the terms of this Clause 14. For Members to benefit from such services, interested Members (the “Submitting Members”) shall share the Member Data with the Host whether directly, or represented by the Network Support Team. Upon receiving such Member Data, the Host (or the Network Support Team) shall analyse and provide statistics and insights to produce and share the Benchmarked Data on the terms set out in this Agreement.

14.2. In providing the Benchmarking Services the Host, whether directly or represented by the Network Support Team, does not collect, use or otherwise process Personal Data from the Members. Members undertake to use reasonable endeavours not to include any Personal Data in the Member Data.

14.3. Upon becoming Submitting Members, Submitting Members grant under this Agreement a non-exclusive, non-sublicensable (except as required to perform the Benchmarking Services) and non-transferable license to the Host and the Network Support Team to use/process their Member Data for the purpose of allowing the Host, whether directly, or represented by the Network Support Team provide the Benchmarking Services and for carrying out its obligations under this Agreement.

14.4. For the duration of this Agreement and for as long as the Members remains Members of the Network, the Host grants a non-exclusive, non-sublicensable (without prejudice to Clause 14.5, 14.8 and 14.9) and non-transferable license to Members to access the Benchmarked Data and use it for their internal business purposes, and any other purpose that may be agreed to separately between the Host, whether directly, or represented by the Network Support Team and the Member in question in



accordance with each yearly work programme presented to the Members. Members shall notify the Host promptly if they become aware of any unauthorised use of the whole or any part of the Benchmarked Data.

14.5. Any use of the Benchmarked Data for any purpose other than as listed in Clause 14.4 above is expressly prohibited unless specifically agreed to in writing by the Host, whether directly or represented by the Network Support Team at its reasonable sole discretion.

14.6. In relation to the Benchmarked Data and the Member Data, each Member acknowledges and agrees that:

14.6.1. it is solely responsible for the quality, accuracy, reliability, consistency, suitability and legality of its Member Data;

14.6.2. it shall update its Member Data in a timely manner to correct typographical errors truncation of data, out-of-date information and other inaccuracies;

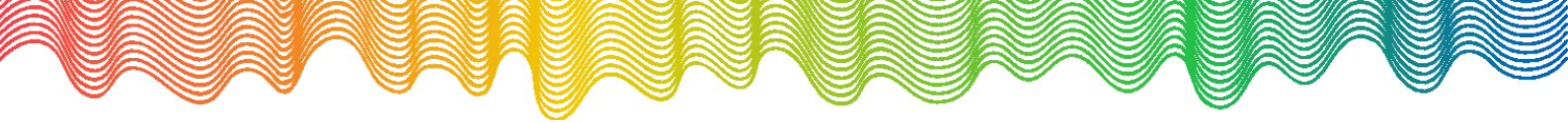
14.6.3. the accuracy, reliability, quality and completeness of the Benchmarked Data depends on the accuracy, reliability, quality and completeness of the Member Data; and

14.6.4. neither the Host nor the Network Support Team is responsible for and does not guarantee that the Benchmarked Data is accurate, complete, suitable or fit for any particular purpose.

14.7. Each Member Account is personal to each Member and sharing of login credentials with any other Members is strictly prohibited. Each Member acknowledges and agrees that:

14.7.1. each Member shall be responsible to keep their Member Account secure at all times and shall not share login credentials with any other Members or third parties. In the event a Member ceases to be a Member, they shall notify the Host or the Network Support Team promptly and shall no longer have access to its Member's Account; and

14.7.2. each Member may grant access to its Member Account only to a certain number of employees who need access to such Member Account for the purpose of this Agreement (each such employee an "Authorised User"). The number of Authorised Users will be notified by the Host from time to time. Each Authorised User will be granted by its Member a login to the Member Account of the relevant Member ("User Login"). Each User Login is personal to each Authorised User and sharing of login credentials to any other person without the prior written permission from the Host or the Network Support Team is strictly prohibited. Each Member shall procure that its Authorised Users use the Member Accounts only for the purpose of and in accordance with the terms of this Agreement and that they do



not share their login credentials with any other person (including other employees, Members or third parties). In the event an Authorised User ceases to be an employee of a Member, the Member shall notify the Host or the Network Support Team promptly to ensure that the User Login of that Authorised User is no longer accessible by that Authorised User.

14.8. Access to Benchmarked Data including Member Identifiable Data, is given to Submitting Members once they have received prior written permission (which can be granted by email) from the Host, whether directly or represented by the Network Support Team. It should be noted that as unique identifiers do not change between project iterations, by sharing identifying codes members are consenting to previous and future years Benchmarked Data being identifiable. Submitting members that do not wish to be identified in accordance with this clause 14.8, should notify the Host whether directly or represented by the Network Support Team, in writing, this member will become recognised as a Non-Submitting Member for the purposes of this Clause 14. Members who are Non-Submitting Members may only access Benchmarked Data which identifies Members, if they obtain prior written approval from the Host whether directly or represented by the Network Support Team and enter into any appropriate agreement (such as a separate data sharing agreement) with no less onerous terms than those set out in this Agreement. A data sharing agreement will reflect the wishes of the parties and should outline how the data will be used clarifying that Benchmarked Data will be used for legitimate benchmarking purposes and not for example for regulatory performance management of Members. Members who receive Member Identifiable Data shall not share such data without other Member's prior written consent.

14.9. Each Member warrants and represents that:


14.9.1. It has and will maintain all necessary licences, approvals, authorisations, permissions and consents to share any Intellectual Property Rights in their Member Data;

14.9.2. Member Data does not contain any material which is offensive, unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, defamatory or otherwise illegal;

14.9.3. there is no present or prospective claim, proceeding or litigation in respect of the Member Data which may in any way impair the Host's rights or obligations under these terms; and

14.9.4. the Member Data and the Host's processing thereof does not infringe the Intellectual Property Rights of any third party;

14.9.5. to their knowledge, the Member Data does not contain any Personal Data;



14.9.6. It will use reasonable efforts to ensure that the Member Data does not contain and shall not distribute any viruses, malware, trojans, worms, logic bombs, or other material that is malicious or technologically harmful; and

14.9.7. It will not modify the Benchmarked Data.

14.10. Except as specifically set out in this Agreement, with respect to the Benchmarking Services all warranties, express or implied, are excluded.

14.11. Members shall permit the Host whether directly or represented by the Network Support Team to check the use of the Benchmarked Data at all reasonable times in accordance with applicable laws, The relevant Member shall provide reasonable assistance to the Host (or the Network Support Team) to verify (including in a remote manner) that Members use of the Benchmarking Data.

15. Confidentiality

15.1. Each Member shall at all times (i) keep confidential any Confidential Information; (ii) not use Confidential Information for any purpose other than in connection with the operation of this Agreement; and (iii) not disclose any Confidential Information to any third party except:


15.2. subject to clause 15.4 below, to a Member's officer, employee, agent, consultant or professional advisers where such disclosure is in connection with the operation of this Agreement; or

15.3. with the consent in writing of the Host whether directly or represented by the Network Support Team or the Member to which the information relates; or

15.4. as may be required by law or regulation or by a court of competent jurisdiction, when the Member concerned shall, so far as legally permissible and reasonably practicable, supply a copy of the required disclosure to the other Members, promptly and before it is disclosed to enable the other Members to consider and suggest amendments to it, and take into account any reasonable requirement by the other Members; or

15.5. Each Member shall inform any officer, employee or agent or any consultant or professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, of the confidentiality of the Confidential Information and shall ensure they are bound by confidential obligations not less onerous than the terms of this Agreement.

15.6. Upon termination of this Agreement, any of the Members may demand from the others the return of any documents containing Confidential Information in relation to that Member by notice in writing whereupon the other Members shall use all



reasonable endeavours to ensure that its officers, employees, agents and professional advisers (save for any submission to or filings with any legal or regulatory authority) to the extent reasonably and technically practicable:

- 15.7. return such documents; and
- 15.8. destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,
- 15.9. Any return or destruction pursuant to Clause 15.5 shall take place as soon as practicable after the receipt of any such notice and shall not apply to any Confidential Information a Member is required to retain in order to comply with applicable law or regulation.
- 15.10. The obligations of each of the Members in these Clauses 9,14 and 15 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.
- 15.11. Save as expressly provided under this agreement, none of the Parties shall make or permit or authorise the making of any press release or other public statement or disclosure concerning this Agreement or any transaction contemplated by it or its termination or cessation without the prior consent in writing of the other Parties (except as required by law or regulation) but before any Party makes any such release, statement or disclosure it shall where practicable first supply a copy of it to the other Parties and shall incorporate any amendments or additions they may each reasonably require.

16. Account Misuse

- 16.1. NHS Benchmarking Network reserves the right to close without warning any Member Accounts being used for any other purpose than for the provision of data held in the Members area to the individual Member.
- 16.2. Possible forms of misuse include, but are not restricted to the following:
 - 16.2.1. Data theft - information provided is for the benefit of the individual Member only, and must not be shared, published, or otherwise disseminated in any way;
 - 16.2.2. Login Sharing - the sharing of login details is strictly prohibited without prior consent from NHS Benchmarking Network. NHS Benchmarking Network will automatically suspend accounts being misused and / or accessed from multiple locations
 - 16.2.3. Incorrect information - if the information provided by a Member is false or incorrect the Member may be denied access to the Member Account or a Member Account may be closed.



17. Copyright Notice

- 17.1. This website and its content is Copyright © NHS Benchmarking Network 2023. All rights reserved.
- 17.2. Any redistribution or reproduction of part or all of the contents in any form is prohibited other than the following:
- 17.2.1. you may print or download to a local hard disk extracts for your personal and non-commercial use only
 - 17.2.2. you may copy the content to individual third parties for their personal use, but only if you acknowledge the NHS Benchmarking Network as the source of the material
 - 17.2.3. You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.

18. Fair Processing Notice

- 18.1. Please find available to download The NHS Benchmarking Network's Fair Processing Notice.

19. Freedom of Information Act

- 19.1. The Members acknowledge that they are each subject to the requirements of Freedom of Information Act 2000 (FOIA) and, to the extent that any FOIA Request shall relate to the Network, shall assist and co-operate with each other and the Steering Group to enable the relevant Member to comply with any such FOIA Request.
- 19.2. The Member shall be responsible for determining at its absolute discretion whether any information to be disclosed in the response is information of a commercially sensitive nature which would, if disclosed, cause significant commercial disadvantage or material financial loss to that Member or the Network and, as such, is exempt from disclosure in accordance with the provisions of FOIA.

20. No Partnership or Agency

- 20.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.



21. Data Protection

- 21.1. Without prejudice to Clause 14.2, in the performance of their respective duties under this Agreement and in relation to the Network generally, each party to this Agreement shall observe applicable Data Protection Legislation if and to the extent it applies to them in connection with his Agreement.

22. Variation

- 22.1. No variation of this agreement shall be effective unless it is in writing

23. Costs

- 23.1. Unless otherwise stated in this Agreement, each Party will bear its own costs, fees and expenses incurred in performing its obligations under this Agreement

24. Dispute Resolution

- 24.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute") then except as expressly provided in this Agreement the Parties shall follow the dispute resolution procedure set out in this Clause 24.
- 24.2. A Party shall give to the other Parties and to the Steering Group written notice of the Dispute, setting out its nature and full particulars together with any relevant supporting documentation. On service of the Dispute Notice, the Steering Group shall attempt in good faith to resolve the Dispute.
- 24.3. Each Party shall bear its own costs in respect of the determination of any Dispute.

25. Governing Law and Jurisdiction

- 25.1. This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 25.2. The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.