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## **The Health and Social Care Information Centre**

### **Standard Terms and Conditions for the Use and Re-Use of Public Sector Information**

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## **STANDARD TERMS AND CONDITIONS FOR THE USE AND RE-USE OF PUBLIC SECTOR INFORMATION**

<b>1</b>	<b>PURPOSE &amp; SCOPE OF THESE STANDARD TERMS AND CONDITIONS .....</b>	<b>3</b>
<b>2</b>	<b>DEFINITIONS .....</b>	<b>3</b>
<b>3</b>	<b>ADDITIONAL SPECIAL TERMS AND CONDITIONS.....</b>	<b>6</b>
<b>4</b>	<b>MATERIALS COVERED BY THESE TERMS AND CONDITIONS .....</b>	<b>6</b>
<b>5</b>	<b>MATERIALS FALLING OUTSIDE THE SCOPE OF THESE TERMS &amp; CONDITIONS....</b>	<b>6</b>
<b>6</b>	<b>HOW THESE INFORMATION ASSETS MAY BE USED AND RE-USED.....</b>	<b>7</b>
<b>7</b>	<b>SUPPLY OF INFORMATION ASSETS .....</b>	<b>7</b>
<b>8</b>	<b>TERM.....</b>	<b>7</b>
<b>9</b>	<b>PAYMENT TERMS .....</b>	<b>8</b>
<b>10</b>	<b>USER OBLIGATIONS.....</b>	<b>9</b>
<b>11</b>	<b>NHS IC OBLIGATIONS .....</b>	<b>10</b>
<b>12</b>	<b>CHANGES TO THE TERMS OF THESE STANDARD TERMS AND CONDITIONS .....</b>	<b>10</b>
<b>13</b>	<b>AUDIT.....</b>	<b>10</b>
<b>14</b>	<b>TERMINATION.....</b>	<b>11</b>
<b>15</b>	<b>CONSEQUENCES OF TERMINATION .....</b>	<b>11</b>
<b>16</b>	<b>ASSIGNMENT.....</b>	<b>11</b>
<b>17</b>	<b>DISCLAIMER .....</b>	<b>11</b>
<b>18</b>	<b>GOVERNING LAW .....</b>	<b>12</b>
<b>19</b>	<b>FURTHER INFORMATION .....</b>	<b>12</b>
<b>ANNEX 1</b>	<b>RE-USE TYPOLOGY .....</b>	<b>13</b>

## **1 PURPOSE & SCOPE OF THESE STANDARD TERMS AND CONDITIONS**

- 1.1 This document sets out the Terms and Conditions under which Public Sector Information held by the Health and Social Care Information Centre (The NHS IC) may be used and re-used.
- 1.2 The NHS ICs Information Asset Register identifies those information assets that are available for use and re-use. These standard Terms and Conditions set out the basis on which NHS IC information assets can be used and re-used.
- 1.3 The Terms and Conditions enable The NHS IC to meet it's responsibilities under the EU Directive on the Use and Re-Use of Public Sector Information 2005.
- 1.4 The Terms and Conditions do not cover computer programs or software.
- 1.5 In addition to these standard Terms and Conditions, the use and re-use of certain NHS IC information assets will be subjected to specific additional special Terms and Conditions.
- 1.6 Together these standard Terms and Conditions along with any specific additional special Terms and Conditions, and any written contract which incorporates them (containing the commercial details of The NHS IC's information assets licensed and applicable Charges, payment and other commercial terms), shall constitute The NHS IC Data Re-Use Agreement signed between The NHS IC and the Information Asset User. A signed Agreement provides the information asset user with a licence to use/re-use a given information asset for a defined period of time.

## **2 DEFINITIONS**

In this document, the terms below have the following meanings:

- 2.1 "Agreement" means the Data Sharing or Re-Use Agreement, the contract as 1.6 above...
- 2.2 "Application" means the Information Asset User's application for a Licence to use/re-use an information asset.
- 2.3 "Application Form" means the Licence application form.

- 2.4 “Asset Sale” means the disposal by the Information Asset User of all, or a substantial part of, its business and assets.
- 2.5 “Change in Control” means the:
- 2.5.1 sale, transfer or change of (or the grant of a right to sell, acquire, transfer or change of) any of the shares in the capital of the Information Asset User or the membership of the Information Asset User (if the Information Asset User is a company formed under the Companies Acts or a Limited Liability Partnership formed under the Limited Liability Partnerships Act 2000 or any other corporate body); or
- 2.5.2 retirement, resignation or expulsion of any of the partners of the partnership of the Information Asset User or the addition or admission of any new partners (if the Information Asset User is a partnership under the Partnership Act 1890 or a limited partnership under the Limited Partnership Act 1907);
- (and whether in one transaction or as a series of transactions) which will result in a change in the Control of the Information Asset User.
- 2.6 “Charges” means any charges set out in any agreement, commercial front sheet, data sharing agreement or re-use agreement which incorporates these standard Terms and Conditions, including but not limited to any sums described therein in as “Licence Fee(s)” or “Production Fee(s), and which shall be payable under condition 9 of these standard Terms and Conditions.
- 2.7 “Control” means (i) the ownership or control (directly or indirectly) of more than [fifty per cent (50%)] of the voting rights of the Information Asset User (or the ability to direct the casting of more than [fifty per cent (50%)] of the voting rights of the Information Asset User) exercisable at meetings of the shareholders, members or partners of the Information Asset User or (ii) the right to appoint or remove directors, officers or managers of the Information Asset User holding more than [fifty per cent (50%)] of the voting rights at meetings of the board, officers or managers or (iii) the right to more than [fifty per cent (50%)] of the capital or profits of the Information Asset User.
- 2.8 “Exit” means a Change in Control, an Asset Sale or a Listing.
- 2.9 “Information Asset User” means organisations or persons who request or who are granted the rights to use/re-use an information asset which is held by The NHS IC.
- 2.10 “Information Asset Register” means a list of information resources that are held by The NHS IC and available for use and re-use, within defined terms and conditions.
- 2.11 “Information Governance” means a framework that enables person-identifiable and corporate information to be managed according to ethical, mandatory and statutory standards.
- 2.12 “Insolvency Event” means *the occurrence of any of the following events in relation to the end user: (a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the data user to be wound up or dissolved or the entity being otherwise dissolved; (b) the appointment of an administrator or the making of an administration order to the User or the appointment of a receiver or administrative receiver or an encumbrancer taking*

*possession of or selling the whole or part of that data user's undertakings assets rights or revenue; (d) the data user entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to maintain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors or (e) the User being unable to pay its debts within section 123 of the Insolvency Act 1986.*

- 2.13 "Licence" means the Licence to be issued upon approval of an Information Asset User's application form.
- 2.14 "Listing" means the successful application and admission of all or any of the shares in the capital of the Information Asset User, or securities representing such shares to the Official List of the UK Listing Authority or on the AIM market operated by the London Stock Exchange plc, or the Nasdaq National Stock Market of the Nasdaq Stock Market Inc., or to any recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000 (as amended)).
- 2.15 "Official Source" means any publication, product or information source which has been made available to the public by The NHS IC.
- 2.16 "Person Identifiable Data" means data from which person identities may be obtained or derived. In the NHS and social care, this could relate to patients, service users, service providers such as hospital consultants, GPs.
- 2.17 "Public Task" means the core purpose of the organisation. For public sector organisations this is often encapsulated in the statutory instrument which established them i.e. its Statutory Function. The NHS ICs core "Public Task" is the specification, collation and publication of health and social care related data and information for use by public sector organisations and private sector organisations to the benefit of the English health and social care system.
- 2.18 "Unrefined Data" means data or information held in its basic granular form. This may be different from source or primary data received by the organisation e.g. original survey forms which have been validated and collated into unrefined data prior to processing to create refined data.
- 2.19 "Refined Data" means un-refined data or information which has been enhanced, modified or transformed by The NHS IC.
- 2.20 "Re-use of Information" means the particular definition of re-use of information within the EU Directive on Re-Use of Public Sector Information which came into force in July 2005. These regulations apply to information for which The NHS IC is the data controller where the activity of supplying the information falls outside The NHS ICs public task. The regulations only apply to information that is already accessible either because The NHS IC has identified it as being available for re-use, it is not subject to an exemption under the Directive, is otherwise accessible to the use e.g. via The NHS IC website or is requested under the Freedom of Information Act .
- 2.21 "The NHS IC" means The Health and Social Care Information Centre.

2.22 "Field" means a recognisable business domain, sector or market<sup>1</sup> within the Territory;

2.23 "Territory" means a legally recognisable geographic trading area, country or jurisdiction<sup>2</sup>.

### **3 ADDITIONAL SPECIAL TERMS AND CONDITIONS**

3.1 Certain NHS IC information assets are subject to special Terms and Conditions, for example, where the information asset contains sensitive data. An example of such an information asset is the Hospital Episode Statistics (HES) Extract asset. In this instance, potential users must comply with the special (additional) terms and conditions set out in both the NHS Care Record Guarantee and the HES Protocol.

3.2 In such cases, The NHS IC will require potential users to confirm acceptance with the additional (special) terms and conditions as part of The NHS IC Data Re-Use Agreement. These will be listed in the Agreement and provided as additional document to this agreement.

3.3 In a limited number of instances the use and re-use of certain NHS IC information assets will be subject to the review and approval of a standing approval committee.

3.4 Where an information asset is subject to special Terms and Conditions this fact is made clear in The NHS ICs Information Asset Register.

### **4 MATERIALS COVERED BY THESE TERMS AND CONDITIONS**

4.1 All information assets listed within the Information Asset Register may be reproduced under these standard Terms and Conditions alone unless, in addition, special Terms and Conditions apply as referenced conditions 1.4, 1.5, 1.6 or Section 3 of this document.

### **5 MATERIALS FALLING OUTSIDE THE SCOPE OF THESE TERMS & CONDITIONS**

5.1 The Regulations do specify a number of exemptions from this right to information. These include matters of national security, commercial or contractual information and court records.

5.2 Exempt information assets specified under Freedom of Information legislation are not available under these terms and conditions.

5.3 These use/re-use terms and conditions do not cover computer programs,

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<sup>1</sup> Examples of Field are; Public Task, Improving the quality of healthcare management and service delivery, Business to Business trading, Internal Business Development,

<sup>2</sup> Examples of Territory are; England, Wales, the United Kingdom, Europe, World-wide

software or personal identity documents.

- 5.4 In accordance with the Regulations, The NHS IC reserves the right to withhold such permission or stipulate additional re-use terms and conditions.
- 5.5 "Refined" data, information and or information products and packages, software, algorithms and other bespoke material may only be used or re-used with the express permission of The NHS IC and under a separate agreement.
- 5.6 Special Terms and Conditions (see Section 3) may apply to certain information assets listed in the Information Asset Register or where the re-use is associated with a commercial transaction.
- 5.7 The use and re-use of technical drawings and diagrams which relate to wider Intellectual Property Rights in patents, trademarks, design right, registered design right and inventions are not covered by these standard terms and conditions.
- 5.8 These terms and conditions exclude any material where the copyright is owned by a third party.

## **6 HOW THESE INFORMATION ASSETS MAY BE USED AND RE-USED**

Within these Terms and Conditions, to use or re-use includes the following non-exclusive rights:

- 6.1 Use only within the Field and Territory as specified in the Agreement.
- 6.2 And as may be specified in Section 4 of the Agreement.

## **7 SUPPLY OF INFORMATION ASSETS**

- 7.1 In most cases the information asset user will be able to reproduce the information asset as long as they are careful not to infringe copyright of The NHS IC or any other party. The user may reproduce the material by whatever means they choose including scanning, downloading from the website or re-keying.
- 7.2 The Information Asset Register holds details of the availability of information assets.
- 7.3 The format of the available information asset is listed in the Information Asset Register along with any special conditions for access to the information asset. The NHS IC may be able to supply the material the user wants to re-use in other formats. The application form should include details of information assets requested in other formats, and The NHS IC will assess whether it is possible to make the information available in the format. There may be an associated cost as per Section 10 of these standard Terms and Conditions.

## **8 TERM**

- 8.1 The licence for the use/re-use shall commence on the date indicated on the returned Licence and shall continue for the period specified in the Agreement unless otherwise terminated as provided for in Section 14.

- 8.2 The licence shall not automatically renew and the user will be required to return or destroy the Information Asset as outlined in Section 10 unless either party notifies the other of its intention to terminate the agreement in writing in advance of the end of the term of the licence.

## 9 PAYMENT TERMS

- 9.1 The Charges shall be payable by the Information Asset User to The NHS IC by the date(s) specified in any agreement or in any commercial front sheet which incorporates these standard Terms and Conditions ("**the Due Date(s)**").
- 9.2 All Charges (or appropriate portions thereof) shall be promptly paid by the Information Asset User to The NHS IC to its nominated bank account by the Due Date(s), in cleared funds, without withholding, set-off or deduction, and time for payment is of the essence
- 9.3 All Charges payable shall be paid in £ Sterling and are exclusive of VAT, which shall be paid in addition at the appropriate rate, where VAT applies.
- 9.4 Where the Information Asset User fails to make payment as set out in Condition 9.2 above, The NHS IC shall be entitled (but shall not be obliged) to charge the Information Asset User interest on all sums overdue at the rate of 4% above Barclays Bank plc base rate (from time to time in force) calculated on a daily basis from the relevant Due Date until payment is made in full by the Information Asset User.
- 9.5 In addition to its right to charge interest on late payment as set out in condition 9.4 above, and without prejudice to its rights under condition 9.6 below or otherwise, where the Information Asset User fails to make payment within a further [14] days from the first date that any sums are overdue, The NHS IC shall be entitled (but shall not be obliged) to do any or a combination of the following:
- 9.5.1 to cancel all or any part of any outstanding licence(s);
  - 9.5.2 refuse to grant any further licence(s) (whether connected or unconnected to the subject matter of this Agreement) to the Information Asset User;
  - 9.5.3 terminate the agreement which incorporates these standard Terms and Conditions;
- 9.6 If the Information Asset User:
- 9.6.1 exceeds at any time any level of maximum anticipated sales for any period that is specified in the contract which incorporates these Terms and Conditions; and/or
  - 9.6.2 fails to pay any Charge within [14] days after it becomes due and payable; and/or
  - 9.6.3 is subject to an Insolvency Event; and/or
  - 9.6.4 is subject to an Exit;
- then all Charges and other sums payable to The NHS IC during the entire term of this licence (whether then due for payment or not) shall become immediately due and payable without the need for demand on the Information Asset User



and, for the avoidance of doubt, interest in terms of condition 9.4 above shall accrue and be due on such sums from such date until the date of payment.

## **10 USER OBLIGATIONS**

The user warrants and undertakes that it shall:

- 10.1 Comply with all relevant legislation, regulations, codes of practice, guidance and other requirements;
- 10.2 Provide full and accurate information on any Application and inform The NHS IC in writing if any of the information changes;
- 10.3 Inform The NHS IC if they wish to terminate the licence prior to its natural expiry date;
- 10.4 Re-use only material which is covered by the licence, and for the use specified in the licence;
- 10.5 Reproduce only under the terms of the licence issued by The NHS IC;
- 10.6 Reproduce information asset in accordance with legislation e.g. copyright;
- 10.7 Acknowledge and act appropriately in awareness that the rights granted under this Licence cannot be transferred, sold, or rented to anyone else.
- 10.8 Reproduce information asset accurately from the current Official Source except where the Information Asset User makes clear there is a more up to date version available;
- 10.9 Identify the source of the information asset and feature the appropriate copyright statement if it is published;
- 10.10 Any use of The NHS ICs information assets in whole or in part should include customary bibliographic citation, including author attribution, date, publication/document title, The Health and Social Care Information Centre, and the URL [www.ic.nhs.uk](http://www.ic.nhs.uk);
- 10.11 Ensure compliance with the Data Protection Act 1998. This includes not sending the data for storage and/or processing overseas
- 10.12 Where applicable, abide by access mechanisms and keep password etc secure and not share with any third party;
- 10.13 Keep a full and accurate record of how information asset supplied has been used and make this available for audit purposes, if required;
- 10.14 Send The NHS IC, if requested, a copy/or subscription of any publication produced that includes the information asset. In the case of the electronic products and services the user should provide the appropriate licence;
- 10.15 Not alter and then represent the information asset in a way which could imply that it has official status or has been endorsed by The NHS IC;
- 10.16 Not use the information asset to advertise or promote products or services or in ways which could imply endorsement of these products or service by The NHS IC or generally in a manner which is likely to mislead others;
- 10.17 Not use the information assets in ways which are knowingly or potentially libellous or slanderous of individuals, companies or organisations;

- 10.18 Not reproduce The NHS ICs logos without express and explicit permission;
- 10.19 Notify The NHS IC of any errors found in the Information Asset;
- 10.20 Comply with the regulations set around Information Asset destruction and archiving after the period of the licence expires;
- 10.21 Acknowledge any potential sensitivities of the Information Asset and agree to uphold and maintain security and confidentiality standards, as required, at all times.
- 10.22 Not Re-Distribute, Sub-licence, Rent, Sell or Modify the information assets without express and explicit permission of The NHS IC.
- 10.23 Comply fully with this Data Re-Use Agreement at all times.
- 10.24 Agree to pay the Fees as set out in Section 9 above.

## **11 NHS IC OBLIGATIONS**

The NHS IC warrants and undertakes that it shall:

- 11.1 Confirm receipt of any application within [seven] working days;
- 11.2 Alert the user to any cost associated with production of the information prior to issuing a licence;
- 11.3 Respond to any queries a user or potential user may have within [seven] working days;
- 11.4 Handle all licences in a way that is fair, equitable and transparent;
- 11.5 Provide notification to the user of any changes to the Terms and Conditions of the licence;
- 11.6 Be open and transparent in any refusal to grant a licence and provide a formal complaints procedure or right of appeal.

## **12 CHANGES TO THE TERMS OF THESE STANDARD TERMS AND CONDITIONS**

- 12.1 The NHS IC shall have the right to change the terms of these standard Terms and Conditions. Changes to terms shall be notified in writing. Unless the information asset user notifies The NHS IC in writing within 14 days of receiving notice of the changes, The NHS IC shall assume that the user is in agreement for their licence to continue under the revised and extended terms.

## **13 AUDIT**

- 13.1 The Information Asset User shall grant The NHS IC or its representatives the right to contact the user on the details provided through registration for the purposes of audit or inspection.
- 13.2 The user shall provide full agreement and co-operation and assistance to The NHS IC and its nominated representatives as required to facilitate the audit or inspection process.

- 13.3 If any audit or inspection by or on behalf of The NHS IC reveals or demonstrates any non-compliance by the User of its obligations pursuant to this licence, the user shall (without prejudice to any other rights or remedies that The NHS IC may have) remedy the cause of any such non-compliance as soon as reasonably practicable and confirm with The NHS IC the actions taken to achieve such remedy.
- 13.4 Without prejudice to any other rights or remedies that The NHS IC may hold, The NHS IC shall be entitled to suspend the provision of any further Information Asset to the user until such time as a remedy has been achieved to the satisfaction of The NHS IC in accordance with condition 13.3.
- 13.5 By exercising its rights of audit and inspection under the condition, The NHS IC does not undertake any responsibility to the user or assume any liability to the user for any aspect of the user's operations nor shall the user be entitled to assert any such responsibility to assumption on the part of The NHS IC for the user's operations.

## **14 TERMINATION**

- 14.1 The NHS IC both reserves the right to terminate the licence immediately and without notice if the user:
- Commits any material breach of any of the terms and conditions of the licence which is not remedied within 30 days of being required to do so by written notice; or;
  - Suffers an Insolvency Event or is likely to suffer an Insolvency Event;
- 14.2 The user also has the right to terminate the licence at any time by e-mail or in writing.
- 14.3 Termination of any use/re-use licence shall be without prejudice to any other rights or remedies of either party.

## **15 CONSEQUENCES OF TERMINATION**

- 15.1 Upon termination or expiry of this licence for any reason:
- All rights granted to the user under this licence shall immediately terminate.
  - The user shall (at its own cost) securely destroy or otherwise permanently and securely erase any information asset provided under this licence in its possession and/or control at the date of expiry or termination and shall certify to The NHS IC that it has done so.

## **16 ASSIGNMENT**

- 16.1 The user shall not be entitled to assign or transfer its rights or obligations under this licence without the prior written consent of The NHS IC.

## **17 DISCLAIMER**

- 17.1 The user's use of the material under this licence is entirely at their own risk. The Health and Social Care Information Centre takes no warranty, guarantee or representation that the material is error free.

## **18 GOVERNING LAW**

- 18.1 This licence shall be governed by and constructed in accordance with English Law and each party agrees to submit to the exclusive jurisdiction of the English Courts.

## **19 FURTHER INFORMATION**

- 19.1 For any queries relating to this licence or The NHS ICs policies regarding the Re-Use of Public Sector Information, please contact:

The Information Centre for Health & Social Care  
Information Governance Team  
1 Trevelyan Square  
Boar Lane  
Leeds  
LS1 6AE

## ANNEX 1 RE-USE TYPOLOGY

TABLE 1

Market Definitions	Type A Refined or un-refined product or service with <b>no additional processing</b> required by IC	Type B Refined or un-refined product or service <b>which requires additional processing</b> by IC
<p>Market 1: IC product or service to be used by <b>another public body in pursuance of its own “public task”</b> objective.</p> <p><i>NB: Public Body, Public Task re-use is outwith the RUPSI Regulations and would normally be governed by a separate Data Sharing Agreement. It is included here for completeness. The reader is urged to seek advice from Information Governance and review the Data Access and Information Sharing Policy.</i></p>	Free	Full Cost Recovery (if the Information Centre choose to levy it)
<p>Market 2: IC product or service to be used by any organisation for the <b>direct and primary</b> purposes of improving the quality of healthcare management and service delivery <b>in England not involving a commercial transaction.</b></p>	Free	Full Cost Recovery
<p>Market 3: IC product or service to be used by any organisation for the purpose of improving the quality of healthcare management and service delivery <b>in England involving a commercial transaction.</b></p>	Free	Additional costs fully recovered, plus a Return on Investment (ROI) or Royalty Agreement (see section 4.4).
<p>Market 4: All other intended uses</p>	Annual Licence Fee	Annual Licence Fee plus additional costs fully recovered and Return on Investment (ROI) or Royalty Agreement (see section 4.4).