

Licence to National Health Service in England

Terms and Conditions

Introduction

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1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence the following meanings shall apply:

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- (i) in respect of Paper Copies: (a) employees of the Licensee, workers, consultants engaged by the Licensee and members of the public known as "non-executive members" who sit on a Designated Committee of an NHS Trust; (b) employees and workers of any HEI who are on temporary or permanent placement with the Licensee but only whilst, and to the extent, that they are engaged in the business of the Licensee or in providing such consultancy services to it; (c) employees and workers of any Library Service Provider while providing library services to the Licensee; and (d) students of any HEI who are on temporary or permanent placement with the Licensee for training and/or receiving instruction as part of their course of study at their HEI but only whilst, and to the extent that, they are engaged in such training and/or receiving such instruction and
- (ii) in respect of Digital Copies: those individuals in (i) above who are permitted by the Licensee to have access to the Licensee's Intranet;

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Certificate: the certificate issued by CLA to confirm the issue of the Licence to the Licensee;

CLA: The Copyright Licensing Agency Ltd;

CLA's website: www.cla.co.uk or such other site as may be notified to the Licensee;

Commencement Date: 1 April 2008;

Designated Committee: any group of individuals numbering less than 25 (at least 1 of whom must be an authorised person) created by the Licensee and having an advisory, consultative, tribunal or executive function in connection with its activities;

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Licence: the licence granted by Clause 2;

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Licensee's Intranet: shall mean NHSnet or such other intranet operated by NHS as is accessible only by those Authorised Persons permitted by NHS to have access to the intranet by way of a secure log-in process which verifies the individual's authority;

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Prescribed Rate: the rate of interest prescribed from time to time pursuant to The Late Payment of Commercial Debts (Interest) Act 1998;

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2. GRANT OF LICENCE

On the issue of the Certificate, CLA grants to the Licensee the non-exclusive right within the United Kingdom to:

- 2.1 make, or permit the making of, Paper Copies;
- 2.2 distribute, or permit the distribution of, Paper Copies to Authorised Persons;
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- 2.6 make copies of Paper Copies;
- 2.7 distribute a single Paper Copy to patients, carers or guardians of patients;

with the exception of clause 2.7, all for the Licensee's internal information purposes only and on the terms and conditions set out in the following Clauses.

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- 3.1 The Licence shall commence on the Commencement Date and continue until 31 March 2010 unless terminated in accordance with clause 10.
- 3.2 The Licence shall pay the Fee together with any VAT payable within 30 days of receipt of an acceptable invoice from CLA.
- 3.3 The CLA shall issue a new Certificate to the Licensee within 30 days of issue of a valid invoice.
- 3.4 CLA reserves the right to charge interest at the Prescribed Rate on late payment of amounts due under the Licence.

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 - (b) in the case of a published report of judicial proceedings, the entire report of a single case; or
 - (c) in the case of a book, one chapter.

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For the avoidance of doubt:

- 6.1 all of the provisions applying to the use of Digital Copies shall also apply in relation to any Third Party Digital Material; and
- 6.2 any material supplied in electronic form to the Licensee under any licence other than a CLA licence is subject to the terms and conditions of that other licence, and not the terms and conditions of this Licence.

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7.1 The Licensee shall:

7.1.1 notify Authorised Persons of, and ensure their compliance with, the provisions of the Licence;

7.1.2 display adjacent to every copying machine used to make Paper Copies, and every scanner used to produce Digital Copies, any user guidelines which CLA may periodically supply to the Licensee.

7.2 In exercising its rights under the Licence, the Licensee shall be responsible for complying with all applicable laws of any kind including (without limitation) moral rights, data protection, the obtaining of any consents which may be required from any person, firm or company (other than those consents relating solely to copyright and/or database right), privacy or personality rights of any kind, defamation or obscenity.

8. VISUALLY-IMPAIRED AUTHORISED PERSONS

8.1 The provisions of this clause shall only apply where an Authorised Person is visually impaired or otherwise disabled and by reason of such visual impairment or disability is unable to read or access a Licensed Copy made under the provisions of the Licence

8.2 Notwithstanding the provisions of clause 4.2, the Licensee may make and supply a copy (an "Accessible Copy") of part or the whole of any work within Licensed Material in any alternative format that is more accessible to an Authorised Person (as described in clause 8.1), whether in digital or audio format, large or small print copies or embossed copies (whether produced in Moon or Braille or otherwise) or in other formats on, and subject to, the following conditions:

8.2.1 the Licensee must have lawful possession an original copy of any work from which it makes an Accessible Copy;

8.1.2 the Licensee may only make an Accessible Copy of a work if and to the extent that such work is not commercially available in a form accessible to the Authorised Person for whom the Accessible Copy is made;

8.2.3 each Accessible Copy that exceeds the limits set out in Clause 4.2 shall contain:

- (a) a statement that it is a copy of the original work made under a CLA Licence for the personal use of a visually impaired person and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law;
- (b) the title, as well as the name of the author and publisher, of the original work and the published edition from which it is copied;

8.2.4 the Licensee may only charge for the supply of an Accessible Copy an amount which does not exceed the cost of making and supplying it;

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- (b) no other digital manipulation of the work is made whether by way of optical character recognition, morphing, colour or shade adjustment beyond what is necessary to make the Accessible Copy accessible to the Authorised Person for whom the Accessible Copy is made;

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8.3 An Authorised Person is to be regarded as visually impaired or disabled for the purposes of this Clause if he or she would be regarded as a 'visually impaired person' in accordance with s.31F (9) of the Copyright, Designs and Patents Act 1988 or, as appropriate, as a disabled person in accordance with s.1 of the Disability Discrimination Act 1995.

9 INDEMNITY

9.1 In this Clause 'Qualifying Claim' shall mean any complaint made in writing that the Licensee acting in pursuance of the Licence has infringed copyright and/or database right in Licensed Material or in the typographical arrangement of the published edition in which Licensed Material is contained.

9.2 In the case of any Qualifying Claim, CLA shall indemnify the Licensee in respect of all reasonable legal costs, expenses and damages awarded against or incurred by the Licensee including any ex gratia payments made with the prior written consent of CLA, provided that the Licensee has complied with the terms of this Licence and has given CLA notice of any Qualifying Claim within 10 working days or, in the case of a Claim Form, within 5 working days of the same having been received by the Licensee.

9.3 The indemnity conferred by this Clause shall not apply:

9.3.1 if the Licensee is in material breach of any term of the Licence; or

9.3.2 during any period, or in respect of matters arising during such period, while the Licence is in suspense pursuant to Clause 10.

9.4 CLA shall take over responsibility for any negotiations for the settlement of any Qualifying Claim and if such Qualifying Claim cannot be resolved by negotiation CLA shall assume full responsibility for the conduct of the defence of such Qualifying Claim. The Licensee shall co-operate with CLA in this respect where reasonably requested by CLA to do so.

9.5 The Licensee shall ensure that no admission or offer of payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent and shall ensure that all correspondence received in connection with a Qualifying Claim is promptly passed to CLA.

9.6 The Licensee shall indemnify CLA in respect of all reasonable expenses, damages and legal costs awarded against or incurred by CLA in respect of any claim arising out of the Licensee's breach of any term of the Licence.

10. TERMINATION AND BREACH

- 10.1 If the Licensee commits any material breach of any of the provisions of the Licence and remains in breach 14 days after receiving notice to remedy such breach (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate the Licence or suspend the Licence until CLA shall be satisfied such breaches will not recur.
- 10.2 Either party may terminate the Licence by notice in writing to the other if and when a supervisor, administrator, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over, the whole or any substantial part of the other party's assets or if and when the other party enters into any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986) or if and when a petition is presented for the purpose of the making of an administration order or the winding-up of the other party which is not discharged within 7 days of the presentation of such a petition or if the other party is placed into liquidation or administration or if the other party is dissolved or if a resolution for the winding-up of the other party is passed (other than a voluntary liquidation for the purpose of reconstruction in which all creditors' claims will be discharged in full) or if a bankruptcy petition is presented against the other party which is not discharged within 7 days of its presentation.
- 10.3 Upon termination of the Licence for whatever reason the Licensee shall immediately delete from the hard drives of all of its central and local servers any and all Digital Copies which may be stored there (save for those Digital Copies the retention of which is required by law) and upon written request from CLA the Licensee shall certify that it has done so.

11. DATA COLLECTION

- 11.1 CLA may, no more than once in each year, require any NHS body covered by the Licence to participate in a data collection exercise such as, but without limitation, a survey, a record keeping exercise or an Information Audit. The information obtained will assist CLA to distribute Licence Fees to authors, artists and publishers.
- 11.2 CLA shall supply the Licensee on request with the latest copies of the CLA Guides to Surveys, Record Keeping and Information Audits (the 'Guides') and shall supply such further copies of the Guides as are reasonably necessary before commencing any data collection exercise.
- 11.3 If selected by CLA to participate in a data collection exercise, the Licensee shall provide all reasonable assistance to CLA in accordance with the Guides and undertakes to ensure that its employees comply with its obligations under this Clause.
- 11.4 CLA undertakes not to disclose any information obtained as a result of any data collection exercise except:
- 11.4.1 as required by a court or other authority of competent jurisdiction; or
 - 11.4.2 in aggregated form from which the identity of the Licensee cannot directly be identified.

12. GENERAL

- 12.1 All notices given under the Licence shall be in writing and be sent by first class post, in the case of the Licensee to the address shown on the Certificate, and in the case of CLA to: Saffron House, 6-10 Kirby Street, London EC1N 8TS (or any address notified to the Licensee by CLA), and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.
- 12.2 The Licence may only be varied if such variance is acknowledged in writing on behalf of CLA and the Licensee.

- 12.3 The Licence is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.
- 12.4 The Licence shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Licence.
- 12.5 The parties do not intend that any term of the Licence shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Licence.