

# Licence for Informing Healthcare on behalf of the NHS in Wales

## Terms and Conditions

### Introduction

This Licence records the terms on which CLA, as agent for the Authors' Licensing and Collecting Society Ltd, the Design & Artists Copyright Society Ltd, the Publishers Licensing Society Limited and various reproduction rights organisations overseas, grants a licence to Informing Healthcare on behalf of the NHS in Wales to make photocopies of, or otherwise reproduce, extracts from published material in which copyright subsists.

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence the following meanings shall apply:

#### Authorised Persons:

- (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 or other Library Service Provider who are on temporary or permanent placement with, or providing library services to, 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; and (c) 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;

where 'workers' has the meaning given to it by the Employment Rights Act 1996 and 'consultants' means individuals providing consultancy services to the Licensee;

**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](http://www.cla.co.uk) or such other site as may be notified to the Licensee. A reference to a list or other information on CLA's website shall include both any such list or information which is stated to be of general application to all CLA licences and any stated to apply specifically to CLA licences for public administration;

**Commencement Date:** 1<sup>st</sup> April 2009

**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;

**Digital Copies:** electronic copies of Material Licensed For Scanning, in whole or part, in the form of digital dumb or bitmap copies which are direct unaltered copies of the work copied; and which, in both cases, are direct unaltered copies of the work copied and are made in accordance with the terms of the Licence;

**Excluded Material:** those categories of work and individual works identified in the list of Excluded Categories and Works published and periodically amended by CLA. Any amendment shall be posted on CLA's website and shall take effect on the next Quarter Day after such amendment is first posted. For the avoidance of doubt, categories of work or individual

works may be excluded from Material Licensed for Photocopying, from Material Licensed for Scanning or from Digital Material or any combination thereof;

**Fee:** the fee calculated by multiplying the number of Professional Employees of the Licensee by the current rate shown on the Certificate by the relevant rate shown on CLA's Rate Card as published by CLA.

The fee for the first year of the Licence is shown on the Certificate and for subsequent years shall be calculated by multiplying the relevant rate per Professional Employee (as shown on CLA's website prevailing three months prior to the anniversary of the Commencement Date) by the number of Professional Employees of the Licensee as used for the calculation of the fee for the previous year or such number as is determined in accordance with clause 3.5;

**HEI:** any Higher Education Institution in the UK;

**Library Service Provider:** any organization contracted by the NHS to provide library services to, and for the purposes of, the Licensee;

**Licence:** the licence granted by Clause 2;

**Licensed Copies:** either Paper Copies or Digital Copies as appropriate;

**Licensed Material:** any and all Material Licensed For Photocopying, Material Licensed For Scanning and Digital Material;

**Licensee:** as listed in the Certificate;

**Licensee's Intranet:** the computer network operated or controlled by the Licensee (whether a stand alone network or a virtual network within the Internet) which is accessible only by those employees, workers and consultants of the Licensee who are permitted by the Licensee to have access to the computer network by way of a secure log-in process which verifies the individual's identity;

**List of Participating US Publishers:** the list of publishers participating in the agreement between the Copyright Clearance Center of the United States of America (CCC) and CLA, as notified to the Licensee on issue of the Certificate and periodically thereafter;

**Material Licensed For Photocopying:** original published editions of books, journals, magazines and other periodicals in which copyright subsists published in the Photocopying Mandate Territories or published in the USA by publishers on the List of Participating US Publishers other than any Excluded Material;

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**Participating Digital Material Publisher:** a Rightsholder who has confirmed to CLA that it is willing to permit the use under the Licence of Digital Material in which the Rightsholder owns or controls the copyright and who has not withdrawn such permission. The list of Participating Digital Material Publishers shall be available on CLA's website and may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day after such amendment is first posted;

**Photocopying Mandate Territories:** the United Kingdom, Argentina, Australia, Austria, Belgium, Canada (including Quebec), Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Jamaica, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Singapore, South Africa, Spain, Sweden, Switzerland and the United States of America. This list may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day after such amendment is first posted;

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

**Professional Employee:** those employees of the Licensee of HEO grade, or its equivalent, or above and including General Practitioners contracted to provide services to the Licensee.

**Quarter Day:** 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July or 1<sup>st</sup> October;

**Rightsholder:** any person owning or controlling the copyright in any Licensed Material;

**Scanning Mandate Territories:** the United Kingdom, United States of America, Canada, Spain, Ireland and South Africa. This list may be amended periodically by being posted on CLA's website and shall take effect three months after notice of such amendment is first posted by CLA on CLA's website; and

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1.2 All references to the singular in this Licence may include the plural and vice versa as the context so requires and references to any gender shall include both genders.

## 2. GRANT OF LICENCE

On the issue of the Certificate, CLA grants to the Licensee and, as appropriate, Authorised Persons the non-exclusive right within the United Kingdom to:

2.1 make, or permit the making of, Paper Copies and to distribute, or permit the distribution of, such Paper Copies to Authorised Persons;

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2.5 make copies of Paper Copies;

2.6 Distribute a single paper copy to patients, carers or guardians of patients;

2.7 store Licensed Copies on the Licensee's Intranet for a maximum of 30 days and such temporary storage shall not be deemed a breach of clause 5.6; and

2.8 permit an Authorised Person to store Digital Copies for individual use. Such Digital Copies may not be accessed on a routine basis by any other Authorised Persons;

With the exception of clause 2.6 all for the Licensee's internal information purposes only and on the terms and conditions set out in the following Clauses.

## 3. PAYMENT AND TERM

3.1 The Licence shall commence on the Commencement Date and continue from year to year unless and until terminated in accordance with Clause 10.

3.2 The Licensee shall pay the Fee together with any VAT payable within 30 days of receipt of an invoice from CLA.

3.3 Subject to the Licensee complying with all terms and conditions of the Licence, CLA shall issue a new Certificate to the Licensee within 30 days of the first anniversary of the Commencement Date and each subsequent anniversary.

3.4 CLA reserves the right to charge interest at the Prescribed Rate on late payment of any amounts due under this Agreement.

3.5 The Licensee shall, at least 30 days prior to each anniversary of the Commencement Date, notify CLA of any material change (whether an increase or a decrease) in the number of its Professional Employees. The Licensee shall provide CLA with all information reasonably required to determine the accuracy of any such number as is notified by the Licensee. In default of agreement between the parties the matter may be referred to mediation in accordance with the Centre for Effective Dispute Resolution Select Mediation Procedure.

#### **4. CONDITIONS APPLYING TO CREATION AND USE OF LICENSED COPIES**

The Licensee must own or, where an HEI or other Library Service Provider is providing library services to the Licensee, that HEI or other Library Service Provider must own, an original and/or copyright-fee-paid copy of any Licensed Material it copies or scans under the terms of the Licence;

4.2 No Licensed Copy shall exceed the greater of 5% of any item of Licensed Material, or:

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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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4.7 For the avoidance of doubt, where the original is in full colour, Paper Copies and Digital Copies may be made in black and white (known as halftones) provided that no colour separations are made and provided that the Licensee complies with the provisions of Clause 5.2.

#### **5. FURTHER CONDITIONS APPLYING TO THE CREATION AND USE OF DIGITAL COPIES**

5.1 The Licensee shall not edit, amend, manipulate, add to or delete from Digital Copies nor shall it authorise the same.

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5.3 Digital Copies may not be placed on the publicly accessible world wide web or be linked either directly or indirectly by hypertext links (or the like) to or from any external or third party website.

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5.5 Where any work (including an artistic work) appearing within Digital Material or Material Licensed for Scanning incorporates, or has adjacent to it, the identity of the author or creator of the work, no Digital Copy of that work shall be made unless the Digital Copy incorporates the identity of such author or creator.

5.6 Digital Copies may not be stored on a server, or systematically indexed, with the intention of creating an electronic library or similar corporate information resource of extracts of Licensed Material except that Digital Copies may be stored where necessary for technical back-up purposes or where the retention of such Digital Copies may be required by law.

5.7 Without prejudice to its obligations set out in Clause 5.5, the Licensee shall use reasonable endeavours to include, where practicable, in all Digital Copies of artistic or literary works the identity of the author or creator of the literary or artistic work.

5.8 The Licensee shall delete from the hard drives of all its central and local servers any and all Digital Copies which may be stored there upon notice from CLA that the copyright holder believes that the Licensed Material contained in the Digital Copies infringes copyright or is or may be defamatory, obscene or otherwise unlawful.

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For the avoidance of doubt:

6.1 all of the provisions applying to the use under this Licence of Digital Copies (whether Digital Materials or made from Material Licensed for Scanning) shall also apply in relation to any Digital Copies made from Third Party Digital Material; and

6.2 nothing in this Licence shall operate to limit any rights which the Licensee may have in relation to the use of material supplied to the Licensee in electronic form under the terms and conditions of that supply.

## **7. OTHER OBLIGATIONS**

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 licensee support material which CLA may periodically supply, or make available on CLA's website, 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.

7.3 CLA shall have the right on giving reasonable notice to the Licensee to enter any of the Licensee's premises to monitor and to verify the observance by the Licensee of its obligations under the Licence.

## **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 cl. 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;

8.2.2 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 or a disabled 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;

8.2.5 any Accessible Copy produced in a digital format may include facilities for navigating around the Accessible Copy and any such other facilities or changes (such as enlargement, reduction or colour selection of the text or illustrations) as are necessary to enable the Authorised Person for whom the Accessible Copy is made to access the Accessible Copy provided that:

(A) such changes do not amount to a derogatory treatment of the work;

(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;

8.2.6 that the Accessible Copy is only to be used for the benefit of Authorised Persons.

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 Either party may terminate the Licence upon giving to the other at least 30 days written notice to expire on the first or any subsequent anniversary of the Commencement Date.

10.2 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.

10.3 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.

10.4 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 the Licensee to participate in a data collection exercise to identify the type of photocopying and scanning of Licensed Material and re-use of Digital Material under the Licence and to assist CLA in distributing the Fee to authors, artists and publishers.

11.2 If selected, the Licensee shall co-operate with CLA in conducting the data collection exercise and undertakes to ensure that its employees comply with its obligations under this Clause.

11.3 CLA shall supply the Licensee on request with the latest copy of the CLA Guides to Data Collection and shall supply such further copies of the Guide as are reasonably necessary before commencing any data collection exercise.

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

## The Copyright Licensing Agency Ltd

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