

OPCS-4 DATA PRODUCTS LICENCE AGREEMENT

IMPORTANT NOTICE - PLEASE READ THE FOLLOWING CAREFULLY

THE TERMS AND CONDITIONS OF THIS OPCS-4 LICENCE AGREEMENT SHOULD BE READ CAREFULLY BEFORE DOWNLOADING THE OPCS-4 PRODUCTS. BY USING THE CLICK-USE LICENCE AGREEMENT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENCE.

1. GRANT OF LICENCE

1.1. The Data and the Products (as defined in the Schedule to this Agreement) are owned by the Crown and subject to Crown copyright protection.

1.2. You may use and re-use the Data and the Products free of charge in any format or medium, under the terms of the Open Government Licence for the Licensed Purposes only and subject to compliance with this Agreement.

1.3. When making the Data and Products available to End Users in accordance with Clause 3 below, you shall display the following acknowledgement:

1.3.1. prominently when the Data comprised in the Products is first accessed and when used by End-Users as part of the Licensee's Product; and

1.3.2. on any accompanying printed or electronic documentation, instruction booklet or user manual:

"The OPCS Classification of Interventions and Procedures, codes, terms and text is Crown copyright (2016) published by Health and Social Care Information Centre, also know as NHS Digital and licensed under the Open Government Licence available at www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm."

2. CONDITIONS OF USE

2.1. You may use the Products solely for the purposes of accessing the Data.

2.2. You shall ensure that all Data is reproduced accurately in the Licensee's Product and that the Referential Integrity of the Data is fully maintained.

2.3. Save as provided in Clause 2.5, you shall not modify or attempt to modify, enhance or alter the Data or the Products or any part thereof or advise or allow any End-User or third party to do so without the express prior written permission of the Information Provider.

2.4. All Intellectual Property Rights in or arising from the Data or the Products and all modifications, enhancements or alterations of the Data or the Products by you or any End User (including but not limited to those made without the prior written permission of the Information Provider) shall vest in the Crown. You shall, where requested by the Information Provider and at your own cost, execute all necessary documents and take all such other steps as are required by the Information Provider to give effect to this Clause 2.4.

2.5. You may abbreviate the Data where necessary but no other modifications or adaptations or alterations shall be made to the Data without the prior written consent of the Information Provider.

2.6. If you become aware of any material error in the Data or the Products or any material change or correction which is needed to the Data or the Products, you agree to advise the Information Provider promptly of such error, change or correction.

3. END-USERS

3.1. You shall be permitted to sub-license End-Users to access the Products and the Data for the Licensed Purposes but only to the extent that the Data forms part of the Licensee's Product.

3.2. You shall ensure that End-Users comply with the terms of this Agreement and shall only sub-license End-Users by means of an End-User Licence which provides that:

3.2.1. each End-User must acknowledge that the Data and Products are subject to the terms of this Agreement and the Open Government Licence and are protected by Crown copyright;

3.2.2. each End-User may only use the Data and Products for the purposes of using the Licensee's Product;

3.2.3. no End-User has any right to supply copies of the Data or the Products in any format to third parties without prior written consent of the Information Provider;

3.2.4. no End-User may do any act or thing in respect of the Data or the Products which you are prohibited from doing under this Agreement; and

3.2.5. the End-User may apply directly to the Information Provider upon receiving notice that the sub-licence will

terminate in accordance with Clause 3.6 below and that the Information Provider may (but shall not be obliged to) grant the End-User a licence in respect of the Data and/or the Products for a limited period in order to enable the End-User to continue to use the Data and/or the Products and/or give the End-User an assurance or undertaking that for a limited period the Information Provider shall not seek to prevent the End-User from using the Data and/or Products.

3.3. Without limitation to Clause 2, you shall ensure that End Users shall not under any circumstances:

3.3.1. modify, merge, decompile, disassemble, reverse engineer, sell, offer for sale, deal in or distribute the Data or the Products, whether in whole or in part;

3.3.2. reproduce the Data or the Products or extracts therefrom whether in machine readable, optical or printed form as part of other products of any kind without the written permission of the Information Provider.

3.4. Subject to Clause 6, the Information Provider and the Licensor accept no liability in respect of any failure or defect in the Data or the Products nor any responsibility for use of the Data or the Products by you or any End-Users and you shall at all times, during and after the duration of this Agreement, indemnify the Information Provider and the Licensor and keep them indemnified against all losses, damages, costs or expenses and any other liabilities (including but not limited to legal fees) incurred by, or agreed to be paid by you, arising from or in connection with the use of the Data or the Products by you or any End-User.

3.5. You shall maintain accurate records of all End-Users to whom the Data and the Products are made available. You shall, within 30 days of a request from the Information Provider, send to the Information Provider a report detailing all End-Users to whom the Products have been supplied. This report shall provide the following details:

3.5.1. the name of the individual named on the End-User Licence;

3.5.2. the name of the relevant organisation;

3.5.3. the address of the organisation;

3.5.4. End-User Licence number;

3.5.5. issue date of the End-User Licence;

3.5.6. expiry date of the End-User Licence;

3.5.7. the End-User's unique identification reference (eg GP number or other NHS allocated number where available);

3.5.8. whether the organisation is an NHS or non-NHS body;

3.5.9. the number of users accessing the Data under the End-User Licence;

3.5.10. a description of the part or parts of the Data used by the End-User; and

3.5.11. the name of the software programme and version used.

3.6. You shall ensure that any End-User Licence granted by you shall automatically terminate on the termination of this Agreement.

3.7. You shall at all times remain responsible for the acts of End-Users with respect to the use by the End User of the Data and the Products and the Information Provider and/or the Licensor shall be entitled to terminate this Agreement, including for the avoidance of doubt the licence granted under this Clause 3, in connection with the actions or breach of End-Users where such termination would have been allowed under this Agreement had the actions or breach been yours.

4. WARRANTY

4.1. You warrant that you have full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of your organisation.

4.2. You acknowledge that you are fully responsible for selecting the Product to meet your requirements.

4.3. Except as expressly stated in this Agreement, all warranties and conditions concerning the Data and the Products (including any failure to supply or delay in supplying the Products) whether express or implied by statute, common law or otherwise (including but not limited to the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose, the use of reasonable care and skill or non-infringement of third party intellectual property rights) are hereby excluded to the fullest extent permitted by law.

5. NEW VERSIONS

5.1. You acknowledge that the Information Provider and/or the Licensor may need to alter the content of the Products from time to time. This may be to correct minor errors within the Products ("Updates") and/or to create a more up to date version of the Products ("New Version").

5.2. The Information Provider will notify you of any Updates or New Versions which are created from time-to-time.

5.3. You shall use all reasonable endeavours to ensure that any End-Users and any third party users to whom you sub-license the Product (via the Licensee's Product) at all time have access to the latest version of the Products (including any applicable Updates).

6. LIMITATIONS ON LIABILITY

6.1. No party hereto limits its liability for death or personal injury caused by its negligence or for any other liability which may not be excluded by law.

6.2. Subject to Clause 6.1, neither the Information Provider nor the Licensor shall be liable to you or any End-User in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or the Licensor or the Information Provider was advised of the possibility of them in advance:

6.2.1. loss of, damage to or corruption of data;

6.2.2. economic loss;

6.2.3. loss of actual or anticipated profits;

6.2.4. loss of business revenue;

6.2.5. loss of anticipated savings;

6.2.6. loss of business;

6.2.7. loss of opportunity;

6.2.8. loss of goodwill; or

6.2.9. any indirect, special or consequential loss or damage howsoever caused.

6.3. Subject to Clause 6.1, the Information Provider's and the Licensor's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise for any default (or series of related events of default) hereunder shall be limited to damages which in no event shall exceed one thousand Pounds (£1,000).

6.4. The parties expressly agree that should any limitation or provision contained in this Clause 6 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Agreement.

6.5. Owing to the nature of the internet the Information Provider and the Licensor cannot guarantee the availability of the Products or any Updates and therefore exclude all liability to the fullest extent permitted by law for any loss or damage resulting or arising from any unavailability of the Products and/or any Updates.

6.6. The provisions of this Clause 6 shall continue after the termination of this Agreement.

7. INSPECTION RIGHTS

On giving not less than 10 days' prior written notice to you, an officer acting on behalf of the Crown shall be entitled to request a demonstration of the Licensee's Products which include the Data and Products at one of your offices.

8. ADVERTISING

You shall have the entire control of the manner and extent of advertising material advertising the Licensee's Product save where the advertising material refers to the Licensor (other than in the form of the acknowledgement mentioned at Clause 1 above) or the Information Provider, or any other government department, in which case such advertising material shall be submitted to the Information Provider for prior written approval, such approval not to be unreasonably withheld.

9. TERMINATION

9.1. Each party may terminate this Agreement by giving each of the other parties not less than 6 months' notice in writing.

9.2. The Licensor and the Information Provider shall, either jointly or severally, have the right at any time to give notice in writing to you to terminate this Agreement on occurrence of any of the following events:

9.2.1. there is either a single breach of your obligations under this Agreement which is individually of such seriousness as to allow the Licensor to treat this Agreement as repudiated and discharged by breach or more than one breach of such obligations which are cumulatively of such seriousness;

9.2.2. if you commit a material breach of any of the terms of this Agreement and, in the case of a breach capable of being remedied, failing to remedy such breach within 30 days of being requested by the Licensor and/or the Information Provider in writing to do so;

9.2.3. if you go into liquidation either compulsorily or voluntarily (except in the case of a winding-up for the purposes of amalgamation or reconstruction where the resultant body agrees to be bound by this Agreement) or has a receiver appointed over its assets or substantial part thereof or enters into a composition with its creditors generally or plans to

do any of these things;

9.2.4. if you fail to allow inspection as specified in Clause 7; and

9.2.5. if you fail to confirm that you remains bound by the terms of this Agreement after having been given 30 days' notice of the Information Provider's intention to terminate if such confirmation is not received.

10. CONSEQUENCES OF TERMINATION

10.1. On termination of this Agreement for any reason:

10.1.1. all rights granted to you shall terminate immediately and no further use of the Products or reproduction of the Data may be made by you, nor may any further copies of the Products be supplied by you to End-Users and for avoidance of doubt all sub-licences granted by you under End-User Licences will also terminate; and

10.1.2. you shall cease using and, on request from the Information Provider, delete from all computer hardware and storage media and otherwise destroy copies of all Products and the Data in your possession or control and shall procure that End-Users do likewise within 30 days of termination (subject to the provisions of Clause 3.2.5).

10.2. Termination for any reason shall not affect:

10.2.1. any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect; or

10.2.2. any claim which one party may have against either of the other parties for damages or otherwise.

11. FORCE MAJEURE

In the event that any party is delayed in the performance of its obligations under this Agreement by force majeure, this Agreement shall remain in suspense until the cause thereof has ceased. Force majeure shall include, although not by way of a limitation, strikes, lock-outs, riots, sabotage, acts of war or piracy, destruction of essential equipment by fire, explosion, storm, flood or earthquake, and delay caused by failure of power supplies or transport facilities.

12. ASSIGNMENT

12.1. You may not assign this Agreement or the benefit or advantage hereof without the consent of the Information Provider first being obtained in writing. The Information Provider and the Licensor may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement to any Relevant Authority or to any other body which substantially performs any of the functions that previously had been performed by the Information Provider. Where your consent is required in order to effect any such assignment, novation or other disposal of either the Information Provider or the Licensor's rights or obligations under this Agreement, you shall execute such documents and do all such other things as are necessary in order to give effect to this Clause 12.1.

12.2. In the event of a Change of Control, the you shall:

12.2.1. notify the Information Provider of any Change of Control at the earliest opportunity and in any event not later than 14 days from the date when the Change of Control is effected; and

12.2.2. confirm to the Information Provider not later than 14 days from the date when the Change of Control is effected that you remain bound by the terms of this Agreement.

12.3. If you fail to confirm that you remains bound by the terms of this Agreement in accordance with Clause 12.2.2, the Information Provider may terminate this Agreement in accordance with Clause 12.2.6.

13. NOTICES

13.1. Any notice or notification required or authorised to be given under this Agreement by one party to the other shall be in writing and sent to the other party at the address set out for such party in this Agreement.

13.2. Any notice or other communication in connection with this Agreement shall be deemed to have been duly served if sent by first class post or by facsimile to the other parties of this Agreement:

13.2.1. in the case of the Licensor and the Information Provider to Director of National Provider Support, to 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE (or such other name and address as notified by the Information Provider to you in writing from time-to-time); and

13.2.2. if sent to you, to the name and address provided to the Information Provider as part of the registration process through which you take delivery of the Products (or such other name and address as notified by you to the Information Provider in writing from time-to-time or where no such name and address is provided to any address which is stated publicly (whether in a public register, your website or otherwise) as being an address for you).

13.3. Notices shall be deemed duly served:

13.3.1. if sent by first class post, 2 clear Working Days after posting; or

13.3.2. if sent by facsimile on the day of transmission provided that the transmission is made between the hours of 9am and 5pm on a Working Day.

14. CONFIDENTIALITY

14.1. No party shall disclose or pass on any information concerning the existence, contents or circumstances of this Agreement, the business of the other parties or that of its customers or utilise other than in connection with the affairs of the others for the purpose of this Agreement, information, trade or professional secrets of the other and all parties shall use all reasonable endeavours to ensure that their employees and agents and subcontractors involved shall observe these conditions.

14.2. This provision will not apply to:

14.2.1. any information in the public domain other than in breach of this Agreement;

14.2.2. information already in the possession of the receiving party before its receipt from the disclosing party;

14.2.3. information obtained from a third party who is free to divulge the same; or

14.2.4. disclosure of information which is required by law or other competent authorities.

15. ENTIRETY

This Agreement constitutes the entire agreement between the parties and no modification or amendments shall be binding on any party unless it is agreed in writing by all parties.

16. THIRD PARTIES

The parties to this Agreement do not intend that any term hereof should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, or by any other statute or common-law principle, by any person who is not a party to this Agreement. The parties may vary, terminate or rescind this Agreement without the consent of any member of the third party.

17. FOIA

17.1. You acknowledge that the Information Provider and the Licensor are subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and you shall assist and cooperate with the Information Provider and the Licensor to enable the Information Provider and the Licensor to comply with its information disclosure obligations.

17.2. Wherever it is reasonably practicable to do so, the Information Provider and/or the Licensor shall consult with you prior to releasing any information which relates to you in response to a request made pursuant to FOIA. However the Information Provider and the Licensor shall be responsible for determining in their absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA.

18. INTERPRETATION

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

Agreement: This Agreement and its schedules.

Change of Control: In relation to a party, where a person (or persons acting in concert) acquires or agrees to acquire directly or indirectly, the power to direct or cause the direction of the management and policies of the other person.

Classification: OPCS Classification of Interventions and Procedures and known as OPCS-4.

Data: The information and Classification including codes, terms and text contained in the Products.

End-User: Users of the Licensee's Product.

End-User Licence: A sub-licence to be issued by you under which End-Users may access the Data stored in the Product as part of the Licensee's Product.

Information Provider: Health and Social Care Information Centre, also known as NHS Digital, of 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE.

Intellectual Property Rights: Patents, trade marks and service marks, design rights, database rights, copyright, know-how, trade or business names, rights in the nature of unfair competition rights and rights to sue for passing off and other similar rights or obligations (whether registerable or not), and all registrations or applications to register any of the aforesaid items or rights in the nature of any of the aforesaid items in any country or jurisdiction.

Licensed Purposes: means:

* use in the normal course of your or any End-User's business, provided that you shall only be permitted to make the Data available to End Users to the extent permitted in Clause 3; and

* to support research activities which benefit the care of patients.

Licensee's Product: Any service or product made available by you to End-Users which includes the Data.

Licensor: The Controller of Her Majesty's Stationary Office, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Products: means

- * OPCS-4 Codes and Titles
- * OPCS-4 Tables of Coding Equivalences
- * OPCS-4 Metadata (Validation) File
- * OPCS-4 Cross-mapping files
- * OPCS-4 Volumes I and II
- * OPCS-4 code mappings to DH Chemotherapy Regimens List
- * OPCS-4 code mappings to DH High Cost Drugs List
- * NHS OPCS-4 eVersion

Referential Integrity: Refers to the preservation of the original relationship between the codes and the code descriptions and the values (e.g. age, sex) relating to the codes and code descriptions and mappings from terminologies to the Classification.

Relevant Authority: Any contracting authority as defined in the Public Contracts Regulations 2015 and any National Health Service Authority or Trust, or Health Service Body (as defined in Section (4(2) of the National Health Service and Community Care Act 1990).

Working Day: means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.

You: Shall have the meaning set out in the Open Government Licence.

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