

## **ADDENDUM TO WILMINGTON HEALTHCARE LIMITED TERMS AND CONDITIONS AND MASTER SERVICES AGREEMENTS**

### **NHS Digital Data Terms and Conditions**

The following Terms and Conditions apply to all products and services provided by Wilmington Healthcare Ltd (WH) that contain third-party data which is being re-used under licence from NHS Digital.

Wilmington Healthcare Ltd has an active Data Sharing Agreement (DSA) with NHS Digital for the re-use of NHS Digital data. The terms and conditions of the DSA outline:

- who can utilise the NHS Digital data contained within WH products and services;
- what the NHS Digital data can be used for; and
- the requirement to demonstrate that the ultimate beneficiary of such use is the health and social care sector.

**In order for WH to comply with the NHS Digital licensing regulations it is now an obligation for WH to provide these Terms and Conditions to all our relevant customers. You must comply with these Terms and Conditions in order for us to continue to provision your NHS Digital data services / products. For this reason, only the parts of the Terms and Conditions that are shown highlighted in yellow may be changed and the remainder of the Terms and Conditions are non-negotiable.**

## 1.0 Parties

These Terms and Conditions are made on **DATE** between:

1.1 Wilmington Healthcare Ltd a company registered under the laws of England and Wales under company number 02530185, whose registered office is located at 5th Floor, 10 Whitechapel High Street, London E1 8QS, UK ("WH")

## AND

1.2 **CLIENT** a company registered under the laws of England and Wales under company number **XXX**, whose registered office is at **ADDRESS** (The Client)

## 2.0 Definitions

2.1 "Start Date" means **DATE**

2.2 "End Date" means **DATE**

2.3 "Purpose" means NHS Digital Data products / services that are commissioned in order to:

- Raise disease awareness, management and diagnosis through analysing data and publishing reports and tabulations which are available in the public domain
- Support the commissioning, healthcare and service improvement cycle and enhance patient outcomes through understanding disease progression and applying to the continual improvement of service development
- Produce longitudinal rare disease analysis and reports which enable patients to receive the correct treatment for a condition that had not yet been diagnosed.

Before any products and services containing NHS Digital Data are provisioned by WH, the Client must provide a purpose statement which is agreed by WH's Advisory Board. This must include details of:

- what NHS Digital Data are required;
- what will be done with such NHS Digital Data;
- who will use such NHS Digital Data; and
- what the benefit is to the health and social care sector.

2.4 "NHS Digital" means NHS Digital, the trading name of the Health and Social Care Information Centre

2.5 "NHS Digital Data" means data licenced to Wilmington Healthcare under a Data Sharing Agreement entered into by Wilmington Healthcare and NHS Digital which may include (but is not limited to) Hospital Episode Statistics (HES), Mental Health Minimum Dataset (MHMDS), Mental Health and Learning Disabilities Dataset (MHLDDS), Mental Health Services Dataset (MHSDS) and Diagnostic Imaging Dataset (DID's) and data derived from the same.

2.6 "Health and Social Care Organisations" means GPs, GP surgeries, Commissioners, Trusts (Acute and Mental Health), Area & Regional Teams, Vanguard, STPs, Strategic Clinical Networks, Government & Government aligned groups, DH, NHS England, NICE and Academic Health Science Networks (AHSN), Social Care, Local Authorities, Health and Wellbeing Boards, NHS England Commissioning Support Units (CSUs), Patients and companies that specialise in providing services on behalf of the NHS, Charity and not-for-profit organisations within England.

2.7 "Registered Approved Users (RAs)" means users who have successfully completed the NHS Digital Data Protocol training provided by WH, which includes an online assessment that demonstrates that users understand the re-use terms along with these Terms and Conditions relating to use of WH products / services containing NHS Digital Data.

2.8 **“Data Products” means** the data products / services described in section 5 of these Terms and Conditions.

### 3.0 Status of these Terms and Conditions

3.1 The parties acknowledge and agree that, although the parties have entered into other agreements which relate to the provision of data and services by WH to the Client;

3.1.1 These Terms and Conditions are a stand-alone agreement which relates to NHS Digital Data;

3.1.2 These Terms and Conditions are not subject to the Terms and Conditions of any other agreements entered into by the parties;

3.1.3 These Terms and Conditions shall continue in force notwithstanding the termination of any other agreements entered into by the parties;

3.1.4 in the event of any conflict between these Terms and Conditions and those of any other agreement entered into by the parties, these Terms and Conditions shall prevail in relation to the supply of NHS Digital Data;

3.1.5 these Terms and Conditions shall not amend, supersede or replace any part or all of any other agreement entered into by the parties unless otherwise expressly stated with reference in writing to this clause 3.1.5 and signed by the parties; and

3.1.6 any variation to these Terms and Conditions shall not affect the meaning or interpretation of any other agreement entered into between the parties save for clause 6.5 of these Terms and Conditions and save where otherwise expressly stated in writing with reference to this clause 3.1.6 and signed by the parties.

### 4.0 Term

4.1 These Terms and Conditions shall start on the Start Date and shall continue in force until the Client no longer has access to NHS Digital Data, or any output produced using NHS Digital Data as a source, provided by WH.

4.2 WH shall be entitled to remove and end the Client’s access to NHS Digital Data, or any output produced using NHS Digital Data as a source immediately and without notice, in accordance with the terms of other agreements entered into between the parties.

4.3 If the Client’s access to NHS Digital Data is removed or ended as a result of the Client’s breach of these Terms then the Client will not be entitled to any refund on monies paid, and any outstanding invoices due in relation to the provision of the Products or Services associated with this Agreement will still be due.

4.4 If the Client’s access to NHS Digital Data is removed or ended as a result of WH’s inability to provide NHS Digital Data for any reason, then a full or partial refund may be due, in accordance with the terms of other agreements entered into between the parties.

### 5.0 Data Products

#### 5.1 Reports and Tabulations

5.1.1 All Reports and Tabulations produced by WH publish aggregated, small number suppressed in line with the HES Analysis Guide, non-sensitive, non-identifiable HES, Mental Health Dataset or DIDs Dataset, and seek to:

- Increase the appropriate diagnosis of a disease and minimise misdiagnosis and improve patient treatment/outcomes

- Raise awareness of a specific disease
- Analyse the management of disease

5.1.2 The Client agrees that it will not use Reports and Tabulations to

- relate NHS Digital Data outputs to the use of commercially available products; or
- undertake any analysis on the impact of commercially available products

5.1.3 Reports and Tabulations must be made publicly available, therefore WH reserves the right to publish Reports and Tabulations on publicly available websites or via printed medium.

5.1.4 WH has complete editorial control over the Reports and Tabulations meaning that the reports are developed completely independently of the commissioner of the work.

5.1.5 The Client is not permitted to publish any Reports or Tabulations associated with the provision of Products and Services under this Agreement, without the express and written permission of WH

## 5.2 Quantis

5.2.1 WH produces a series of online and offline outputs within the Quantis portfolio to provide healthcare insight and enable NHS service improvement. All WH outputs that use NHS Digital Data only contain aggregated, small number suppressed data in line with the HES Analysis Guide and disclosure control rules for data from the Mental Health Datasets.

5.2.2 The Client acknowledges and agrees that it will only use Quantis products / services with health and social care organisations in order to:

- Identify where local health and social care organisations should focus their planning
- Understand the efficiency of existing clinical pathways and services
- Model more efficient, integrated (between health and social care) pathways and services by understanding patient cohort journeys and the progression of poorly managed disease
- Monitor the success of a newly implemented pathway and/or service
- Assist local health and social care environments in identifying where service efficiencies and patient outcomes can be improved before monitoring the impact of any intervention
- Study disease progression, over time, both locally and nationally. Process map patient cohort journeys through data to show the cost of ineffective disease management and the consequences to patients and the social system
- Show healthcare activity and cost, comparing like-for-like organisations and trending data over time
- Map performance locally and nationally where specialist teams or resources are in place
- Provide a reliable evidence baseline for performance to inform key decisions and to enable measurement of impact on the condition
- Address healthcare inequalities
- Provide transferable collaborative service solutions
- Measure the success and effectiveness post implementation of a new pathway or service implemented within the health and social care sector

5.2.3 The Client agrees that it will not use Quantis products / services principally for commercial purposes, including but not limited to, targeting sales resource and advertising or promoting a particular product or service.

5.2.4 The Client acknowledges that outputs produced using Quantis export functionality must be made available, if requested, to all health and social care organisations, irrespective of their value to the Client and agrees to co-operate with WH as necessary to comply with this.

5.2.5 The Client acknowledges that users of Quantis products / services must be accredited as RAs through the NHS Digital Data Protocol Training, which is provided by WH and agrees that it will not allow a user who is not an RA to use Quantis products / services.

5.2.6 The Client agrees that it will not use Quantis products / services to

- relate NHS Digital Data outputs to the use of commercially available products; or
- undertake any analysis on the impact of commercially available products

5.2.7 The Client agrees to abide by the established Prescription Medicines Code of Practice Authority (PMCPA) Code of Practice and Department of Health governance on the use of healthcare data when using the Quantis products / services.

## 6. Restrictions and Breach

6.1 The Client agrees that it will only use the Data Products for the Purpose agreed with WH.

6.2 The Client agrees that it will only use the Data Products within projects or workstreams where the ultimate beneficiary of such work will be the health and social care sector. The Client will also ensure that any user of the Data Products that contain NHS Digital Data has the ability to demonstrate that the work undertaken has a clear measurable benefit to the health and social if requested-

6.3 The Client will ensure that access to the Data Products is managed, auditable and, in the case of Quantis products / services, restricted to those individuals who need to access the Data Product for the Purpose. With regards to Quantis products / services, the Client will also ensure that access is restricted to individuals who are RA accredited. For the avoidance of doubt, the Data Products can only be accessed by individuals based in the Client's UK office.

6.4 The Client agrees that it will comply with these Terms and Conditions until it no longer has access to WH products / services containing NHS Digital Data and regardless of whether its access to Quantis products / services has ended.

6.5 Failure to comply with these Terms and Conditions may result in Wilmington Healthcare removing the Client from the approved user list and notifying NHS Digital of the organisation and reason as to removal. It will also constitute a material breach for the purposes of any other agreements relating to the supply of Wilmington Healthcare products / services containing NHS Digital Data entered into between the parties.

## 7. Interpretation and Administration

7.1 No purported alternation or variation of these Terms and Conditions shall be effective unless it is made in writing, refers specifically to this clause 7.1 and is signed by authorised representatives of both parties.

7.2 If at any time any part of these Terms and Conditions are held to be or becomes void or otherwise unenforceable for any reason, the same shall be deemed to be omitted from these Terms and Conditions and the validity and/or enforceability of the remaining provisions of these Terms and Conditions shall not be affected.

7.3 Subject to clause 7.5, these Terms and Conditions and all other written agreements entered into and signed by authorised representatives of the parties relating to NHS Digital Data contain the entire agreement between the parties in relation to the use of NHS Digital Data.

7.4 Subject to clause 7.5, the parties acknowledge that these Terms and Conditions have not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on behalf of the other than as expressly set out in these Terms and Conditions and any other written agreement entered into and signed by authorised representatives of the parties relating to NHS Digital Data.

7.5 The parties acknowledge and agree that nothing in these Terms and Conditions shall exclude any liability in respect of misrepresentation or fraud.

7.6 These Terms and Conditions are personal to the Client and may not be assigned or transferred to any third party, however, WH may do so at any time on notice to the Client.

## 8. Governing Law

8.1 These Terms and Conditions and any issues, disputes or claims arising out of or relating to them (whether contractual or non-contractual in nature) shall be governed by and construed in accordance with the laws of England and Wales.

8.2 All disputes or claims arising out of or relating to these Terms and Conditions shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.

**Signed** for and on behalf of **Wilmington Healthcare Limited**

**Name:**

**Job Title:**

**Signature:**

**Date:**

Signed for and on behalf of **CLIENT**

**Name:**

**Job Title:**

**Signature:**

**Date:**