

## **END-USER LICENCE AGREEMENT (EULA)**

Please ensure you read the full End-User License Agreement ("EULA"), which make up the Terms and Conditions of use of the Data Capture System ("DCS"), when you register your user account.

This End-User Licence Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) the ("Licensee") and Public Health England ("PHE"). PHE grants the Licensee the right to use the DCS online software system ("Web Software"), which includes computer software, the data supplied with it, and any associated media, printed materials, electronic documentation and Internet-based services provided that you comply with all Terms and Conditions of this EULA.

Please read this EULA carefully, as it sets out the Terms and Conditions upon which we license our Web Software for use. The Web Software and accompanying documentation is licensed and not sold. This Web Software is protected by copyright laws and treaties, as well as laws and treaties related to other forms of intellectual property. PHE and/or its subsidiaries, affiliates and suppliers own the intellectual property rights in the Web Software. Your use, copying and downloading of the Web Software is subject to these rights and to all the Terms and Conditions of this EULA.

This EULA constitutes the Terms and Conditions. By accessing or otherwise using the Web Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not use the Web Software. This EULA does not grant you any other rights but for the ones contained herein. The use of the Web Software is subject to the Terms and Conditions that follow.

PHE is an executive agency of the Department of Health and Social Care, and has developed this Web Software to facilitate the collection and reporting of data on cases of infections. Data stored in the Web Software is in compliance with the Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679). PHE have permission to collect patient identifiable information without the explicit permission of patients as granted under Section 251 of the NHS Act 2006. This legal provision can only be used to support medical purposes that are in the interest of the patient or wider public, where it is not practicable to receive the consent of every individual and where anonymised data will not suffice.

The Web Software and associated documentation (whether in printed or electronic form) including any improvements, modifications, enhancements, fixes, updates, upgrades, and future versions of it ("Updates") is licensed to you by PHE "as is" with no warranties whatsoever and you acknowledge and agree that PHE will have no liability in connection with or arising from your use of the Web Software. Your only right or remedy with respect to any problems or dissatisfaction with the Web Software is to immediately cease use of the Web Software.

By clicking "Accept" when you first verify your account to use the Software Product, you agree to be bound by the terms and conditions of this EULA. If you do not agree to this EULA, you must click "Reject" during the account verification step. If you do not agree to this EULA, you must not use the software for any purpose whatsoever.

You should print a copy of this EULA for future reference.

#### GRANT AND SCOPE OF LICENCE

In consideration of you agreeing to abide by the Terms and Conditions of this EULA, PHE grants you a non-transferable, non-exclusive licence to use the Web Software on any Internet enabled device, subject to the terms incorporated into this EULA by reference. We reserve all other rights. You agree to use all reasonable efforts to protect the Web Software from unauthorised use, reproduction, distribution or publication.

#### LICENCE RESTRICTIONS

You must:

- not use the Web Software or data obtained using it in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Web Software, or any Internet browser, device, or operating system;
- not infringe our intellectual property rights or those of any third party in relation to your use of the Web Software (to the extent that such use is not licensed by this EULA);
- not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the Web Software;
- not use the Web Software in a way that could damage, disable, overburden, impair or compromise PHE systems or security or interfere with other users; and
- not collect or harvest any information or data from the Web Software systems or attempt to decipher any transmissions to or from the servers running the Web Software.

You agree that you are solely responsible for (and that PHE has no responsibility to you or to any third party) for your use of the Web Software, any breach of your obligations under the Terms and Conditions, and for the consequences (including any loss or damage which PHE may suffer) of any such breach.

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- not to copy the Web Software or associated documents except where such copying is incidental to normal use of the Web Software, or where it is necessary for the purpose of back-up or operational security;
- not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Web Software;
- not to make alterations to, or modifications of, the whole or any part of the Web Software, or permit the Web Software or any part of it to be combined with, or become incorporated in, any other programs;
- not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Web Software or attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be

prohibited because they are essential for the purpose of achieving interoperability of the Web Software with another software program, and provided that the information obtained by you during such activities:

- is used only for the purpose of achieving inter-operability of the Web Software with another software program;
- is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
- is not used to create any software that is substantially similar to the Web Software;
- to keep all copies of the Web Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Web Software;
- to include our copyright notice on all entire and partial copies you make of the Web Software on any medium;
- not to provide or otherwise make available the Web Software in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- to comply with all technology control or export laws and regulations that apply to the technology used or supported by the Web Software

**ACCOUNTS AND PASSWORDS.** You are responsible for maintaining the confidentiality of your password and account, and shall be responsible for all uses of the Web Software via your registration and/or login, whether authorised or unauthorised by you. You agree to immediately notify PHE of any unauthorised use of your registration, user account or password.

**CONFIDENTIALITY.** You acknowledge that in using the Web Software you may have access to confidential information including, without limitation, information, including personal data ("Confidential Information"). You agree that you shall hold any Confidential Information in confidence and, unless required by law, shall not:

- make any Confidential Information available to any third party (other than to a party to whom you are satisfied that you may legally disclose such Confidential Information to);
- use the Confidential Information for any purpose otherwise than in the proper performance of your duties as an employee or contractor (as applicable);
- permit or cause any unauthorised disclosure of Confidential Information through any failure to exercise due care and diligence.

**COPYRIGHT.** Copyright in the Web Software belongs to PHE. With this EULA, you may use the Web Software on any computing device over the Internet. You may reproduce the content in the Web Software in printed form or as a digital image for use within your own organisation. All reproduction or derivation of the content in the

Web Software must be accompanied by an appropriately dated universal copyright statement, as indicated: © [Year] Public Health England.

**EVENTS OUTSIDE OUR CONTROL.** PHE will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks (“Event Outside Our Control”). If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:

- our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- we will use our reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

**FORCE MAJEURE.** PHE shall not be liable for damages and you shall not have the right to terminate this EULA for any delay or default in delivery of the Web Software resulting directly or indirectly from acts of nature, forces or causes beyond its reasonable control including, but not limited to: internet failures, network failures, computer equipment failures, telecommunications equipment failures, other equipment failures, electrical power failures, acts of God, terrorist action, acts of civil or military authority, government actions, fires, epidemics or pandemics, riots, wars, sabotage, insurrections, labour shortages or disputes.

**INDEMNIFICATION.** You, at your expense, shall indemnify PHE against all losses, damages, claims, expenses (including legal fees and court costs) arising out of or resulting from (a) any use of the Web Software by you (unless and only to the extent the loss is attributable to a breach by PHE of any obligation under this Agreement), (b) any breach by you of this EULA, or (c) any actions by you or persons that would constitute a breach of this Agreement if that person were a party to this agreement and its obligations were substantially the same as your obligations.

**INTELLECTUAL PROPERTY RIGHTS.** You acknowledge that all intellectual property rights in the Web Software, the documentation and the technology anywhere in the world belong to PHE, that rights in the Web Software are licensed (not sold) to you, and that you have no rights in, or to, the Web Software, the documents or the technology other than the right to use each of them in accordance with the terms of this EULA. You acknowledge that you have no right to have access to the Web Software in source-code form.

**UPDATES AND UPDATES.** Nothing in this EULA shall be construed to obligate PHE to provide upgrades or updates of the Web Software to you under any circumstances. To the extent upgrades or updates are provided, they shall be provided to you on a licence exchange basis, and you agree that by using an upgrade or update you voluntarily terminate your right to use any previous version of the Web Software.

**PERSONAL DATA.** You acknowledge that in using the Web Software you may have access to personal data (including sensitive personal data) relating to patients and/or clients of the NHS or any other healthcare organisation. You agree that you will comply with all data, information governance, and security standards, policies and procedures applicable to you as an employee or contractor of the NHS or any other healthcare organisation in the United Kingdom, and that you will only use, hold and distribute data accessed via the Web Software within the NHS or any other healthcare organisation and solely as required for the purposes of your employment. Where data you have obtained via the Web Software is no longer required, it must be destroyed in a secure manner in accordance with any applicable legislation and/or NHS data retention policy. In addition, if you are a contractor you agree that:

- you and your employer have in place appropriate technical and organisational measures to prevent unauthorised or unlawful processing of personal data and to prevent against accidental loss or destruction of, or damage to personal data which are at least equivalent to the standard of security required by the NHS security policies; and
- you and your employer shall take reasonable steps to ensure the reliability of any employees who will have access to personal data.

## **LINKAGE TO OTHER DATA SOURCES**

By agreeing to this EULA, you are providing your permission for PHE to:

- access and extract Other Data (as defined below), in relation to a patient, that you or your organisation have provided to other PHE surveillance programmes, administrative data sources or audits (the “Other Data”, including but not limited to data accessed or extracted from the Intensive Care National Audit and Research Centre (“ICNARC”), Paediatric Intensive Care Audit Network (“PICANET”), BadgerNet, neonIN, PHE’s Second Generation Surveillance System and the Hospital Episodes Statistics); and
- link the Other Data to the data that you or your organisation have supplied to the Web Software.

## **SHARING OF AGGREGATE DATA WITH EXTERNAL ORGANISATIONS**

By agreeing to this EULA, you are providing your permission for PHE to share aggregate data with other organisations who may need to use the data for public health or healthcare purposes. These data are shared in aggregate form and will not contain Personally Identifying Information (“PII”). Such organisations may include, but not be limited to: the Department of Health and Social Care, Getting It Right First Time, NHS England and NHS Improvement, Health Protection Scotland and the Care Quality Commission.

**LIMITATION OF LIABILITY.** You acknowledge that the Web Software has not been developed to meet your individual requirements, and that it is therefore your

responsibility to ensure that the facilities and functions of the Web Software as described in the documents meet your requirements.

You agree not to use the Web Software, documents or data for any commercial, business or resale purposes, and PHE has no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

Nothing in this EULA shall limit or exclude our liability for:

- death or personal injury resulting from our negligence;
- fraud or fraudulent misrepresentation; and
- any other liability that cannot be excluded or limited by English law.

**LIMITED WARRANTY.** The Web Software is provided to you free of charge, it is provided "as is" with no warranties whatsoever and you acknowledge and agree that PHE will have no liability in connection with or arising from your use of the Web Software. Your only right or remedy with respect to any problems or dissatisfaction with the Web Software is to immediately cease use of the Web Software. You expressly acknowledge and agree that use of the Web Software and any documents and services provided is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you.

**LOCAL ADMINISTRATOR OBLIGATIONS.** As a registered local administrator ("Local Administrator") for a specific organisation, in addition to the normal User Obligations, you will also be fully responsible for the following:

- authorising or rejecting user account requests from users at the organisation(s) where you are the Local Administrator;
- managing all user accounts at the organisation(s) where you are the Local Administrator, including de-activating, deleting, suspending user accounts when staff leave employment at the organisation(s) where you are the Local Administrator; and
- ensuring that the users accessing the Web Software at the organisation(s) where you are the Local Administrator have the correct account type to access patient-level information, or anonymised information, and to manage the roles as appropriate for all users at the organisation(s) where you are Local Administrator, and any users that have access to patient identifiable data comply with the appropriate information governance guidelines and rules.

**OTHER IMPORTANT TERMS.** We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA. You may only transfer your rights or obligations under this EULA to another person if we agree in writing. If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

**SECURITY FEATURES.** "Security Features" means any security mechanisms available for the purpose of preventing any unauthorised person or computer from accessing the Web Software, including those features implemented after the execution of this EULA as they become available, including mechanisms to, as applicable:

- (a) limit the extent of Web Software included in an embedded software file to a subset of the whole of the Web Software, in whole or in part, from an embedded software file;
- (b) prevent the reverse-engineering, re-use, importation, de-compilation, embedding, or inclusion of such embedded software files that contain any part of the Web Software, into other embedded software files; and
- (c) any other optional feature designed to prevent use of the Web Software by any unauthorised person or computer.

**SPECIFIC USE.** PHE and/or its affiliates make no representations about the suitability of the Web Software for any purpose. This Web Software is provided by PHE "as is" and any express or implied warranties, including, but not limited to, the implied warranties or merchantability and fitness for a particular purpose are disclaimed. In no event shall the PHE be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of use of this Web Software, even if advised of the possibility of such damage.

**TECHNICAL INFORMATION.** By using the Web Software or any of the associated services, you consent to us collecting and using technical information about the devices and related software, hardware and peripherals for services that are internet-based or wireless to improve our products and to provide any services to you.

**TERMINATION.** We may terminate this EULA immediately by written notice to you:

- if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or
- if you breach any of the Licence Restrictions.

Upon termination for any reason:

- all rights granted to you under this EULA shall cease immediately; and
- you must immediately cease all activities authorised by this EULA;

**THIRD PARTY INFORMATION.** The Web Software may contain links to other independent third-party websites. Third-party sites are not under our control, and PHE is not responsible for and does not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding

your interaction with any third-party websites, including the purchase and use of any products or services accessible through them.

**USER OBLIGATIONS.** The Web Software is provided for you to use for exercising your duties as an employee of or contractor to healthcare organisations in relation to management of patients and infections or infection-related data, in line with your job description, information governance guidelines and regulations. The Web Software may not be used for personal purposes or to profit or otherwise benefit individuals and you agree not to use or access any information via the Web Software unless necessary for the performance of your duties. You are responsible for ensuring the accurate production of any reports produced through the Web Software or from data extracted from it. Reports produced directly from the Web Software or via data extracted from it must acknowledge the data source. PHE shall not be liable for any losses or damage incurred by inappropriate or inaccurate use of any data provided through the Web Software. Access to the Web Software through any allocated licence is restricted to one named registered user per allocated licence. You must not share access, passwords, usernames or log-on details to the Web Software with any other person as this may place the NHS in breach of its agreements with third party software licensors. Use of the system will be monitored for log-on and password change history; account creation, editing and locking; assigning of user privileges and roles; record import, edit and upload; and, record processing and enrichment activities. You undertake not to configure any automated system to connect to our systems in such a manner as to risk causing excessive load either on the servers or our networks.

**USES NOT PERMITTED:** You may not sell, rent, lease, sub-license, lend, assign or transfer in whole or in part or provide unlicensed third parties access to the Web Software or rights under this EULA. You may not disseminate outside of your organisation reports, data or analysis created from use of the Web Software without the written permission of PHE's HCAI & AMR department. You may not remove or obscure copyright notices.

**YOUR CONDUCT.** You agree that all information or data of any kind, whether text, data, software, files, code, music or sound, photographs or graphics, video or other materials, publicly or privately provided, shall be the sole responsibility of the person providing the data or content or the person whose user account is used. PHE shall not be responsible to you in any way for the content that appears in the Web Software nor for any error or omission nor be liable for any breaches of any copyright in the content stored in the Web Software by you and your users.

This EULA, all other legal relationships between PHE and any dispute arising under or in relation to the Web Software shall be governed by and construed in accordance with English Law, and shall be subject to the exclusive jurisdiction of the English courts.