

Licence for Use of ELSA and HKCTT

eHR Programme

The eHR Programme is a territory-wide programme to enhance the continuity of care of patients by the sharing of patients' electronic health records amongst participating healthcare providers in Hong Kong. The Hospital Authority ("HA") is the technical agency for the Government of the Hong Kong SAR in the development and implementation of IT systems related to the eHR Programme.

eHR HK Limited, a subsidiary of HA, is to hold, maintain and license the intellectual property rights and assets related to the eHR Programme as agreed by the Government. This Licence governs the use of the Encapsulated Linkage Security Application ("ELSA") and the Hong Kong Clinical Terminology Table ("HKCTT").

ELSA is a program designed to allow the IT systems of private healthcare providers to share and access information with the Electronic Health Record Sharing System ("eHRSS") established by HA on behalf of Government, and in addition provides functions to facilitate the searching of the HKCTT.

Any reference made to ELSA shall, unless specified, include all its versions, updates and fixes (if any) that are provided to you or notified to you from time to time.

The use of ELSA and HKCTT is subject to the terms and conditions attached hereto ("Licence") and the licences of various third party applications as described in the Licence*.

The Licence will run from the date of delivery of ELSA and HKCTT to you until it is terminated or comes to an end ("**Term**").

*For the purpose of the Licence:-

"we", "us" or "our" means eHR HK Limited and its successors and assigns.

"you" or "your" means the person to whom eHR HK Limited grants the Licence.

Licence

1.
 - (a) This Licence to use ELSA is granted to you gratis and is non-exclusive and non-transferable. ELSA is for internal use by you and your partners, staff, agents and sub-contractors who have a need to connect to the eHRSS during the Term (except as otherwise permitted with our prior written consent) or search the HKCTT, and is granted solely for the purpose of allowing your IT systems to (i) access information on the eHRSS (ii) if you have the relevant IT systems, upload information to the eHRSS in Hong Kong and (iii) search the HKCTT. In this Licence, the term “partners” refers to natural persons with whom you carry on your business (of a hospital or clinic) in common with a view to profit and who are directly involved in providing medical services to patients pursuant to such business.
 - (b) You agree that we may, by written notice to you, transfer all of our rights and obligations under this Licence at any time to any entity nominated by us. Upon service of such written notice, we will be released from all of our obligations under this Licence. You must execute any documentation we require in effecting such transfer.
 - (c) The functionality of ELSA will depend on whether or not you participate in the eHRSS and how you connect to the eHRSS. If you do not participate in the eHRSS, or depending on how you connect to the eHRSS if you do, you may not receive any updates, patches or fixes to ELSA and, although you will still be able to access the HKCTT, you may not receive any updates. We do not make any representation that we will provide any updates, patches or fixes to ELSA or HKCTT.
 - (d) If you choose to use the HKCTT then your use of the HKCTT will be subject to the enclosed “Terms of Use for the Hong Kong Clinical Terminology Table” in addition to this Licence.
2. We shall provide you with:
 - (a) a copy of the object code of ELSA, or in the case of some of the third party software comprising ELSA, instructions on how to download such software, for you to install at your location;
 - (b) a soft copy of the user guide (the latest version of which is referred to as the “**User Guide**” in this Licence) to assist your use of ELSA generally;
 - (c) such other related documentation issued from time to time (the latest version of which is referred to as “**Other Documentation**” in this Licence) including guidelines on maintaining patient confidentiality; and
 - (d) if the HKCTT is required but is not embedded within ELSA, a copy of the HKCTT and relevant information on how to use it.

The User Guide, and Other Documentation are collectively known as the “**User Documentation**”, and are provided to you for internal use only. You may only make such copies of the User Documentation (and any previous versions thereof) for internal training purposes and not otherwise.

3. You (or if you are a hospital or clinic, the doctors within your medical practice) are responsible (and we are not) for the treatment of your patients and this includes ensuring that patient data is correctly entered into your IT systems and the results properly interpreted. You acknowledge that ELSA is only a tool to facilitate the operation of your hospital or clinic. Accordingly:
 - (a) you must only use ELSA at your location and use and operate ELSA in accordance with the User Documentation;
 - (b) you must implement, and maintain the implementation of, the security measures relating to the eHRSS which are prescribed from time to time by us or the eHR Office of the Government of the Hong Kong SAR (or any successor body); and
 - (c) you (or if you are a hospital or clinic, the doctors within your medical practice) are solely responsible (and we are not) for patient data entered and processed, results obtained and inferences and conclusions drawn from the use of ELSA.
4.
 - (a) You acknowledge and agree that *neither* we nor the HA warrant that ELSA (or, where relevant, the User Documentation):
 - (i) is error-free, accurate or complete or will achieve any results intended by you;
 - (ii) will be compatible with your IT systems, hardware and/or software;
 - (iii) will operate without interruption, error or virus infection;
 - (iv) will process data or provide information or results accurately.
 - (b) You acknowledge and agree that any liability to you and/or your patients, partners, staff, agents or sub-contractors for any loss or damage suffered in relation to the use of ELSA (other than death or personal injury resulting from negligence) is disclaimed by us and the HA to the fullest extent permissible by law. We hold the benefit of Clause 4(a) and this Clause 4(b) on trust for the HA.
 - (c) All conditions, warranties or other terms which might be implied by law, are excluded to the fullest extent permissible, including but not limited to, any implied warranties as to title, quality, fitness for purpose or the use of reasonable skill and care in respect of the design, programming, creation or compilation of ELSA or any User Documentation.
5.
 - (a) You acknowledge that ELSA comprises:
 - (i) third party works including computer programs (open source or non-open source), software code, preparatory materials, standards (such as classifications and terminology) and documentation (such as manuals, guidelines and instructions relating to their use) (“**Third Party Works**”);
 - (ii) works owned by us, including computer programs, software code, preparatory materials, standards (such as classifications and terminology) and documentation (such as manuals, guidelines and

instructions relating to its operation), together with additional development to Third Party Works (“**Developed Works**”).

- (b) You acknowledge that:
- (i) we take no responsibility for any defect in title, design or functionality of any Third Party Works;
 - (ii) we own the intellectual property rights in the Developed Works (and hold a licence to use and to sublicense the Third Party Works);
 - (iii) you have no rights in ELSA other than the licence granted under this Licence; and
 - (iv) some of the Third Party Works are subject to open source licences which stipulate how such works can be used and licensed, the details are set out in the readme file contained within ELSA.

You must not, nor permit or procure any third party to, deal with any intellectual property (such as to reproduce, adapt, modify, alter, distribute, reverse engineer or create derivative work) in respect of the Developed Works or Third Party Works in whole or in part without our prior written consent and in compliance with any conditions we may impose, except, in the case of Third Party Works, as may be provided or permitted by any relevant open source licences referred to above.

- (c) You must indemnify us, the HA, all committees (and their members) established by the HA, and our and the HA’s employees, officers and agents including their successors in title and assigns (collectively the “**Indemnified Parties**”) against any loss, liability or cost arising out of any claim or demand made by a third party against you, any of your partners, staff, agents, sub-contractors or any Indemnified Party, resulting from a breach by you of the terms of this Licence or for your infringement or alleged infringement of intellectual property in respect of or relating to the Developed Works or the Third Party Works.
6. (a) You must comply with and require that any person to whom you pass personal data to agree to comply with, and ensure that all your partners, staff, agents and sub-contractors comply with the Personal Data (Privacy) Ordinance (Cap. 486).
- (b) You must, at our request, supply us with a list of all your partners, staff, agents and sub-contractors who will use ELSA or the HKCTT (“**Users**”). You must ensure that all Users consent to the passing of their names and other personal data required in connection with this Licence to us and the HA and our respective agents and sub-contractors.
- (c) You must ensure confidentiality of patient data, including personal details and health data. Such shall include compliance with any rules and guidelines that we may issue from time to time in connection with the eHR Programme.
- (d) You must, both during and after the Term, keep secret and not disclose without our prior written consent any of our information disclosed to you in the granting of this Licence, except to the Users on a need-to-know basis solely for the purpose of this Licence. You must ensure that the Users abide

by the same duty of confidentiality.

- (e) You acknowledge that we have informed you that ELSA will keep a log of your connection activity regarding the eHRSS and we will have access to such log.
- 7.
- (a) Either party may terminate this Licence by giving to the other 30 days' prior written notice.
 - (b) We may terminate this Licence immediately on written notice to you if:
 - (i) you are in breach of any term of this Licence and fail to remedy the breach (if capable of remedy) within 14 days of the date of written notice from us informing you of the breach; or
 - (ii) you transfer your business or enter into partnership with others, or you suspend or cease, or threaten to cease, to carry on your business.
 - (c) When this Licence terminates:
 - (i) you must cease using ELSA and the HKCTT;
 - (ii) you must follow the unwind procedures set out in the User Documentation including removing all soft copies of ELSA and the HKCTT from your IT systems; and
 - (iii) you must destroy or return all User Documentation you have been given or is otherwise in your possession.
- 8.
- (a) This Licence is governed by the laws of the Hong Kong SAR.
 - (b) You must comply, and procure that the Users comply, with all applicable laws and regulations in respect of the use of ELSA and the handling of any data entered into, stored on or processed by ELSA. You acknowledge and accept that any breach of this Licence or contravention of any applicable laws by any User shall be deemed a breach on your part of this Licence.
 - (c) You must comply with the lawful requirements of any court, statutory or government body in connection with any lawful or properly authorised investigation conducted by them in respect of use of ELSA or the handling of patient data.
 - (d) The application of the Contracts (Rights of Third Parties) Ordinance is expressly excluded and no person who is not a party to this Licence shall be entitled to enforce any right or term of this Licence pursuant to the Contracts (Rights of Third Parties) Ordinance.

Enclosed: Terms of Use for the Hong Kong Clinical Terminology Table

Terms of Use for the Hong Kong Clinical Terminology Table (“HKCTT”)

1. HKCTT is a standardised clinical terminology table which is developed with a view to supporting the share and access of information with the Electronic Health Record Sharing System (“eHRSS”) in the Hong Kong SAR.
2. HKCTT is a proprietary work. Besides works belonging to the Government and/or the Hospital Authority (“HA”)(“we” or “us”), HKCTT may contain mapped codes or identifiers to certain third party standards, classifications and terminologies (“Third Party Terminologies”) as described in the list below.
3. The list of Third Party Terminologies and the related notices or terms as may be applicable may change from time to time. Such changes will be posted on the website www.ehealth.gov.hk and/or included in a file contained within the relevant version of HKCTT, or made available in any other way as we may consider appropriate. You should check out for any such changes each time before you use HKCTT, and your continued use of HKCTT will mean you have consented to such changes.
4. If you wish to access Third Party Terminologies (other than the mapped codes or identifiers included in HKCTT), you should contact the eHR Information Standards Office. Your access to and/or use of Third Party Terminologies may be subject to further terms and conditions and you must also comply with any applicable terms as may be imposed by such third parties such as subscribing or joining as their affiliates or members.
5. To the extent that HKCTT is embedded within or provided together with any computer programs or modules that are licensed to you by us, your use of HKCTT is subject to the terms applicable to such licenses in addition to these terms.
6. Unless you have obtained the prior written consent from us, you must use HKCTT only for your internal or personal purposes for the collection, compilation, analysis, research, mapping and/or reporting of clinical terminology data within the Hong Kong SAR, in relation to healthcare services (e.g. supporting clinical documentation, preparation for data for sharing with eHRSS, supporting interoperability of eHRSS), healthcare administration (e.g. data reporting, healthcare planning and evaluation, reimbursement) or healthcare development (e.g. teaching and research).

7. You must not, nor permit or procure any third party to, deal with any intellectual property in respect of HKCTT (including the names “Hong Kong Clinical Terminology Table” and “HKCTT”) in any form or manner, such as to reproduce, sell, distribute, make available, communicate, sub-license, adapt, modify, alter, reverse-engineer, create derivative work in relation to HKCTT or any part of it.
8. We do not warrant that HKCTT, Third Party Terminologies, or any part of them:
 - (a) is up-to-date, error-free, accurate or complete or will achieve any results intended by you;
 - (b) will be compatible with your IT systems, hardware and/or software;
 - (c) will always be available or operate without interruption, error or virus infection.
9. You acknowledge and agree that any liability to you and/or your patients, partners, staff, agents or sub-contractors for any loss or damage suffered in relation to the use of HKCTT (other than death or personal injury resulting from negligence) is disclaimed by us to the fullest extent permissible by law. All conditions, warranties or other terms which might be implied by law, are excluded to the fullest extent permissible, including but not limited to, any implied warranties as to title, quality, fitness for purpose or the use of reasonable skill and care in respect of the design, creation, compilation or revision of HKCTT.
10. Any reference made to HKCTT shall, unless specified, include all its versions, updates and fixes (if any) that may be provided or made available to you from time to time. To enhance consistency with the standardised clinical terminologies, we encourage you to adopt the latest versions, updates and fixes of HKCTT available. Without prejudice to Clause 9, as from the date a new version, update or fix is provided or made available, whether or not you install or incorporate the same, we shall not be liable for any loss or damage howsoever caused from the continual use of any previous version or any version without our update or fix.
11. (a) Either party may terminate the use of HKCTT by giving to the other 30 days’ prior written notice.
 - (b) We may terminate your use of HKCTT immediately on written notice to you if:
 - (i) you are in breach of any of these terms (or any terms applicable to

Third Party Terminologies or the computer programs or modules that are licensed to you by us) and fail to remedy the breach (if capable of remedy) within 14 days of the date of written notice from us informing you of the breach; or

- (ii) you transfer your business or enter into partnership with others, or you suspend or cease, or threaten to cease, to carry on your business.
- (c) When the use of HKCTT terminates:
 - (i) you must cease using HKCTT; and
 - (ii) you must follow the unwind procedures as instructed by us including removing all soft copies of HKCTT from your IT systems.

List of Third Party Terminologies

International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, Mental and Behavioural Disorders: Clinical descriptions and diagnostic guidelines, 1992, © World Health Organization.

International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, Mental and Behavioural Disorders: Diagnostic Criteria for Research, 1993, © World Health Organization.

International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, 2010 edition (ICD-10) © World Health Organization.

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