



LICENCE AGREEMENT

BETWEEN

- (1) **HEALTHCARE QUALITY IMPROVEMENT PARTNERSHIP** (company number 06498947) whose registered office is at 70 Wimpole Street, London W1G 8AX (the **“AUTHORITY”**); and
- (2) (**“the LICENCEE”**)

Recital:

The Authority has agreed to grant the Licencee a limited non-exclusive royalty-free revocable licence to use the Audit Tool upon the terms and conditions of this Agreement.

Operative provisions:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:-

“Audit Tool”	means the NELA Audit Tool Paper Questions known as the NELA Audit Questions developed by the Royal College of Anaesthetists NELA project team in relation to the National Emergency Laparotomy Audit project under a contract with the Authority under Schedule 1 contained therein and shall be interpreted as including any Updated Audit Tool;
“Intellectual Property Rights”	means patents, trademarks, copyrights, rights to extract information from a database, design rights and all rights or forms of protection of a similar nature or having equivalent or the similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them and including Know How;
“Know How”	means all technical and other information which is not in the public domain, including but not limited to information comprising or relating to concepts, discoveries, data, designs, formulae, ideas, inventions, methods, models, procedures, designs for experiments and tests and results of experimentation and testing, processes, specifications and techniques, laboratory records, clinical data, manufacturing data and information contained in submissions to regulatory authorities;



“Loss”	means all costs, claims, liabilities and expenses (including reasonable legal expenses);
“Territory”	means Nation, Region, Area concerned (eg Scotland);
“Updated Audit Tool”	means any modified, improved or corrected version of the Audit Tool as created or developed by the Licencee and approved by the Authority in accordance with Clause 4;
“Use”	means to use the Audit Tool for non-commercial purposes for the carrying out of the Initial Health Assessment and the Review Health Assessments for Looked After Children and children in care;

1.2 In this Agreement (except where the context otherwise requires):

- 1.2.1 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;
- 1.2.2 a reference to a party is to a party to this Agreement and shall include that party's personal representatives, successors or permitted assignees;
- 1.2.3 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence); and
- 1.2.4 a reference to a Clause or Schedule is to the relevant clause of or schedule to this Agreement.
- 1.2.5 any reference to a statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted by any subsequent statute, order, regulation or instrument;
- 1.2.6 general words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms; and
- 1.2.7 headings to clauses are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.



1.3 The Schedules form an integral part of this Agreement and have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes the Schedules.

2 GRANT OF LICENCE

2.1 The Authority hereby grants to the Licencee a limited non-exclusive royalty-free revocable licence to Use the Audit Tool within the Territory upon the terms and conditions of this Agreement.

3 DURATION OF AGREEMENT

3.1 This licence granted by Clause 2.1 shall commence on the date of this Agreement and shall continue for a period of three years or terminated in accordance with the provisions of Clause 6 below.

4 VARIATIONS TO THE AUDIT TOOL

4.1 The Licencee may not make modifications, improvements or corrections to the Audit Tool other than with the express written permission of the Authority.

4.2 If approved by the Authority any such modifications, improvements or corrections that may be incorporated into the Audit Tool to create an Updated Audit Tool.

5 INTELLECTUAL PROPERTY

5.1 The Audit Tool is the confidential information of the Authority and all Intellectual Property Rights in the Audit Tool are the exclusive property of the Authority.

5.2 The Authority shall retain title and all ownership rights in the Audit Tool. This Agreement does not grant the Licencee any Intellectual Property Rights in the Audit Tool and the original and all copies of the Audit Tool shall remain the property of the Authority.

5.3 The Licencee agrees that any Intellectual Property Rights it may have in any Updated Audit Tools will belong to and vest in the Authority. The Licencee shall do any acts requested by the Authority to ensure such rights vest legally in the Authority.

5.4 The Licencee confirms that it will make clear on any relevant documentation that the Authority is the owner of the Audit Tool.

5.5 The Authority asserts its moral rights under the Copyright, Designs & Patents Act 1988 to be identified as the author of the Audit Tool and its right not to have the Audit Tool subjected to derogatory treatment.

5.6 The Licencee shall notify the Authority immediately if the Licencee becomes aware of any unauthorised use of the whole or any part of the Audit Tool by any third party.





- 5.7 The Licencee shall take all such other steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of the Authority in the Audit Tool.
- 5.8 The Licencee shall inform all relevant employees, agents and sub-contractors that the Audit Tool constitutes confidential information of the Authority and that all Intellectual Property Rights therein are the property of the Authority and the Licencee shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this Clause 5.

6 TERMINATION

6.1 This Agreement may be terminated:

6.1.1 by the Authority upon giving not less than 28 days' notice to the Licencee;

6.1.2 forthwith by either party if the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to remedy the same;

6.1.3 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or similar steps are taken in a jurisdiction other than England or Wales.

6.2 Subject to Clause 6.3 below within 7 days of the termination of this Agreement (howsoever and by whomsoever occasioned) the Licencee shall at the Authority's sole option either return or shall destroy all copies of the Audit Tool in its possession or control and a duly authorised officer of the Licencee shall certify in writing to the Authority that the Licencee has complied with its obligation as aforesaid.

6.3 Notwithstanding the provisions of Clause 6.2 above the Licencee shall be entitled for a period of one year from the date of termination to keep one copy of the Audit Tool in a fire-proof room for archival purposes only.

7 INDEMNITY

7.1 The Licencee shall indemnify and keep the Authority indemnified against any liability, costs, expenses, losses, claims or proceedings whatsoever arising under any statute or at common law or for breach of contract in respect of:



7.1.1 damage to property, real or personal, including any infringement of third party Intellectual Property Rights;

7.1.2 injury to persons, including injury resulting in death; and

7.1.3 any Loss

arising out of, in connection with, or in respect of, any negligence, act, omission or default of the Licencee, its staff, agents or sub-contractors.

7.2 The Licencee shall be responsible for any acts, defaults, omissions, or neglect of any of its sub-contractors or their agents or employees as if they were acts, defaults, omissions, or neglect of the Licencee.

8 CONFIDENTIALITY

8.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Agreement save that which:

8.1.1 becomes public knowledge through no fault of the relevant party;

8.1.2 was already in the relevant party's lawful possession and at its free disposal before the date of this Agreement;

8.1.3 is lawfully disclosed to the relevant party without any obligations of confidence by a third party; or

8.1.4 is required to be disclosed by a competent regulatory body, government body or body of competent jurisdiction.

8.2 Neither party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).

8.3 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this Clause 7.2 by its employees, agents and sub-contractors.

9 THIRD PARTIES

9.1 No person who is not a party to this Agreement is intended to reserve a benefit under, or be entitled to enforce, this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

10 NOTICES



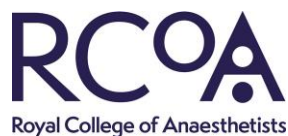
- 10.1 Any notice to be given under this Agreement shall be in writing, addressed to the Authority Representative or Licencee Representative (as appropriate) and either delivered personally, sent by facsimile or sent by first class recorded delivery post.
- 10.2 The address for service of the parties shall be:
- 10.2.1 in the case of the Authority, the address referred to above in this Agreement or such other address as may from time to time be notified in writing to the Licencee;
- 10.2.2 in the case of the Licencee, the address referred to above in this Agreement or its registered office or such other address as may from time to time be notified in writing to the Authority
- 10.3 The fax number for service of the parties shall be:
- 10.3.1 in the case of the Authority, the Authority Fax Number;
- 10.3.2 in the case of the Licencee, the Licencee Fax Number;
- 10.4 A notice shall be deemed to have been served:
- 10.4.1 if personally delivered, at the time of delivery;
- 10.4.2 if sent by facsimile, at 09.00 (local time) on the morning of the first business day of the recipient after faxing.;
- 10.4.3 if posted, on the morning of the first business day of the recipient following the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities.
- 10.5 A notice required to be given under this Agreement shall not be validly given if sent by email.

11 CHANGE OF DETAILS

- 11.1 The Authority may change the identity of the Authority Representative or the Authority Fax Number by notice in writing to the Licencee.
- 11.2 The Licencee may change the identity of the Licencee Representative or the Licencee Fax Number by notice in writing to the Authority.

12 GENERAL

- 12.1 The Licencee shall not be entitled to assign or otherwise transfer this Agreement nor any of its rights or obligations hereunder nor sub-licence the use (in whole or in part) of the Audit Tool without the prior written consent of the Authority.



- 12.2 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 12.3 No variation of this Agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.
- 12.4 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction or illegal, the other provisions will remain unaffected and in force.
- 12.5 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.
- 12.6 Each party will, at the request of the other party and its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of this Agreement.
- 12.7 This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single agreement.
- 12.8 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in and supersedes any previous agreement between the parties.
- 12.9 All conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Audit Tool are hereby excluded.
- 12.10 Each of the parties acknowledge and agrees that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 12.11 Neither the expiration nor the termination of this Agreement shall prejudice or affect any right action or remedy, which shall have accrued or shall thereafter accrue either to the Authority or to the Licencee.
- 12.12 The provisions of Clauses 6 (Intellectual Property), 7 (Termination), 8 (Indemnity), 9 (Confidentiality), 10 (Third Parties), 13 (General) and 14 (Governing Law and Jurisdiction) shall survive the termination or expiry of this Agreement.



13 GOVERNING LAW AND JURISDICTION

- 13.1 This Agreement will be governed by and interpreted in accordance with the law of England and Wales.
- 13.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

