Dated


NHS Choices Standard Licence Terms: Supplemental Agreement for Comment Provision

between

THE SECRETARY OF STATE FOR HEALTH

and

[PARTY 2]
THIS AGREEMENT is dated [DATE]

PARTIES

(1) Secretary of State for Health of Richmond House 79 Whitehall London SW1A 2NS acting through NHS Choices (“NHS Choices”).

(2) [FULL COMPANY NAME] incorporated and registered in [COUNTRY OF INCORPORATION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Comment Provider”).

BACKGROUND

A. The NHS Choices Website is the primary domain for members of the public searching for information on the NHS and is a key channel for the public to search for trusted information about NHS services. Working with NHS Choices to provide information to the NHS Choices website helps to contribute to providing the public, patients and professionals with a voice about their NHS. NHS Choices Syndicated Content is made available to people who agree to the Standard Licence Terms. This Agreement is supplemental to the Standard Licence Terms and covers the multiple channels through which organisations feed comments and responses into the NHS.uk repository (“Comment Capture Services”). This includes but is not limited to:

   a. The NHS Choices’ Simple Object Access Protocol (SOAP) Comment Capture Application Programming Interface (API);

   b. NHS Choices Comment Capture inbound syndication; and

   c. NHS Choices Syndication Services.

B. By providing such content, having access to NHS Choices Syndicated Content, using these services and signing below the Comment Provider agrees to be bound by the terms of this Agreement.

AGREED TERMS

1 Definitions

1.1 The following definitions and those set out in clause 1 of the Standard Licence Terms shall apply to this Agreement:

“Agreement” means this Supplemental Agreement for Comment Provision

“Comment” means any individual comment, comment response, rating or review.

“Comment Capture Services” is as set out in the Background above.

“Data Subject” is as defined in the DPA

“DPA” means the Data Protection Act 1998

“HSCIC” means the Health and Social Care Information Centre

“Intellectual Property Rights” includes but is not limited to patents, trademarks, service marks, design rights (whether registered or otherwise), applications for any of the foregoing, copyright, software, database rights, trade, company or business names and other similar rights, or other right in
the nature of intellectual property or obligations whether registerable or not in any country (including but not limited to the United Kingdom).

“NHS Choices Privacy Policy” means the policy, as amended from time to time, set out at the NHS Choices Website http://www.nhs.uk/aboutNHSChoices/aboutnhschoices/termsandconditions/Pages/Privacypolicy.asp

“NHS Choices’ Rights” means all right, title and interest in and to the service, including without limitation, all Intellectual Property Rights, software, rights to the APIs, the Comment Capture Services and any other services developed and provided by NHS Choices but shall not include any third-party components used as part of this service or software developed by the Comment Provider in conjunction with using this service.

“ODS/NACS/CQC” means the Organisational Data Service (National Administrative Code) operated by the HSCIC, or by the Care Quality Commission in the case of Social Care, providing a unique identifier for each provider across Health and Social Care.

“Service Design” means the technical specification and detail of how the Comment Capture Service operates, which can be found at http://innovate-apps.direct.gov.uk/nhsfedforums/viewforum.php?f=6

“Standard License Terms” means the NHS Choices Syndicated Content Standard License Terms between the Parties

“Submitted” means the supply of data, or the placement of data to be supplied at a later time, onto a location or service that feeds Comment Capture Services

“Party” means a party to the Agreement and “Parties” means both parties to the Agreement

“Personal Data” is as defined in the DPA

2 NHS Choices’ Content Syndication programme

2.1 The Comment Capture Services are designed to be used in conjunction with NHS Choices’ content syndication programme. Accordingly, the Comment Providers is required to abide by and remain a party to the Standard Licence Terms to which this Agreement is supplemental.

2.2 In the event of a conflict between this Agreement and the Standard License Terms, this Agreement shall prevail.

3 Registration and legitimate use

3.1 The Comment Capture Services are made available to the Comment Provider for posting to the NHS Choices Website, without interference, Comments by patients and their friends and family members of an experience of any verified health and social care provider and that provider’s response. Such Comments must be honest, reasonable and non-malicious.
3.2 The Comment Provider agrees to register as a NHS Choices content syndication partner. The Comment Provider must provide accurate identification, contact, and other information required as part of the registration process.

3.3 The Comment Provider may not submit, or allow to be Submitted, a Comment or use the Comment Capture Service in any manner that:

3.3.1 is not in accordance with clause 3.1;

3.3.2 allows for Comments to be Submitted which are contrary to the requirements of clause 5;

3.3.3 directly or indirectly violates any law including but not limited to the DPA;

3.3.4 infringes any NHS Choices Right or third party Intellectual Property Rights;

3.3.5 is liable to result in the publication of a Comment that would amount to an actionable defamation; or

3.3.6 in any other way is in breach of this Agreement.

4 Intellectual property

4.1 The Comment Provider agrees not to remove, obscure, or alter NHS Choices” copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Service.

4.2 The Comment Provider also acknowledges that NHS Choices owns all right, title and interest in and to the NHS Choices” Rights.

4.3 The Comment Provider warrants that it owns or has a worldwide, royalty-free, perpetual, irrevocable licence or right to copy, publish, distribute, adapt and exploit (including for commercial purposes) any Comment Submitted or otherwise made available to the Comment Capture Services.

4.4 Subject to 4.6, the Comment Provider agrees to grant NHS Choices as a present licence of a future right a worldwide, royalty-free, perpetual, irrevocable licence to copy, publish, distribute, adapt and exploit (including for commercial purposes) any Comment Submitted or otherwise made available to the Comment Capture Services.

4.5 Any Intellectual Property Rights in a Comment that has been moderated by NHS Choices and provided to the Comment Provider through syndication is licensed in accordance with the Standard Licence Terms regardless of whether the Comment originated with the Comment Provider.

4.6 Any Comment gathered directly from a person to a Comment Provider where the Intellectual Property Rights are held by that Comment Provider which is unmoderated by NHS Choices and is published or distributed via the Comment Provider’s own processes shall continue to be the intellectual property of that Comment Provider.

5 Comments policy and standards

5.1 Any Comment must be published by the Comment Provider and be classed as being in the “public domain” prior to being Submitted to the Service.
5.2 Comments Submitted to the Service must not be altered, moderated or changed from the Comment as published. If the Comment Provider considers it necessary to remove from publication or alter the published Comment, the Comment Provider must immediately notify NHS Choices of such intent via the methods stipulated in the Service Design. The Comment Provider must explain why it considers it necessary to remove or alter the Comment and when it will do so. A failure to notify NHS Choices in advance of removing or altering a Comment does not remove any requirement to do afterwards. In the event of an alteration, the Comment Provider must remove the existing Comment and publish a replacement Comment with a different unique identifier.

5.3 For each Comment Submitted, the format must comply with the Service Design for the receipt of Comments. All Comments identify the provider using the ODS/NACS/CQC unique organisation code and contain a unique persistent serial identifier that is auditable. The Comment Provider must ensure that all Comments the Comment Provider provides includes the following information:

a. The author of the Comment;

b. The name with which that person should be attributed online. Where that person does not wish to be attributed, this field shall be set to ‘anonymous’;

c. A title of the Comment;

d. The text of the Comment as published on the Comment Provider’s service;

e. The date when the person making the Comment visited the provider organisation;

f. The date which it was received for publication on the Comment Provider’s site or service;

g. The unique persistent serial identifier of the Comment as used on the Comment Provider’s system; and

h. The Comment Provider’s comment partner ID which is issued in conjunction with the Comment Provider’s API key.

The Comment Provider shall not provide any Comment where the Comment Provider knows or could reasonably deduce or assume, that such information is inaccurate.

5.4 The Comment Provider must be able to contact the author of the Comment either by e-mail or telephone. The Comment Provider must, on the reasonable request of NHS Choices, promptly contact the author of any Comment to clarify compliance with NHS Choices’ Comments Policy and this Agreement. The details of any such communication must be accurately provided in writing to NHS Choices.

5.5 If rating questions are submitted, the appropriate rating options must be posted and the exact wording for the responses must be used as per the NHS Choices Website and the NHS Choices Syndication Service.

5.6 Comments Submitted must have a publication date and reflect an experience with a health or social care service within the previous 24 calendar months. Comments that are older or reflect an experience with a provider over 24 months ago will be rejected. If accepted for publication, Comments will remain within the Service for a maximum of five years. In accepting the terms and conditions of this Agreement, the Comment Provider agrees to inform users of its site of these data retention periods.
5.7 The experience forming the subject matter of the Comment does not need to be as a patient, but may be an observation of treatment or service by a friend or family member. Comments may not, however, be submitted if they are: made, edited, or capable of being interfered with, by employees, directors, agents or contractors of the health or social care service being commented upon. This limitation is regardless of whether such Comment does, or is intended to, genuinely reflect the view or statements made by any recipient of health or social care services.

5.8 Comments that the Comment Provider submits through the Service will be moderated in line with NHS Choices’ Comments Policy and assessed to ensure compliance with this Agreement. NHS Choices reserves the right (on behalf of itself and any moderator which NHS Choices may appoint) to edit, not publish on the website or delete any posts the Comment Provider submits. NHS Choices further reserves the right to investigate the origin or any other aspect of any Comment, such investigation may include but is not limited to the steps outlined in clause 5.5 above. Postings will not be treated as confidential. NHS Choices shall not be legally responsible for the content of any material or Comment that the Comment Provider submits for publication and distribution by NHS Choices.

5.9 All Comments that pass moderation will be visible in the outbound syndication feeds that the Comment Provider is subscribed to as part of this Agreement. Additionally, in the event of NHS Choices having to moderate, amend, or delete a Comment that the Comment Provider has provided, the Comment Provider will be notified of this by email to the account provided as part of the application process. It is the Comment Provider’s responsibility to ensure that the contact details on the registration are up to date. NHS Choices shall not be legally responsible for any undelivered, blocked or failed mail deliveries to the given email address supplied. The Comment Provider must poll the service detailing Comments that have been withdrawn from publication no less than the mandated frequency stipulated within the Standard Licence Terms.

5.10 The Comment Provider remains responsible for any Comment it publishes regardless of whether they have been notified by NHS Choices.

6 Testing

6.1 Testing should be performed using the test environments offered by NHS Choices. In exceptional circumstances it may be necessary to send test comments or messages across the ‘live’ environment. If this is necessary, then the Comment Provider agrees to clearly identify each test comment by adding the words ‘do not post – test comment’ in both the title and the comment field.

6.2 NHS Choices will delete upon receipt any test messages and will not pass them through for moderation, nor publish or syndicate any resulting processing of a test message.

7 Approval

7.1 Written approval from NHS Choices is required prior to going live with the Comment Provider’s service. The Comment Provider agrees to submit, at least 15 working days prior to the go live date, a technical specification of its service, information on its privacy and data security processes, an outline of its information level security and its application for testing by NHS Choices.
8 Suspension of Access

8.1 NHS Choices reserves the right without notice to suspend access to the Service in the event of any technical issues with the service operated by NHS Choices, the Comment Provider, or other third-party comment partners.

9 Privacy and data storage

9.1 The Comment Provider warrants that it shall at all times comply with the DPA. Where Personal Data is provided to NHS Choices the Comment Provider warrants that it is done so fairly and lawfully. The Comment Provider further warrants that any Data Subject shall provide consent for their Personal Data to be processed in accordance with the NHS Choices Privacy Policy as if they had provided comments directly to the NHS Choices Website.

9.2 Due to the nature of interaction with health and social care providers, there is a higher likelihood of Comments inadvertently containing personal, patient or sensitive patient identifiable data. Even though the Service operates across the encrypted and more secure https protocol, comment providers must not transmit patient or sensitive patient data to the Service. Comment copy should be de-personalised prior to transmission so as not to cause harm, distress or danger to any individual that could be identified by the Comment.

9.3 Unless certified and accredited to hold such information, the Comment Provider must put into place the appropriate precautions, security measures and safeguards to prevent the receipt and storage of personal, patient or sensitive patient identifiable data. Under no circumstances shall NHS Choices be liable for the security or loss of privacy to an individual caused by information transmitted, processed or stored by the Comment Provider.

9.4 Comments received via the Service will be visible on the NHS Choices Website for 5 years and retained for up to a maximum of 7 years, running from the date with which the commenter interacted with the provider. Comments that fail NHS Choices’ moderation process will not be published, but will be retained by NHS Choices’ moderation system for audit purposes for 3 months from the date of receipt by NHS Choices. The Comment Provider must ensure that all comment providers to its service are aware of these data retention periods and that the Comment Provider gains their informed consent prior to transmission to the Service.

9.5 NHS Choices reserves the right to request written evidence that the Comment Provider is constantly meeting privacy and data storage requirements.

10 Publicity

10.1 Provided that the Comment Provider complies with its obligations under this Agreement, the Comment Provider may indicate that a product or solution that it has created is based on the NHS Choices service provided that those products or services do not in NHS Choices’ reasonable opinion: tarnish, infringe, or dilute NHS Choices’ or any other party’s trademarks; violate any applicable law; or infringe any third-party rights.
11 Attribution and use of NHS Choices logo

11.1 Logo accreditation is required in all applications using the Service where NHS Choices’ panel of questions constitute more than 80% of the survey questions. In these circumstances, use of the NHS Choices logo requires written approval.

12 Disclaimer of warranties

12.1 The Comment Capture Services are provided on an “as is” and “as available” basis with no warranties whatsoever. NHS Choices expressly disclaims to the fullest extent permitted by law all express, implied, and statutory warranties, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement of proprietary rights. NHS Choices disclaims any warranties regarding the security, reliability, timeliness, availability, and performance of the Service.

12.2 The Comment Provider understands and agrees that it uses the Comment Capture Service at its own discretion and risk and that it will be solely responsible for any damages to its systems or loss of data that the use of the Comment Capture Services results in.

13 Limitation of liability

13.1 Subject only to clause 13.3 the Comment Provider agrees that NHS Choices shall have no liability arising from or based on the Comment Provider’s use of the Comment Capture Services.

13.2 Under no circumstances, except for those provided in clause 13.3, shall NHS Choices be liable to any user on account of that user’s use or misuse of the Service. Such limitation of liability shall apply to prevent recovery of direct, indirect, incidental, consequential, special, exemplary, and punitive damages whether such claim is based on warranty, contract, tort (including negligence), or otherwise, even if NHS Choices has been advised of the possibility of such damages. Such limitation of liability shall apply whether the damages arise from use or misuse of and reliance on the Service, from inability to use the service, or from the interruption, suspension, or termination of the Service (including such damages incurred by third parties). Such limitation shall apply notwithstanding a failure of essential purpose of any limited remedy and to the fullest extent permitted by law.

13.3 NHS Choices is liable for death or personal injury caused by its negligence and where NHS Choices has committed fraud or made fraudulent misrepresentations.

14 Indemnity

14.1 The Comment Provider hereby agrees to indemnify, hold harmless and defend NHS Choices in respect of all damages, costs and expenses, including reasonable legal fees and litigation expenses, arising out of the Comment Provider’s:

14.1.1 use of the Comment Capture Service. This includes but is not limited to such costs incurred by NHS Choices arising from the submission of inappropriate or defamatory Comments from third parties to NHS Choices regardless of the Comment Provider’s knowledge or negligence. The
indemnity does not extend to Comments that are rendered defamatory solely as a result of NHS Choices amending or editing the content.

14.1.2 breach of this Agreement.

14.2 Notwithstanding clause 14.1, the Comment Provider shall not be liable for any legal fees and litigation expenses incurred by NHS Choices where the Comment Provider has cooperated fully with NHS Choices in relation to such litigation.

15 Term and termination

15.1 If the Comment Provider wishes to terminate this Agreement, the Comment Provider may simply cease using the Comment Capture Services. NHS Choices may terminate this Agreement (and the Comment Provider’s account) at any time, with or without cause. On termination of this Agreement the Comment Provider must immediately remove any use of NHS Choices Intellectual Property Rights and must remove any indication of connection with NHS Choices or the Comment Capture Services.

15.2 Any termination of the Standard Licence Terms will result in an automatic termination of this Agreement.

15.3 The provision of the following clauses shall survive the termination or expiry of this Agreement, clauses 3, 4, 9, 12, 13, 14, 15, and 16.

16 General Provisions

16.1 The Comment Provider may not assign, charge, sublicense or otherwise deal with its rights or obligations in this Agreement in whole or in part to any third party.

16.2 This Agreement supersedes all prior agreements, arrangements and understandings between the Parties concerning its subject matter with the exception of the Standard Licence Terms. Each of the Parties acknowledges that it has not relied on any statements made by the other in the course of entering into this Agreement.

16.3 Any failure or delay by either Party in exercising its rights under any provisions of this Agreement shall not be construed as a waiver of those rights at any time now or in the future.

16.4 This Agreement shall be governed by, construed and take effect in accordance with English law and the English courts shall have exclusive jurisdiction to settle any claim or dispute which may arise out of or in connection with this Agreement.

16.5 The Comment Provider must ensure that any API or login usernames and passwords are kept secure. Usernames and passwords may only be given to staff that require access to the data for the purposes of their employment. The Comment Provider must immediately notify NHS Choices if usernames or passwords are lost or supplied to any third party, or if the Comment Provider knows or suspects there has been any breach of security in relation to NHS Choices’ Website.

This agreement has been entered into on the date stated at the beginning of it.
Signed by [NAME OF SIGNER] for on behalf of the Secretary of State for Health
Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF COMMENT PROVIDER]

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