

# **SCHEDULE 3 - SNOMED CT INTELLECTUAL PROPERTY**

## **Part A**

### **Rights and Obligations of the Association**

#### **1. RIGHT TO GRANT LICENCES**

The Association may grant licences in respect of the International Release and in respect of any part of the International Release.

#### **2. INTEGRITY OF THE CORE**

2.1 The Association shall have the sole right to modify the Core or any part of it and to permit any other person to modify the Core or any part of it.

2.2 The Association shall have the sole right to determine the manner of formatting of the Core included within the International Release.

#### **3. NAMESPACE IDENTIFIERS**

The Association shall have the sole right to issue Namespace Identifiers and to permit any other person to issue Namespace Identifiers.

#### **4. RESERVATION OF ASSOCIATION'S RIGHTS**

Other than as expressly set out in this Part A, nothing in this Schedule 3 in any way limits any of the Association's rights, including any right to use, modify, license, distribute, sell, offer for sale or otherwise exploit any Intellectual Property Right owned by the Association.

## **Part B**

### **Rights and Obligations of Members**

#### **5. MEMBERS' RIGHTS**

5.1 As a Member, each Member shall have the right, subject to the terms of this Part B, to:

5.1.1 use, and permit the Member's officers, employees, agents and contractors to use, the International Release;

5.1.2 create National Extensions and use and modify those National Extensions;

5.1.3 create Derivatives and use and modify those Derivatives;

5.1.4 modify the manner of formatting of the copy of the Core distributed to the Member as part of the International Release;

5.1.5 distribute the Member's National Release (including the International Release) to Affiliates;

5.1.6 grant licences to Affiliates to:

- (a) use the Member's National Extensions and Derivatives forming part of the Member's National Release;
- (b) create Third Party Extensions from the Member's National Extensions and use and modify those Third Party Extensions;
- (c) create Derivatives from the Member's National Extensions and Member's Derivatives and use and modify any such Derivatives created by that Affiliate;
- (d) incorporate the Member's National Extensions and Derivatives into the Affiliate's products; and
- (e) sub-license the Member's National Extensions and Derivatives, and any Derivatives and Third Party Extensions created by the Affiliate from the Member's National Extensions and Member's Derivatives, to users of the Affiliate's products;

5.1.7 grant licences to other Members (each such Member being a "**Licensee Member**", and the Member granting the licence being the "**Licensor Member**") to:

- (a) use the Licensor Member's National Extensions and Derivatives forming part of the Licensor Member's National Release;
- (b) incorporate the Licensor Member's National Extensions into the Licensee Member's own National Extensions and use and modify any such National Extensions created by the Licensee Member;
- (c) create Derivatives from the Licensor Member's National Extensions and use and modify those Derivatives; and
- (d) sub-license the Licensor Member's National Extensions and Derivatives, and any Derivatives and National Extensions created by the Licensee Member from the Licensor Member's National Extensions, to Affiliates; and

5.1.8 distribute the Member's products containing the International Release (or any part of it) to persons other than Affiliates and other Members, provided that the use by such persons of the Member's products is subject to an end user licence agreement that:

- (a) gives the licensee only those rights in respect of the International Release as are strictly necessary for the licensee's use of the Member's products; and
- (b) includes terms that the Member reasonably considers necessary or desirable to protect the Association's Intellectual Property, including such terms as the Association may prescribe by Regulations.

- 5.2 A Member's rights under paragraph 5.1 are:
  - 5.2.1 non-exclusive; and
  - 5.2.2 non-transferable, except with the prior consent of the Association.
- 5.3 A Member may only use the International Release, and must ensure that its officers, employees, agents and contractors only use the International Release:
  - 5.3.1 for the Member's internal business purposes (including the creation by the Member of National Extensions and Derivatives and the distribution by the Member of its National Release);
  - 5.3.2 in the development and operation of the Member's information systems;
  - 5.3.3 for the Member's research purposes; and/or
  - 5.3.4 in the Member's systems (including browsers and data analysis systems) made available to the general public for accessing and/or retrieving any part of the International Release and/or the Member's National Release and/or data encoded using the foregoing, provided that if those systems are used by persons other than Affiliates, those users are not able to extract any substantial portion of SNOMED CT.
- 5.4 Each Member shall ensure that its use of the International Release, and the use by its officers, employees, agents and contractors of the International Release, complies with all Regulations made by the Association from time to time.
- 5.5 Each Member shall comply with the Internet security measures prescribed by the Association by Regulations from time to time.
- 5.6 Each Member must distribute its National Release in such manner that no person may access any part of the National Release without first entering into a licence agreement with the Association on the Affiliate Licence Terms, and thereby becoming an Affiliate. The Association may prescribe by Regulations the manner in which a Member is required to ensure that its National Release is only distributed to persons who are Affiliates.
- 5.7 A Member may distribute the Core as part of its National Release in a format that has been modified in accordance with paragraph 5.1.4, provided that the Member also distributes the Core as part of its National Release in the same format as the Core is distributed by the Association as part of the International Release.
- 5.8 Each licence granted by a Member under paragraph 5.1.6 must comply with the requirements set out in paragraph 7.
- 5.9 Subject to paragraph 5.1.4, no Member may:
  - 5.9.1 modify any part of the Core distributed to it as part of the International Release; or

5.9.2 grant or purport to grant any right to any person (including any Affiliate) to modify any part of the Core distributed to it as part of the International Release.

5.10 No Member shall acquire any right, title or interest in or to the International Release or any part of it, other than as expressly provided in this Part B.

5.11 Each Member shall have the right to prescribe reasonable conditions, consistent with the Articles, in relation to the use and/or distribution by Affiliates of the International Release, and Affiliates' products containing the International Release (or any part of it), within the Member's Territory. Any Member prescribing any such conditions shall promptly publish those conditions in a manner reasonably likely to bring them to the attention of Affiliates, and shall provide a copy of those conditions to the Association.

## **6. DURATION OF RIGHTS**

6.1 The rights of each Member under paragraph 5.1 shall:

6.1.1 commence upon that Member becoming a Member; and

6.1.2 automatically terminate upon that Member ceasing to be a Member, except as expressly provided in paragraph 6.2.

6.2 If a Member ceases to be a Member, without being replaced in accordance with clause 4.4 of these Articles, and subject to paragraph 6.3, the Member's rights under paragraphs 5.1.1 to 5.1.8 (except 5.1.2) shall continue following the Member ceasing to be a Member, but:

6.2.1 the Member's rights under those provisions in respect of the International Release (itself and as part of the Member's National Release) shall be limited to the most recent version of the International Release on the date that the Member ceased to be a Member and the Member shall have no rights in respect of any subsequent version of the International Release;

6.2.2 the Member's rights under paragraph 5.1.3 shall be limited to non-Standards-Based Derivatives; and

6.2.3 while the Member may not create new National Extensions after the date the Member ceased to be a Member it may continue to use National Extensions created before the date the Member ceased to be a Member.

6.3 If a Member ceases to be a Member, without being replaced in accordance with clause 4.4 of these Articles, and a new Member is subsequently admitted in the former Member's Territory in accordance with clause 4.3 of these Articles, the former Member's rights that are continued under paragraph 6.2 shall automatically terminate.

## **7. LICENCES GRANTED BY MEMBERS**

7.1 Each licence granted by a Member under paragraph 5.1.6 must:

7.1.1 not conflict with any provision of the Affiliate Licence Terms;

- 7.1.2 provide that no rights are granted under it other than to a person who is an Affiliate;
- 7.1.3 not grant or purport to grant any licence or other right to the Affiliate in respect of the International Release or any part of it;
- 7.1.4 not confer or purport to confer any obligation or liability on the Association;
- 7.1.5 provide that, upon that Member being replaced in accordance with clause 4.4 of these Articles, the outgoing Member's rights and obligations under the licence shall automatically transfer to the replacement Member;
- 7.1.6 survive the Member ceasing to be a Member in accordance with clauses 4.5.3 or 4.5.5 of these Articles, and not be terminable by the Member except in the same circumstances as the Association may terminate a licence with an Affiliate under the Affiliate Licence Terms;
- 7.1.7 provide that the Affiliate may not create any Standards-Based Third Party Extension or any Standards-Based Derivative from the Member's National Extensions unless that Affiliate has been issued with a Namespace Identifier in accordance with paragraph 9;
- 7.1.8 require the Affiliate to ensure that all Standards-Based Third Party Extensions and Standards-Based Derivatives that the Affiliate creates from the Member's National Extensions are created and maintained in accordance with, and comply with, all applicable Standards;
- 7.1.9 provide that either:
  - (a) the Member shall own all Intellectual Property Rights in all Standards-Based Third Party Extensions that the Affiliate creates from the Member's National Extensions; or
  - (b) the Affiliate shall own all Intellectual Property Rights in all Standards-Based Third Party Extensions that the Affiliate creates from the Member's National Extensions, but that the Affiliate may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person is an Affiliate and has a Namespace Identifier; and (ii) the transfer is notified in writing to both the Member and the Association within thirty (30) days after the transfer;
- 7.1.10 provide that either:
  - (a) if agreed between the Member and the Affiliate, the Member shall own all Intellectual Property Rights in all Standards-Based Derivatives that the Affiliate creates from the Member's National Extensions and Derivatives; or
  - (b) the Affiliate shall own all Intellectual Property Rights in all Standards-Based Third Party Derivatives that the Affiliate creates

from the Member's National Extensions, but that the Affiliate may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person is an Affiliate and has a Namespace Identifier; and (ii) the transfer is notified in writing to both the Member and the Association within thirty (30) days after the transfer;

7.1.11 provide that:

- (a) if requested by the Member, the Affiliate shall transfer to the Member, or to such other person as the Member may nominate (including the Association), all of its Intellectual Property Rights in such Standards-Based Third Party Extensions (or parts thereof) created by the Affiliate from the Member's National Extensions as the Member may specify;
- (b) if requested by the Member and agreed by the Affiliate in the Affiliate's sole discretion, the Affiliate shall transfer to the Member, or to such other person as the Member may nominate (including the Association), all of its Intellectual Property Rights in such Standards-Based Derivatives created by the Affiliate from the Member's National Extensions as the Member may specify; and
- (c) upon the transfer to the Member of the Intellectual Property Rights in any Third Party Extension (or part thereof) or Derivative in accordance with sub-paragraph (a) or (b) of this paragraph 7.1.11:
  - (i) responsibility for the maintenance and distribution of that Third Party Extension (or part thereof) or Derivative shall also transfer from the Affiliate to the Member or other transferee nominated by the Association (as the case may be); and
  - (ii) accordingly, in the case of a Third Party Extension, that SNOMED CT Content shall cease to be a Third Party Extension and shall become part of the Member's National Extensions (if transferred to the Member) or the Core (if transferred to the Association).

7.2 Any licence granted or purported to be granted under paragraph 5.1.6 that does not comply with the requirements set out in paragraph 7.1 shall be void but the Association may, by Resolution of the Management Board, give retrospective permission to the Member to grant that licence, in which case that licence shall not be void by virtue of this paragraph 7.2.

7.3 A licence granted by a Member under paragraph 5.1.6 may: (i) limit the Affiliate's rights to the Member's Territory; (ii) limit the Affiliate's rights to the Member's Territory together with the Territories of other Members from time to time; or (iii) not be subject to any territorial limitation. A Member shall notify the Association as soon as reasonably practicable, and in any event within thirty (30) days, after granting any licence as described in sub-paragraphs (ii) or (iii)

of this paragraph 7.3, and the Association shall publish the details of that licence to other Members.

7.4 Any licence fees and other amounts charged by a Member under licences granted under clause 5.1.6 or clause 5.1.8 shall be calculated and set by the Member at no greater a level than the Member estimates, in good faith, will allow it to recover its costs incurred in connection with its membership of the Association and activities performed pursuant to that membership.

7.5 Each Member shall comply with such Regulations as the Association may prescribe from time to time for the purpose of:

7.5.1 ascertaining a Member's compliance with paragraph 7.4; and

7.5.2 determining the action that a Member is required to take if it earns licence fees or other amounts in excess of the level specified in paragraph 7.4 (which may include, without limitation: (i) the Member reducing its licence fees or other amounts for future periods; (ii) the Member reimbursing some or all of the excess licence fees or other amounts to some or all Affiliates or other persons; and (iii) the Member accounting to the Association for some or all of the excess licence fees or other amounts).

## **8. NATIONAL EXTENSIONS AND DERIVATIVES**

8.1 Each Member shall ensure that all Standards-Based National Extensions and Standards-Based Derivatives that it creates are created and maintained in accordance with, and comply with, all applicable Standards including the Association's quality assurance processes.

8.2 Subject to paragraphs 8.3, 8.4, 8.9 and 8.10, each Member shall own all Intellectual Property Rights in all National Extensions and Derivatives that it creates.

8.3 A Member shall, if requested by the Association, transfer to the Association all of its Intellectual Property Rights in such Standards-Based National Extensions (or parts thereof) as the Association may specify.

8.4 A Member shall, if requested by the Association and agreed by the Member in the Member's sole discretion, transfer to the Association all of its Intellectual Property Rights in such Standards-Based Derivatives created from the Core as the Association may specify.

8.5 Upon the transfer to the Association of the Intellectual Property Rights in any National Extension (or part thereof) or Derivative in accordance with paragraph 8.3 or 8.4:

8.5.1 responsibility for the maintenance and distribution of that National Extension (or part thereof) or Derivative shall also transfer from the Member to the Association;

- 8.5.2 accordingly, in the case of a National Extension, that SNOMED CT Content shall cease to be a National Extension and shall become part of the Core; and
- 8.5.3 Until that National Extension (or part thereof) or Derivative becomes part of the International Release the Member shall have the same rights and obligations in relation to that National Extension (or part thereof) or Derivative that the Member has in relation to the International Release.
- 8.6 A Member shall, if requested by the Association:
- 8.6.1 require an Affiliate (in accordance with sub-paragraph (a) of paragraph 7.1.11) to transfer to the Member, or to such other person as the Association may nominate (including the Association itself), the Affiliate's Intellectual Property Rights in such Standards-Based Third Party Extensions (or parts thereof) created by the Affiliate from the Member's National Extensions as the Association may specify to the Member; and
- 8.6.2 seek an Affiliate's consent (in accordance with sub-paragraph (b) of paragraph 7.1.11) to transfer to the Member, or to such other person as the Association may nominate (including the Association itself), the Affiliate's Intellectual Property Rights in such Standards-Based Derivatives created by the Affiliate from the Member's National Extensions as the Association may specify to the Member.
- 8.7 The Association shall reimburse a Member for all costs and expenses incurred by the Member in obtaining an Affiliate's consent in accordance with paragraph 8.6.2 (including any sums paid to the Affiliate in consideration for the transfer of its Intellectual Property Rights in accordance with that paragraph), provided that the Member obtains the Association's prior approval before incurring any such costs or expenses.
- 8.8 A Member shall, if requested by the Association or another Member, provide the Association or other Member (as the case may be) with full details of the specification for the process that the Member has used to create any Derivative that is not a Standards-Based Derivative.
- 8.9 A Member shall, if requested by the Association or another Member, provide the Association or other Member (as the case may be) with sufficient information, co-operation and assistance in relation to any of the Member's National Extensions and Derivatives to enable the Association or other Member (as the case may be) to make an assessment about whether the Intellectual Property Rights in those National Extensions or Derivatives should be transferred to the Association in accordance with paragraphs 8.3 and 8.4.
- 8.10 If a Member is replaced in accordance with clause 4.4 of these Articles, all Intellectual Property Rights in the former Member's National Extensions and the former Member's Derivatives shall automatically transfer to the replacement Member.
- 8.11 If a Member ceases to be a Member otherwise than as described in paragraph 8.10, all Intellectual Property Rights in the former Member's National Extensions

and the former Member's Derivatives shall transfer to such person as the national government of the former Member's Territory may nominate (unless the national government waives such transfer) or, in default of such nomination or waiver, to such person as the Association may nominate (including the Association itself).

8.12 If it is not possible, under any applicable law to which a Member (or former Member) is subject, for the Member (or former Member) to effect a transfer of any Intellectual Property Rights in accordance with clauses 8.3, 8.4, 8.10 or 8.11, the Association and the Member (or former Member) shall in good faith put in place arrangements having as similar an effect as possible to a transfer of those Intellectual Property Rights.

8.13 A Member shall, if requested by the Association, grant a licence to an Affiliate as contemplated in clause 3.7.2 of Exhibit 1 to this Schedule 3.

## **9. NAMESPACES**

9.1 Only the Association may issue Namespace Identifiers.

9.2 The Association shall, upon written request from a Member or an Affiliate in accordance with such procedures as the Association may prescribe by Regulations, issue one or more Namespace Identifiers to the Member or Affiliate. The Association shall not unreasonably refuse to issue a Namespace Identifier to a Member or an Affiliate.

9.3 The Association shall be responsible for ensuring that each Namespace Identifier is only issued to a single Member or Affiliate.

## **10. THE ASSOCIATION'S TRADE MARKS**

10.1 No Member shall:

10.1.1 use any trade mark or service mark (or any registrations thereof), other than the Association's trademarks, in any name that includes the word "SNOMED", or that is confusingly similar to SNOMED, SNOMED CT or any other similar trademark;

10.1.2 apply for any trade mark or service mark (or any registrations thereof) in any name that includes the word "SNOMED", or that is confusingly similar to SNOMED, SNOMED CT or any other similar trade mark;

10.1.3 abbreviate the marks SNOMED or SNOMED CT; or

10.1.4 do anything with respect to the foregoing trade marks that damages or could reasonably be deemed to reflect adversely on the Association or such trade marks.

10.2 Each Member shall:

10.2.1 include the following notice on all media on which its National Release (or any part of it) is distributed and on the documentary form of each licence granted by the Member under paragraph 5.1.6:

“This material includes SNOMED Clinical Terms® (SNOMED CT®) which is used by permission of the International Health Terminology Standards Development Organisation (IHTSDO). All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. “SNOMED” and “SNOMED CT” are registered trademarks of the IHTSDO.”

10.2.2 specify in all media on which the National Release are distributed the version and date of the International Release contained in the National Release.

10.3 The Association will set out in regulations the terms on which members can use the “SNOMED” and “SNOMED CT” trademarks and all use by a Member of the “SNOMED” and “SNOMED CT” trademarks, and all goodwill resulting from that use, shall inure to the Association’s benefit. Each Member shall ensure that its use of those trade marks (including on its National Release) complies with the requirements set out in this Part B and with all Regulations made by the Association from time to time in respect of the use of its trade marks.

## **11. REPRESENTATIONS, WARRANTIES AND LIMITATIONS OF LIABILITY**

11.1 To the extent permitted by law, the Association excludes all representations, warranties and conditions that would otherwise be implied by law in this Part B (including, without limitation, all implied warranties of merchantability or fitness for a particular purpose).

11.2 Without limiting paragraph 11.1, the Association does not represent or warrant that the International Release or any part of it will satisfy any Member’s requirements, operate in combinations selected by the Member or be free from defects or errors.

11.3 The Association shall not be liable to any Member, and no Member shall be liable to the Association, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise, for any of the following arising under or in connection with this Part B (including, without limitation, in respect of the Member’s use of or inability to use the International Release or any part of it):

11.3.1 indirect or consequential loss;

11.3.2 special or punitive damages;

11.3.3 loss of profits, loss of savings and loss of revenue;

11.3.4 loss of business, loss of reputation and loss of goodwill; and

11.3.5 loss of data.

11.4 The entire aggregate liability of the Association to each Member, and of each Member to the Association, arising under or in connection with this Part B in any financial year, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise, shall not in any event

exceed the Annual Fee paid or payable by that Member in respect of that financial year.

11.5 Nothing in this Part B excludes or limits the liability of the Association or any Member for fraud (including fraudulent misrepresentation) or for any other liability that by law cannot validly be excluded or limited (but only to the extent that the liability cannot validly be excluded or limited).

11.6 A Member may not bring any claim against the Association, and the Association may not bring any claim against any Member, arising under or in connection with this Part B (including, without limitation, in respect of the Member's use of or inability to use the International Release or any part of it) more than two years after the date on which the cause of action arose.

## **Part C**

### **Defined Terms and Interpretation**

#### **12. DEFINITIONS**

In this Schedule 3, the following terms have the following meanings:

**"Affiliate Licence Terms"** means the terms set out in Exhibit 1 to this Schedule 3 (including the Appendices to that Exhibit), as may be amended from time to time;

**"Core"** means the SNOMED CT Content that is controlled, maintained and distributed by the Association from time to time;

**"Cross-Map"** means a work consisting of (i) SNOMED CT Content and (ii) content of another nomenclature, classification or knowledge structure, together with a set of relationships between (i) and (ii);

**"Derivative"** means a work consisting of (a) SNOMED CT Content, from the Core or an Extension together with (b) either (i) additional properties an/or information about such SNOMED CT content and/or (ii) any set of relationships between that SNOMED CT Content and content of other nomenclature, classification or knowledge structure, and includes a Cross-Map and a Sub-Set;

**"Extension"** means a work consisting of SNOMED CT Content alone that is supplementary to other SNOMED CT Content and that depends on that other SNOMED CT Content, and includes a translation of any SNOMED CT Content into any language other than the original language of its development;

**"International Release"** means the release produced and distributed by or on behalf of the Association, consisting of the Core, the Specifications, the Association's Derivatives and other documents and software;

**"Namespace Identifier"** means a code or that part of a code that identifies the organisation responsible for creating and maintaining a Standards-Based Extension or a Standards-Based Derivative and is used as an element of SNOMED CT Identifiers;

“**National Extension**” means an Extension that is controlled and maintained by a Member and is SNOMED CT Content supplementary to the Core;

“**National Release**” means, in respect of each Member, the release produced and distributed by the Member, consisting of the International Release, the Member’s National Extensions, the Member’s Derivatives and other documents and software;

“**Relationship**” means a relationship, of a kind defined by the Association in Specifications, between concepts (which may be, without limitation, a hierarchical or an associative relationship) or between a concept and a description;

“**SNOMED CT**” means the concept-based work of clinical nomenclature and classification with multiple hierarchies and semantic definitions known as SNOMED Clinical Terms (SNOMED CT);

“**SNOMED CT Content**” means terminological content, consisting of concepts, descriptions and Relationships, each of which is identified using a SNOMED CT Identifier;

“**SNOMED CT Identifier**” means a code, of a kind defined by the Association in Specifications, for identifying concepts, descriptions and Relationships;

“**Specification**” means specifications promulgated by the Association from time to time for products and processing relating to SNOMED CT, including specifications of the internal logic of SNOMED CT, editorial policies, guidelines and characteristics;

“**Standard**” means a Specification that is formally adopted by the Association through such procedures as the Association may prescribe by Regulations;

“**Standards – Based**” means, in respect of an Extension (including a National Extension and a Third Party Extension) or a Derivative, an Extension or Derivative the creation of which is the subject of one or more Standards;

“**Sub-Set**” means a sub-set of SNOMED CT Content that is grouped together for one or more purposes; and

“**Third Party Extension**” means an Extension that is controlled and maintained by an Affiliate and is SNOMED CT Content supplementary to the Core or a National Extension (or both).

### 13. INTERPRETATION

13.1 In this Schedule 3, unless the context requires otherwise, a reference to a paragraph is to a paragraph of this Schedule 3.

13.2 A reference in this Schedule 3 to the “**modification**” (or any similar term) of any SNOMED CT Content includes the alteration and deletion (or both) of that SNOMED CT Content or any part of it.

13.3 In this Schedule 3, a reference to a Third Party Extension being created from a National Extension means that the SNOMED CT Content in that Third Party

Extension is supplementary to and dependent on the National Extension (and such a Third Party Extension is not to be treated as being created from the Core notwithstanding that it may also be supplementary to and dependent on the Core).