

Dated 9 day of August 2016

**TRADE MARK LICENCE AGREEMENT**

**between**

**THE CARE QUALITY COMMISSION for HEALTHWATCH  
ENGLAND**

**-and-**

Havering Healthwatch Limited operating as Healthwatch Havering

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## TRADE MARK LICENCE AGREEMENT

**THIS AGREEMENT** is made this [ 9 ] day of [August ] 2016

### **PARTIES**

- (1) **CARE QUALITY COMMISSION for HEALTHWATCH ENGLAND** of 151 Buckingham Palace Road, London SW1W 9SZ ("**Licensor**"); and
- (2) Havering Healthwatch Limited operating as Healthwatch Havering of Queen's Court, 9-17 Eastern Road, Romford RM1 3NH  
Whose registered office is the said Queen's Court

("Licensee")

### **1. BACKGROUND**

- 1.1 Healthwatch England has been established under the Health and Social Care Act 2012 to be the new consumer champion for health and social care in England. Its purpose is to strengthen the collective voice of patients and users of health and social care services and of the general public.
- 1.2 Healthwatch will exist in two distinct forms – Local Healthwatch organisations at local level funded by and accountable to the public via local authorities; and Healthwatch England at national level, funded by the Department of Health, to enable the collective views of the people who use the National Health Services and social care services to influence national policy.
- 1.3 Local Healthwatch organisations are corporate bodies and within the contractual arrangements made with their local authority must carry out particular activities<sup>1</sup> which include:
  - (a) promoting and supporting the involvement of local people in the commissioning, the provision and scrutiny of local care services;
  - (b) enabling local people to monitor the standard of provision of local care services and whether and how local care services could and ought to be improved;
  - (c) obtaining the views of local people regarding their needs for, and experiences of, local care services and importantly to make these views known;

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<sup>1</sup> Section 221(2) of the Local Government and Public Involvement in Health Act 2007

- (d) making reports and recommendations about how local care services could or ought to be improved. These should be directed to commissioners and providers of care services, and people responsible for managing or scrutinising local care services and shared with Healthwatch England;
- (e) providing advice and information about access to local care services so choices can be made about local care services;
- (f) formulating views on the standard of provision and whether and how local care services could and ought to be improved; and sharing these views with Healthwatch England;
- (g) making recommendations to Healthwatch England to advise the Care Quality Commission (CQC) to conduct special reviews or investigations (or where the circumstances justify doing so, making such recommendations direct to the CQC); and
- (h) to make recommendations to Healthwatch England to publish reports about particular issues and providing Healthwatch England with the intelligence and insight it needs to enable it to perform effectively.<sup>2</sup>

- 1.4 Healthwatch England is a statutory committee of the Licensor, supported by the Licensor’s infrastructure and with access to the Licensor’s expertise.
- 1.5 The Licensor is the owner of the Healthwatch logo, as protected by UK trade mark application/registration number **No. 2630094 in Classes 44 and 45** and the HEALTHWATCH text **No. 2019295 in Classes 36 and 44 in the United Kingdom (“the Marks”)**.
- 1.6 In accordance with section 182(11) of the Health and Social Care Act 2012<sup>3</sup>, the Licensor is able to grant the Licensee a licence for use of the Marks in relation to the carrying on of Local Healthwatch activities<sup>4</sup> under arrangements made by Local Healthwatch organisations.<sup>5</sup>

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<sup>2</sup> Section 182(8) of the Health and Social Care Act 2012, defines ‘local people’, in relation to a local authority to mean (a) people who live in the local authority’s area, (b) people to whom care services are being or may be provided in that area, (c) people from that area to whom care services are being provided in any place, and who are (taken together) representative of the people mentioned in paragraphs (a) to (c).

<sup>3</sup> Section 182 (11) of the Health and Social Care Act 2012 inserts a new section 45D into the Health and Social Care Act 2008.

<sup>4</sup> Section 221(1) of the Local Government and Public Involvement in Health Act 2007

<sup>5</sup> “Local Healthwatch arrangements” has the meaning given by section 222 of the Local Government and Public Involvement in Health Act 2007.

- 1.7 The Licensee has been appointed as a Local Healthwatch organisation and wishes to use the Marks in the provision of the services provided by it in the course of its activities as a local Healthwatch organisation (as defined in the Local Government and Public Involvement in Health Act 2007, as amended by the Health and Social Care Act 2012) ("**the Local Healthwatch Services**").
- 1.8 The Licensee's use of the Marks will only ever be in combination with the designation of the Local Healthwatch area for which the Licensee has been appointed (this combination is referred to in this Agreement as "**the Local Marks**").
- 1.9 The Parties have agreed to enter into a written licence covering the use of the Marks by the Licensee in relation to the activities described in clause 1.6 and pursuant to the provision of Local Healthwatch Services as defined in clause 1.7.

**IT IS AGREED AS FOLLOWS:**

**2. GRANT**

- 2.1 The Licensor hereby grants to the Licensee a royalty free, non-exclusive, non-transferable and non-assignable licence to use the Marks as part of the Local Mark in connection with the provision of the Local Healthwatch Services in accordance with the terms of this Agreement.
- 2.2 The Licensee shall not grant to any third party any use of the Marks.

**3. APPLICATION OF THE MARKS**

- 3.1 The Licensee is only permitted to use the Marks in accordance with the style guidelines, branding guidelines, quality standards, specifications and directions laid down, given, supplied or approved from time to time by or on behalf of the Licensor ("**the Standards of Quality**"). The initial Standards of Quality shall comprise the Visual Brand Guidelines attached at **Schedule 1**.
- 3.2 In particular, the Licensee undertakes that it will never use the Marks by itself and will only ever use the Marks as part of the Local Marks.
- 3.3 The Licensee shall from time to time as requested by the Licensor or its agent provide samples showing the way the Marks is being used, so that the Licensor or its agent can ensure that the Standards of Quality are being complied with.
- 3.4 The Licensee shall make any changes requested by the Licensor relating to its use of the Marks, including changing its use to comply with amended Standards of Quality provided to the Licensee by the Licensor or its agent.

3.5 If the Licensor amends the Standards of Quality, the Licensee shall be allowed a reasonable period to change their usage of the Marks so that it conforms to the new Standards of Quality, such period not to exceed 90 days.

#### 4. **GOODWILL**

4.1 The Licensee recognises the Licensor's title to the Marks and that all goodwill generated by the Licensee's use of the Mark will inure to the benefit of the Licensor.

4.2 The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the use of the Marks or the reputation or goodwill associated with Marks or the Licensor.

4.3 The Licensee shall not, nor directly or indirectly assist any other person to:

4.3.1 use the Marks except as permitted under this Licence; or

4.3.2 do or omit to do anything to diminish the rights of the Licensor in the Marks or registration of the Marks.

#### 5. **TERM**

The licence granted in this Agreement shall continue for so long as the Licensee continues as a Local Healthwatch organisation, unless terminated earlier in accordance with the terms of this Agreement.

#### 6. **PROTECTION OF THE MARKS**

6.1 The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:

6.1.1 any actual, suspected or threatened infringement of any registration for the Marks;

6.1.2 any actual or threatened claim that the Marks is invalid;

6.1.3 any actual or threatened opposition to the Marks;

6.1.4 any claim made or threatened that use of the Marks infringes the rights of any third party;

6.1.5 any relevant passing off or unfair competition relating to the Marks or any application to register trade mark which may conflict or be confused with the Marks which comes to their attention; or

- 6.1.6 any other form of attack, charge or claim to which the Marks may be subject.
- 6.2 In respect of any of the matters listed in clause 6.1:
  - 6.2.1 the Licensor shall, in its absolute discretion, decide what action if any to take;
  - 6.2.2 the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
  - 6.2.3 the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
  - 6.2.4 the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.
- 6.3 The Licensee shall not be entitled to exercise the rights contained in Section 30 of the UK Trade Mark Act 1994.

## 7. **CONFIDENTIALITY**

- 7.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after expiry or termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], nor any of the terms of this agreement, except as permitted by clause 7.2.
- 7.2 Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 7; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 7.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights or perform its obligations under or in connection with this Agreement.

## 8. TERMINATION

8.1 The Licensor may terminate this Agreement by immediate written notice in the event that:

- (a) the Licensee ceases or threatens to cease to carry on business, goes into liquidation, appoints a receiver or administrator, enters into a voluntary arrangement with its creditors or suffers any similar insolvency process or process which affords the Licensee protection from its creditors;
- (b) the Licensee commits a breach of this Agreement, provided that if the breach is capable of remedy termination shall only occur if the breach shall not have been remedied within 30 days of the Licensee having been given notice in writing specifying the breach and requiring it to be remedied;
- (c) the Licensee is no longer entitled to operate as a Local Healthwatch organisation;
- (d) the Licensee is for any reason substantially prevented from performing or is unable to perform its obligations under this Agreement;
- (e) the Licensee challenges the validity of the Marks, applies to cancel any registration obtained for the Marks or challenges any application filed to register the Marks as a trade mark or design;
- (f) the Licensee tries or takes steps to allow others to try to register the Marks or the Local Marks or any trade mark similar to them; or
- (g) the Licensee does anything to prejudice or to endanger the value or validity of the Marks or acts in any way likely to damage the reputation of the Healthwatch scheme, the Licensor or any other Local Healthwatch organisation.

8.2 Termination of this Agreement shall be without prejudice to any existing rights and/or claims that the Licensor may have against the Licensee, and shall not relieve the Licensee from fulfilling the obligations accrued prior to such termination.



## **9. EFFECT OF TERMINATION**

- 9.1 Upon termination of this Agreement the Licensee shall cease to use the Marks and any other indication of a connection with the Licensor or the Healthwatch scheme generally.
- 9.2 Within 60 days of the termination of this Agreement, the Licensee shall remove all references to the Marks from its premises, vehicles, stationery, invoices, labels and any other material and cancel any references to the Marks in advertisements, catalogues, directories and other promotional material.
- 9.3 Following termination, the Licensee shall not use any trade mark identical with or similar to the Marks and shall procure that its officers and employees observe the same restriction.

## **10. WAIVER**

- 10.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **11. ENTIRE AGREEMENT**

- 11.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **12. VARIATION**

- 12.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **13. SEVERANCE**

- 13.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent

necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 13.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 14. **COUNTERPARTS**

- 14.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

#### 15. **THIRD PARTY RIGHTS**

- 15.1 No one other than a party to this Agreement and their successors, shall have any right to enforce any of its terms.

#### 16. **NO PARTNERSHIP OR AGENCY**

- 16.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 16.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

#### 17. **NOTICES**

- 17.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by pre-paid first-class post or other next working day delivery services at its registered office or its principal place of business (in any other case); or
  - (b) sent by email to the addressed specified on page 10 of this Agreement.
- 17.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address];
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting [or at the time recoded by the delivery service].
- (c) if sent by email at 9.00am on the next Business Day after transmission.

17.3 This clause 17 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 18. GOVERNING LAW AND JURISDICTION

18.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

18.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

### **Signed on behalf of CARE QUALITY COMMISSION FOR HEALTHWATCH ENGLAND**

By: Name (printed) Benedict Knox

Position (office held) Head of Communications

Signature 

Date 29 / 07 / 2016

### **Signed on behalf of**

By: Name (printed) Ian Richard Buckmaster

Position (office held) Executive Director and Company Secretary

Signature 

Date 09/08/2016

## **Schedule 1**

### **Visual Brand Guidelines**

[http://www.healthwatch.co.uk/sites/healthwatch.co.uk/files/local\\_healthwatch\\_guidelines\\_final\\_0\\_1.pdf](http://www.healthwatch.co.uk/sites/healthwatch.co.uk/files/local_healthwatch_guidelines_final_0_1.pdf)

### **Terms and conditions of use of the Healthwatch branding toolkit**

1. The materials are the property of CQC.
2. CQC giving copies of the materials to the Local Healthwatch Organisation does not give the Local Healthwatch Organisation any rights in or to the materials and does not constitute the grant of a trade mark or copyright licence.
3. The Local Healthwatch Organisation is only permitted to make use of the materials to establish a Local Healthwatch and to promote the Local Healthwatch and Healthwatch England programmes.
4. The Local Healthwatch Organisation is not permitted to make copies of the materials or to distribute the materials to any person, save that a copy of the materials may be given to the Local Healthwatch Organisation appointed by a local authority. Once that appointment has been made and the appointed Local Healthwatch organisation have signed a licence agreement in the attached form and returned a copy of the completed agreement to Healthwatch England.
5. When using the materials the Local Healthwatch Organisation will comply with all style guidelines, branding guidelines, Healthwatch brand quality standards, specifications and directions laid down, given, supplied or approved from time to time by or on behalf of CQC ("Healthwatch Brand Quality Standards").
6. If Healthwatch England amends the Healthwatch Brand Quality Standards, the Local Healthwatch Organisation must change their usage so that it complies with the new Healthwatch Brand Quality Standards within 90 days.
7. The Local Healthwatch Organisation recognises CQC's title to the Healthwatch trade mark and that all goodwill generated by their use of that trade mark will inure to the benefit of CQC and Healthwatch England.
8. The Local Healthwatch Organisation undertakes that it will not use the Healthwatch trade marks in any way that could either prejudice or endanger the value or validity of the Healthwatch trade marks or damage the reputation

of the Local Healthwatch programme, the National Healthwatch programme, CQC or any Local Healthwatch organisation.

9. The Local Healthwatch Organisation agrees to stop all use of the materials and the Healthwatch trade mark if the Local Healthwatch organisation appointed by them loses the right to use the materials and/or the Healthwatch trade mark.
10. Within 30 days of the appointment of a Local Healthwatch organisation by the local authority, the local authority will notify Healthwatch England of the appointment and provide to Healthwatch England the full name and contact details of the newly appointed Local Healthwatch organisation.

## Schedule 2

### 1. Case details for trade mark UK00002630094

#### Trade mark

[Previous](#) 1 of 2 [Next](#)



[Previous](#) 1 of 2 [Next](#)

Number of marks in series: 2  
Status: Registered

#### Relevant dates

Filing date: 30 July 2012  
Date of entry in register: 23 November 2012  
Renewal date: 30 July 2022

#### Trade mark

[Previous](#) 2 of 2 [Next](#)



[Previous](#) 2 of 2 [Next](#)

Number of marks in series: 2  
Status: Registered

#### Relevant dates

Filing date: 30 July 2012  
Date of entry in register: 23 November 2012  
Renewal date: 30 July 2022

### 2. Case details for trade mark UK00002019295

#### Trade mark

Trade mark: HEALTHWATCH  
Status: Registered

#### Relevant dates

Filing date: 01 May 1995  
Date of entry in register: 23 February 1996  
Renewal date: 01 May 2025

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