

**From:** nss iric  
**Sent:** 14 December 2020 13:23  
**Subject:** Information Message IM/2020/029 - NHSScotland Master Indemnity Agreement

**IRIC**                      **Incident Reporting &  
Investigation Centre**

**Reference:**      IM/2020/029  
**Subject:**        NHSScotland Master Indemnity Agreement

This information message is sent to draw the attention of Equipment Co-ordinators to information which may be relevant to the safety of equipment and facilities in local authorities and health boards.

Please find the information below:

#### **Master Indemnity Agreement (MIA)**

The NHSScotland Master Indemnity Agreement (MIA) is issued and developed by Health Facilities Scotland (HFS) Equipping Services. It indemnifies health boards in respect of equipment and other goods supplied free of charge or on loan (including for trial and testing). The MIA lists the companies which are currently registered as well as details of their public and product liability insurance, thereby reducing unnecessary duplication.

The MIA has recently been updated to clarify the responsibilities of health boards and suppliers in relation to damaged equipment, maintenance and the processing of personal data. A summary of the most significant changes has been attached for ease of reference.

However, it is the responsibility of each health board to review the full agreement (also attached) and to ensure it is understood how this affects both the health board's and the supplier's responsibilities. It is therefore recommended that each health board assess how these changes will impact on local processes and understand how any existing arrangements with suppliers, or future arrangements entered into after entering into the MIA, may take precedent.

Further information regarding the MIA is available from the NHS National Services Scotland website: <https://www.nss.nhs.scot/health-facilities/equipping-services/access-the-master-indemnity-register/>. Enquiries relating to these changes should be raised in the first instance with Duncan Ferguson on 07583 751258 or email [duncan.ferguson2@nhs.scot](mailto:duncan.ferguson2@nhs.scot).

As the Equipment Co-ordinator for your organisation, we recommend that you assess whether or not to forward this information to managers and staff within your area of responsibility who might benefit from being aware of it.

For enquiries, if you received this message directly from IRIC, email us direct at [nss.irc@nhs.scot](mailto:nss.irc@nhs.scot) or phone 0131 275 7575. Alternatively, if you have received this message from someone in your own organisation, please contact them in the first instance so they can collate enquiries and liaise with IRIC as required.

**Incident Reporting & Investigation Centre (IRIC)**  
Health Facilities Scotland  
**NHS National Services Scotland**

**Contact us:**  
IRIC Email      [nss.irc@nhs.scot](mailto:nss.irc@nhs.scot)  
Helpline        0131 275 7575

Web <https://www.nss.nhs.scot/browse/health-facilities/incidents-and-alerts>

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NHS National Services Scotland is the common name for the Common Services Agency for the Scottish Health Service. [www.nss.nhs.scot](http://www.nss.nhs.scot)

FAC406-210, 7D(iii), Rev 2

Significant changes are detailed below and highlighted in yellow;

3.1 The Supplier agrees that, unless expressly otherwise agreed by the NHS Board in writing, all loans and supplies of Equipment by the Supplier to a NHS Board during the period of this Agreement will be subject to the terms of this Agreement. This Agreement will apply to the use of the Equipment by employees, agents and sub-contractors of a NHS Board and employees, agents and sub-contractors of any university (who for the avoidance of doubt shall be deemed to be agents of the NHS Board for the purpose of Clause 5 hereof) who use the facilities of the NHS Board for the purposes of teaching students. The Supplier acknowledges that the loan or supply of Equipment to the NHS Board at no cost is of benefit to the Supplier whether that be the evaluation, testing, research, trialling (where the provision of the Equipment is not the main subject of the trial) of the Equipment or other benefit.

4.1 In the event that the Supplier shall lend any Equipment to any NHS Board in return for the evaluation, testing, research or trialling (where the provision of the Equipment is not the main subject of the trial) of the Equipment or other benefit to the Supplier, the following conditions shall apply:-

(viii) Unless otherwise agreed between the Supplier and the NHS Board in writing, the Supplier shall be responsible for all maintenance of whatever nature to be carried out in respect of the Equipment during the period of loan. Such maintenance by the Supplier shall be in conformance with the Equipment manufacturer's recommendations relating to the Equipment and Good Industry Practice. The Supplier will provide copies of maintenance service reports to the NHS Board should they request them;

(ix) Unless otherwise agreed by the NHS Board in writing, the NHS Board shall not be liable for any charge for maintenance, repair, consumable materials and accessories required for the operation of the Equipment during the period of the loan or for any carriage or installation charges except by prior notification and the issue of an official purchase order by the NHS Board;

(x) The Equipment shall remain continuously at the Supplier's risk during and after the period of the loan as regards damage, loss or destruction and the NHS Board shall not be under any obligation to keep the Equipment insured. For the avoidance of doubt, the Equipment shall not be modified or repaired by the NHS Board without the prior written agreement of the Supplier; and

(xi) Any damage to the Equipment occurring at the Premises and Locations, to the extent this is caused by: (i) the NHS Board failing to use or operate such Equipment in accordance with the express written instructions of the Supplier; (ii) a negligent act or omission of the HS Board; or (iii) any modifications made to the Equipment not expressly

authorised by the Supplier in writing shall be made good by the Supplier at the NHS Board's reasonable cost and expense.

## 5. Indemnity

5.1 The Supplier shall indemnify and hold each NHS Board and its agents harmless against any liability, loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings ('Losses') arising from or in connection with (i) the installation, presence, use or removal of the Equipment or Goods on or from the Premises and Locations; or (ii) any breach of Clause 13 of this Agreement, save, in either case, to the extent that any such Losses have been caused by any negligent act or omission by, or on behalf of, the NHS Board or its agents or any failure by the NHS Board to use or operate the Equipment in accordance with the express written instructions of the Supplier. The Supplier's liability in connection with the installation, presence, use or removal of the Equipment or Goods on or from the Premises and Locations of any NHS Board, shall not exceed the sum of £5 million in respect of any one incident, except in the case of death or personal injury caused by negligence, or fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law.

Addition of

## 13. Data Protection

13.1 Where, during the period of the loan, the NHS Board records Personal Data on the Equipment, the NHS Board shall be the Controller of such Personal Data and, to the extent that the Supplier, upon request from the NHS Board pursuant to Clause 4.1 (iv) securely erases Personal Data from the Equipment before the removal of Equipment, the Supplier shall be the Processor in respect of such Processing of the Personal Data in terms of the Data Protection Legislation;

Further amendment of

## 13.2

(iii) to act only on documented instructions from the NHS Board including those set out in the Processing Information (Article 28(3)(a)). The Supplier shall immediately inform the NHS Board if, in its opinion, an instruction infringes any Data Protection Legislation;

Addition of Personal Data and Data subject information as below.

**Equipment Details:**

Description of Equipment/Goods	
Model	
Make	
Serial Number	
Premises & Locations	
Planned Preventative Maintenance	
Period of Loan/ Expiry Date	
Health Board Reference No: <i>(Asset Management/Equipment/Job No)</i>	
<b>Personal Data and Data Subjects:</b>	<b>Will Personal Data be Processed [Y/N]</b>  <b>[Delete as appropriate – if yes – please complete Processing Information in Annex A]</b>

**Annex A – Processing Information**

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the NHS Board is the Controller and the Supplier is the Processor in accordance with Clause 4,1(iv) of the MIA.
Subject matter of the Processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the Processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the Processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

**Equipment on Loan/Free of Charge**

**Goods Supplied Free of Charge**

**This is the Schedule referred to in the Master Indemnity Agreement between the Common Services Agency and the Supplier**

**Schedule Part One**

**Supplier:** .....

**MIA No:** .....

**NHS Board:** .....

**Date:** .....

**Equipment Details:**

Description of Equipment/Goods	
Model	
Make	
Serial Number	
Premises & Locations	
Planned Preventative Maintenance	
Period of Loan/ Expiry Date	
Health Board Reference No: (Asset Management/Equipment/Job No)	
Personal Data and Data Subjects:	Will Personal Data be Processed (Y/N)  [Delete as appropriate – if yes – please complete Processing Information in Annex A]]

The NHS Board acknowledges receipt of the Equipment and/or Goods specified above

- are on loan for the period specified above and;
- are for use by the NHS Board

respectively on the terms set out in the then current version of the Master Indemnity Agreement between the Supplier and the Common Services Agency (on behalf of the NHS Board).

*It is the Supplier's responsibility to arrange free of charge prompt collection of any Equipment on loan after an agreed loan period has expired. The NHS Board will take no responsibility for, and may dispose of the Equipment if it is not collected within 21 days of the date of the notice issued under Clause 8.1 of the Master Indemnity Agreement.*

**Signed for the Supplier:** .....

**Print Name:** ..... **Date:** .....

**Signed for the NHS Board:** .....

**Print Name:** ..... **Date:** .....



**Annex A – Processing Information**

Description	Details
Identity of the Controller and Processor	<i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the NHS Board is the Controller and the Supplier is the Processor in accordance with Clause 4, 1(iv) of the MIA.</i>
Subject matter of the Processing	<i>This should be a high level, short description of what the processing is about i.e. its subject matter</i>
Duration of the Processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the Processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>