



## Notes on draft licence Option 1.

The rationale for the proposed licence Option 1 is that the majority of existing CESSDA members have in place similar arrangements for data licensing and re-use. This Option derives its content from clauses which are common between members or, where not common between partners, have been recommended for the legal protection of the planned cessda-ERIC.

Explanatory Notes.

**Part C** contains 5 optional deposit categories which are essentially the same as four of those listed in the Option 2 licence plus one extra. Each category is explained briefly:

- i. Allows free download of any dataset for any use by any authorised user. Data can be used for any purpose and there would be no requirement for users to sign a licence agreement.
- ii. Data can be used for any purpose but the user must be both authorised and registered (i.e. authenticated with cessda-ERIC), having agreed a simple user licence
- iii. Data can be used only for academic purposes, users must be both authorised and registered (i.e. authenticated with cessda-ERIC), having agreed the simple user licence
- iv. Data can be used only for academic purposes, users must be both authorised and registered (i.e. authenticated with cessda-ERIC), having agreed the simple user licence and restrictions on use (for example, an additional set of restrictions governing the use of sensitive data)
- v. Data use requires depositor permission during a fixed period, following which they revert to category ii above. Note that the inclusion of this clause will require the management system to provide an alert and emails when the initial period ends.

**Part D** It is recommended that cessda-ERIC adopts electronic signatures. This needs to be explored further, in particular, by considering the European Directive on Electronic Signatures:

Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

## **Agreement Terms and Conditions**

### 1. Definitions and Interpretation:

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ‘Agreement’       | The definition has been constructed to permit the deposit of follow-up or serial datasets without the need for a new set of forms for each.                                                                                                                                                                                                                                                                        |
| ‘Restricted Data’ | The term ‘Approved Researcher Status’ could be changed but is used as in the UK legislation to describe a researcher who has been approved for secure access to a specific dataset for a specific purpose.                                                                                                                                                                                                         |
| ‘User’            | Students in some countries may be below the legal age for entering into a contractual agreement. Legal advice was sought and the advice was that it is reasonable to expect that students have had conditions of use explained to them by the registered user who grants access and can therefore be considered responsible for their data use. Note however, that this should be confirmed at the national level. |

### 2. Licence:

2.1 Legal advice is that responsibility for collecting royalty payments should remain with the depositor and not be undertaken on their behalf by cessda-ERIC: the collection of payments for third parties is potentially problematic and unlikely to be cost-effective.

### 3. Depositor’s Rights and Undertaking

Some countries do not include indemnity clauses in their local documents. Legal advice is that they should be included for the protection of the ERIC. They have therefore been drafted in this version but could be amended or deleted if the ERIC Executive decides they do not wish to include them.

### 5. Notice

‘If no reply is received to a notice under this Agreement the consent of the recipient will be deemed to have been given after thirty (30) days have elapsed from the issue of that notice.’

The addition of this phrase was queried as being legally acceptable. The advice is that whilst it would not be if used out of context, given the context, it is binding. Good practice should be to include this sentence in any notice under the agreement, thus reminding the recipient of the condition.

### 7. General

7.7 Belgian law has been assumed as in the Statutes

## End User Licence Model

### Disclaimer:

*For clauses 12-16, should be included as these relate to DPA. The section as a whole will need to be reviewed by the legal team in terms of inclusion and if so, also amended to meet current EU directives.*

*Clause a: Again, the clause should be included in the agreement as this relates to organisational issues. A cessda-ERIC member (resource provider or Archive) could risk being sued if inaccuracies in data lead to loss of reputation or financial loss*

*Clause b: As above but relates to cessda-ERIC services*

*Clause c: Particularly important that we include this clause (or similar) where data have been 'harmonised' for example.*

*Clause d: Do not have a clear view on this clause. Request advice about inclusion, or wording so that it meets the needs of cessda-ERIC (if required).*

This Agreement may be enforced separately in relation to each data collection provided to the User by any member of the Data Team and the User. No other persons may enforce this Agreement under the Contract (Rights of Third Parties) Act 1999. *This clause will need to be reviewed by the legal team to meet EU directives and create a generic EU clause rather than UK specific.*

This Agreement and any documents to be entered into pursuant to it shall be governed by and construed in accordance with the laws of Belgium and each Party irrevocably submits to the exclusive jurisdiction of the courts of Belgium over any claim or matter arising under or in connection with this Agreement and the documents entered into pursuant to it.

*Again, Belgian law is used as per Licence Agreement and in accordance with the Statutes for cessda-ERIC but this will need to be reviewed by the legal team.*