Terms of Use
iSHARE Scheme

Version: 18-09-2020

Terms of Use

ARTICLE 1. APPLICABILITY

1.1   These Terms of Use apply to each party participating in the iSHARE Scheme.

1.2   In addition to the laws and regulations described in the Legal Framework, these Terms of Use will apply to each party participating in the iSHARE Scheme and govern the rights and obligations of each party as well as the relationships between the parties.

1.3   In the event of a conflict between the parties' private agreement(s) and these Terms of Use, the private agreement(s) will prevail, with the exception of the matters covered by the Articles 3.5, 4.1, 6.3 and the Annexes.

ARTICLE 2. DEFINITIONS

The terms used in these Terms of Use, both in the singular and plural, shall be understood to mean the following:

2.1   **Accession Agreement**: the agreement that governs the admission of Adhering Parties and Certified parties to the iSHARE Scheme. In the event of a conflict with the Terms of Use, the provisions in the Accession Agreement will prevail.

2.2   **Adhering Party**: an Entitled Party, a Service Consumer or a Service Provider.

2.3   **Annex(es)**: the annex(es) that are inextricably linked with the Terms of Use. In the event of a conflict with the Terms of Use, the provisions in the Terms of Use will prevail.

2.4   **Authorisation Registry**: a party that holds authorisation information that Service Providers can use to determine the rights of the Service Consumer in relation to a specific Dataset.

2.5   **Certified Party**: an Authorization Registry, an Identity Broker or an Identity Provider that has been certified by the Scheme Owner.

2.6   **Conditions of Exchange**: the license conditions that are inextricably linked to an exchanged Dataset.

2.7   **Data or Dataset**: the data exchanged in the context of the iSHARE Scheme.

2.8   **Entitled Party**: a legal entity that has one or more rights to specific Datasets.

2.9   **Human Service Consumer**: a natural person who acts on behalf of and under the responsibility of the Service Consumer.

2.10   **Identity Broker**: a party whose services a Service Provider can use to connect to one or more Identity Providers.

2.11   **Identity Provider**: a party that holds the digital identity information on a Human Service Consumer which that Human Service Consumer can use to identify himself/herself towards a Service Provider.

2.12   **iSHARE Scheme**: the set of specifications which govern the relationships between the parties in the iSHARE Scheme, including, without limitation, the exchange mechanism and the actual exchange of Data. The iSHARE Scheme is available here: https://scheme.ishareworks.org.

2.13   **Legal Framework**: the non-exhaustive overview of relevant and applicable laws and regulations in respect of the iSHARE Scheme. The Legal Framework is described in Annex II to these Terms of Use.

2.14   **Scheme Owner**: the legal entity Stichting iSHARE Foundation responsible for management and continued development of the iSHARE Scheme, as well as for controlling and monitoring the parties' compliance with the iSHARE Scheme.

2.15   **Party**: an entity that participates in the iSHARE Scheme as an Adhering Party and/or as a Certified Party.

2.16   **Service Consumer**: a party who requests the Service Provider to provide a service relating to the exchange of Data, or any ancillary services, such as services rendered on the basis of an authorization established within the iSHARE Scheme.

2.17   **Service Provider**: a party who provides a service relating to the Data to be exchanged with a Service Consumer, or any ancillary services, such as services rendered on the basis of an authorization established within the iSHARE Scheme.

2.18   **Terms of Use**: this document, including the Annexes.

ARTICLE 3. RIGHTS AND OBLIGATIONS OF ADHERING PARTIES

3.1   To the extent applicable, the Adhering Party who is sending the Data is responsible for linking the Conditions of Exchange to the Data to be exchanged. Each Dataset can be provided with an attribute. This is a code to which the Conditions of Exchange of the Adhering Party who is exchanging the Data are linked. It is up to the Adhering Parties who are exchanging the Data to agree on any commercial arrangements with regard to that exchange.

3.2   The Service Provider is responsible for determining the required assurance level of identification of the Human Service Consumer within the iSHARE Scheme.

3.3   To the extent applicable, the rights of the Service Consumer related to the exchange of a specific Dataset is determined by the Conditions of Exchange. The various license conditions are linked to the Dataset by means of a data exchange code. The data exchange codes and their meaning are described in Annex I to these Terms of Use. If a Dataset does not contain a data exchange code, the default Conditions of Exchange as indicated in Annex I apply. The Service Provider and the Service Consumer agree to comply with the Conditions of Exchange.

3.4   Service Consumers will supervise and are responsible for their Human Service Consumers. Service Consumers will not permit any practice that could lead to improper handling by their Human Service Consumers, including, without limitation, the unauthorized use of authentication tokens linked to individuals and/or the organisation, or the use of authentication tokens for any purpose other than the purpose for which they were issued. Service Consumer will make their Human Service Consumers aware of these Terms of Use.

3.5   An Adhering Party is responsible for the security and monitoring of the network connections and systems that it uses in the context of the iSHARE Scheme. An Adhering Party will take appropriate technical and organisational measures in order to safeguard the security, including those measures and use of standards as described in Annex III. The Adhering Party shall comply with the applicable service levels specified in Annex III.

3.6   In case an Adhering Party notices or suspects irregularities in the Data it receives, that party shall immediately notify the Service Consumer(s) and/or the Service Provider concerned. Where applicable, the Service Provider shall immediately notify the Entitled Party.

3.7   The Scheme Owner grants the Adhering Party a limited, non-exclusive and non-transferable license to use - during the term of the Accession Agreement - the trademarks and trade names 'iSHARE' and 'iSHARE Adhering Party' and any other trademarks or trade names related to the iSHARE scheme, as determined by Scheme Owner. The trademarks and trade names may only be used in accordance with the communication guidelines as described Annex III.

3.8   The Service Provider can exchange Data and/or provide services relating to the Data to be exchanged, or any ancillary services, on behalf of an Entitled Party that is not an Adhering Party in the iSHARE Scheme. The Service Provider is responsible within the iSHARE Scheme for the Entitled Party

3.9   Adhering parties are subject to an annual (yearly) fee, which is to be paid according to the payment conditions.

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ARTICLE 4. RIGHTS AND OBLIGATIONS OF CERTIFIED PARTIES

4.1   The Certified Party is responsible for the security and monitoring of the network connections and systems that it uses in the context of the iSHARE Scheme. All Certified Parties will take appropriate technical and organisational measures in order to safeguard the security, including those measures and use of standards as described in Annex III. The Certified Party shall comply with the applicable service levels specified in Annex III

4.2   In addition to its own statutory obligations, the Certified Party shall notify the Scheme Owner of a (potential) network failure or (suspicion of) a security breach in the accordance with the incident management process as described in Annex III. The Certified Party shall warrant that the information it provides is complete and accurate.

4.3   The Scheme Owner grants the Certified Party a limited, non-exclusive and non-transferable license to use - during the term of the Accession Agreement - the trademarks and trade names 'iSHARE' and 'iSHARE Certified Party' and any other trademarks or trade names related to the iSHARE Scheme, as determined by the Scheme Owner from time to time hereafter. The trademarks and trade names may only be used in accordance with the communication guidelines as described Annex III.

4.4   Certified parties are subject to an annual (yearly) fee, which is to be paid according to the payment conditions.

ARTICLE 5. RIGHTS AND OBLIGATIONS OF THE SCHEME OWNER

5.1   The Scheme Owner is not allowed to access exchanged Data.

5.2   The Scheme Owner will maintain and publish a publicly accessible registry of parties and their respective roles within the iSHARE Scheme.

5.3   The Scheme Owner is entitled to suspend a party, or terminate its participation and registration in the iSHARE Scheme in accordance with the warnings, suspension and exclusion process included in Annex III, or if that party breaches the Accession Agreement, these Terms of Use and/or applicable laws and regulations in respect of the iSHARE Scheme. Termination of a party's participation is done by cancellation of the Accession Agreement with that party by the Scheme Owner in writing (including e-mail).

5.4   The Scheme Owner determines which parties can be admitted to the iSHARE Scheme and on what conditions. The standards and (technical) specifications under which Certified Parties and the Adhering Parties will be accredited are specified in Annex III to these Terms of Use.

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5.5   At least every 24 months, the Certified Party shall conduct an audit through an independent certified auditor to verify compliance with the conditions, standards and (technical) specifications under which the Certified Party is accredited. As an exception to the required audit referred to in the preceding sentence, the Certified Party may also provide audit reports that are conducted by independent third parties for other purposes, but only if these audit reports adequately demonstrate the Certified Party's compliance with the conditions, standards and (technical) specifications under which the Certified Party is accredited. In addition to the bi-annual audit, the Scheme Owner in its sole discretion, may determine that more frequent audits are required when there are specific grounds for suspecting a possible breach of these conditions, standards or (technical) specifications. Unless otherwise agreed with the Scheme Owner, the Certified Party will conclude each audit within a period of thirty (30) days. The findings resulting from any audit will be evaluated in mutual consultation by the Scheme Owner and the Certified Party. The costs of all audits will be borne by the Certified Party.

ARTICLE 6. CONFIDENTIALITY AND PRIVACY

6.1   The party to whom information (including the Data) is provided shall only use that information for the purpose for which it has been provided. Neither party shall provide the information to any third party other than those to whom he may provide information within the framework of the iSHARE Scheme, or as otherwise agreed between the parties, unless it is obliged to do so in pursuance of a statutory duty or required by court order. Furthermore, the parties shall accept the duty to observe strict secrecy when the information is marked as confidential or when the receiving party knows or should reasonably suspect that the information was intended to be confidential.

6.2   The parties shall protect the information against unauthorized access using a level of protection that is appropriate given the nature of the information.

6.3   The parties only process personal data if and to the extent necessary for the performance of its rights and obligations within the framework of the iSHARE Scheme. The processing of personal data shall be in accordance with applicable privacy and data protection law.

ARTICLE 7. LIABILITY

7.1   The liability of the parties shall be in accordance with and determined by the general rules of Dutch law.

7.2   To the extent permitted by law, the Scheme Owner expressly disclaims any and all liability for damages of any kind incurred by any party. However, the Scheme Owner's liability is not limited regarding damages that are the result of deliberate recklessness or willful misconduct by the Scheme Owner and/or its management.

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ARTICLE 8. SETTLEMENT OF DISPUTES

8.1   In the event of disputes between the parties arising from and/or in connection with the performance of operations within the framework of the iSHARE Scheme, including disputes regarding compensation for damages, the parties should first endeavour to resolve the disputes by mutual agreement.

8.2   If the dispute cannot be resolved through constructive dialogue between the parties, the iSHARE Scheme may perform a facilitating role in resolving the dispute, to the extent this is within its reasonable control. Furthermore, the parties may always submit disputes to the competent civil courts or any other dispute resolution body.

ARTICLE 9. AMENDING THE TERMS OF USE

9.1   The Scheme Owner is entitled to amend or supplement these Terms of Use and its Annexes in accordance with the release management process as described in Annex III. The amended Terms of Use will be communicated at least thirty (30) days before the amended Terms of Use become effective. Changes to the Terms of Use resulting from mandatory law or changes of minor importance may be implemented at any time without notification being required and without a Party being entitled to terminate the Accession Agreement.

9.2   If a Party does not accept an amendment to the Terms of Use, that Party's participation in the iSHARE Scheme can be terminated on the date on which the amended Terms of Use take effect by notifying the Scheme Owner in writing (including e-mail).

ARTICLE 10. DURATION

10.1   These Terms of Use shall remain in force as long as a party remains registered with the Scheme Owner or for the duration described in the Conditions of Exchange, whichever is longer.

10.2   A party can cancel his registration by terminating the Accession Agreement. Termination is subject to a one month's notice period for Adhering Parties, and a six months' notice period for Certified Parties. After giving notice of termination of the Accession Agreement, a Certified Party shall communicate the termination of its participation in accordance with the withdrawal process described in Annex III.

ARTICLE 11. PARTICIPATION FEE

11.1   The annual participation fee will be invoiced at the beginning of each year. If participation starts during a year, the fee that is due for the first year will be calculated pro rata to the year remaining. The payment term for the invoice of the fee that is due is thirty (30) days from the day that the invoice is dated.

11.2   The annual fee for the coming year will be published no later than one month before the end of

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the running year on the website www.ishareworks.org.

11.3   Payment must be made within 30 days after the invoice date to the following bank account:

IBAN:NL24 INGB 0008 6393 78
Stichting iSHARE foundation
Rotterdam

ARTICLE 12. FINAL PROVISIONS

12.1   These Terms of Use are governed by Dutch law and the parties agree to submit to the courts of Amsterdam.

12.2   The parties are not authorized to transfer their rights and obligations under the iSHARE Scheme to any third party, except with written permission from the Scheme Owner.

12.3   The parties have a continuous obligation to keep their registration with the iSHARE Scheme up- to-date and to notify the Scheme Owner of any material changes in the corporate structure and/or ownership of its business.

12.4   If any provision of these Terms of Use (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these Terms of Use, and the validity and enforceability of the other provisions of these Terms of Use shall not be affected. In such an event, the Scheme Owner shall include a suitable replacement provision.

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ANNEXES

Annex I: Conditions of Exchange

Annex II: Legal framework

Annex III: Standards and specifications of the iSHARE Scheme