Lt FRAMEWORK SUBSCRIPTION AGREEMENT FOR THE LT SERVICE

(US VERSION FOR ACCESS CARDS VIA A BOOK STORE)

A SUBSCRIPTION FORM WILL BE PROVIDED TO CUSTOMERS WHO PURCHASE THE APPS, SERVICE, CONTENT OR DOCUMENTATION. UPON SIGNATURE BY THE CUSTOMER AND WRITTEN CONFIRMATION OF APPROVAL BY THE SERVICE PROVIDER, THE SUBSCRIPTION FORM SHALL BECOME LEGALLY BINDING AND COVERED BY THIS FRAMEWORK SUBSCRIPTION AGREEMENT.

BACKGROUND

(A)   This Agreement governs the license and use of:

  (i)   web-based application service "Lt" provided by the Service Provider via the Apps, via kuracloud.com or via any other website from time to time (the "**Service**");

  (ii)   images and videos, audio files, data files, animations and text (as specified in the Subscription Form) owned by the Service Provider or relevant licensors, but excluding User Content (the "**Content**");

  (iii)   software applications "Lt Applications" (including all versions and releases for any operating system, platform or Device) used to enable communication from hardware devices to the Service (the "**Apps**"); and

  (iv)   printed or electronic materials and documentation provided by the Service Provider or its licensors in relation to the Apps, Content or the Service (the "**Documentation**"),

which is to be made available to the Customer on a Subscription basis for the purpose of non-profit, non-commercial, educational or educational research services.

(B)   The Customer wishes to Use the Apps, Service, Content and Documentation.

(C)   The Service Provider has agreed to provide and the Customer has agreed to take and pay for the rights to Use the Apps, Service, Content and Documentation subject to the terms and conditions of this Agreement.

(D)   By accepting this Agreement, either by clicking a box indicating acceptance or by executing a Subscription Form that references this Agreement, the Customer agrees to the terms of this Agreement. If a person enters into this Agreement on behalf of a legal entity, they shall be deemed to have the authority to bind such entity to this Agreement. If the person does not have such authority, they must not accept this Agreement or Use the Apps, Service, Content or Documentation.

IT IS AGREED that, in consideration of various matters including the mutual promises contained in this Agreement:

1.   DEFINITIONS AND INTERPRETATION

1.1   In this Agreement unless the context otherwise requires, the following words and expressions will have the following meanings:

"**Agreement**" means this framework subscription agreement together with the Subscription Form(s), as may be amended from time to time;

"**Access Card**" means the access card supplied by or on behalf of the Service Provider and used by the User to gain access to the Apps, Service, Content and Documentation;

"**Apps**" has the meaning given under the section titled "Background";

"**Book Store**" means the Book Store(s) specified in the Subscription Form;

"**Business Day**" means any day other than a Saturday, a Sunday or a public holiday in the United States of America;

"**Confidential Information**" has the meaning given in Clause 12.1;

"**Content**" has the meaning given under the section titled "Background";

"**Customer**" means as specified in the Subscription Form;

"**Customer Systems**" means all computer equipment (including mainframes, personal computers, servers and client/server stations), all associated or interconnected network equipment, routers, semi-conductor chips, software and communication lines, and all other equipment (including printers, copiers, fax machines and telephones), owned, licensed or operated by, or operated on behalf of, Customer;

"**Data**" means information the User or Customer gives the Service Provider, information the Service Provider collects about the User or Customer, and information the Service Provider receives from other sources;

"**Derivative Works**" means works created by the Customer in accordance with clause 5.2.3 that, by virtue of the fact that they have modified Content (excluding Third Party Content), and/or combined Content (excluding Third Party Content) and User Content, create derivative works in which separate and new Intellectual Property Rights may subsist;

"**Designated Customer Contact**" means the representative(s) of the Customer specified in the Subscription Form;

"**Designated Information System**" means the information system designated by a party under this Agreement to receive electronic notices pursuant to this Agreement as identified by the email address specified in Clause 17.2.4;

"**Device**" means desktop machine, laptop, mobile telephone or handheld device on which the Apps or the Service is to be used;

"**Documentation**" has the meaning given under the section titled "Background";

"**Due Date**" has the meaning given in Clause 8.1;

"**Effective Date**" means the date this Agreement is accepted by the Customer;

"**FERPA/Privacy Policy for the Service**" means the FERPA/privacy policy for the Service available at: adi.to/ltprivacyusa, as updated from time to time;

"**Group**" means, in relation to a company (wherever incorporated) that company, its Subsidiaries, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company, and each company in a Group is a member of the Group;

"**Initial Subscription Term**" means the initial term of the Subscription as set out in the Subscription Form;

"**Intellectual Property**" means the property in which Intellectual Property Rights subsist;

"**Intellectual Property Rights**" means any of these rights, namely:

(a)   patents, trade marks, rights in design, get-up, trade dress, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them), and where applicable any associated goodwill;

(b)   rights in inventions, know-how, trade secrets and other confidential information; and

(c)   any other intellectual property rights which may exist at any time in any part of the world;

"**Laws**" means:

(a)   any applicable statute or proclamation or any delegated or subordinate legislation;

(b)   means any applicable judgment of a relevant court of law which is a binding precedent in the Territory; and

(c)   means any requirements of any regulatory body,

in each case in force at any time during the term of this Agreement;

"**Losses**" means all losses, liabilities, damages, costs, claims and expenses howsoever arising (including reasonable legal fees and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) and "**Loss**" shall be construed accordingly;

"**Permitted Recipients**" means personnel of the Service Provider (including members of the Service Provider's Group and the Service Provider's subcontractors) or the Customer who are engaged in the performance, management, receipt or use of the Apps, Service Content or Documentation as well as the receiving party's auditors and professional advisers;

"**Service**" has the meaning given under the section titled "Background";

"**Service Provider**" means as specified in the Subscription Form;

"**Subscription**" means the subscription specified in the Subscription Form which entitles Users to Use the Apps, Service, Content and the Documentation;

"**Subscription Fees**" means the fees payable by the Book Store to the Service Provider for the Subscription, as set out in the Subscription Form;

"**Subscription Fee Percentage Cap**" means as specified in the Subscription Form;

"**Subscription Form**" means the form setting out the details of the Subscription;

"**Subscription Start Date**" means as specified in the Subscription Form;

"**Subsidiary**" in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in the relevant companies legislation in the Territory) and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company;

"**Support**" means the support provided by the Service Provider as updated from time to time, detailed further at: adi.to/supportplan;

"**Terms of Service**" means initially the terms accepted by a User prior to using the App or Service and then such terms as updated from time to time as available on adi.to/lttermsusa;

"**Territory**" means United States of America;

"**Third Party Content**" means content available via the Service, which is owned by third parties and which may be subject to third party restrictions on use and is:

(a)   listed at adi.to/thirdpartycontent as updated from time-to-time; and/or

(b)   marked as "Third Party Content Restrictions on use may apply. Please see adi.to/thirdpartycontent for details." in the Service and/or Apps;

"**Use**" includes install, access and use and "Used" shall be construed accordingly;

"**User Content**" means any content provided by the User or the Customer;

"**Users**" means those employees, students, agents and independent contractors of the Customer who are authorised by the Customer to Use the Apps, Service, Content and the Documentation, as and specified in the Subscription Form. For the avoidance of doubt, one user means one individual person and not a group of people;

"**Viruses**" means any thing or device (including any software, code, file or programme) which may:

(a)   prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or

(b)   adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2   In this Agreement:

1.2.1   headings are used for convenience only and do not affect its interpretation;

1.2.2   references to clauses and schedules are to the clauses and schedules of this Agreement;

1.2.3   references to the parties are to the parties to this Agreement;

1.2.4   references to a statutory provision include references to the statutory provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision;

1.2.5   the schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement, and any reference to this Agreement includes the schedules;

1.2.6   notwithstanding the generality of Clause 1.2.5, in the event that the terms of the schedules conflict with Clauses 1 to 21 of this Agreement, Clauses 1 to 21 of this Agreement shall prevail;

1.2.7   references to a "**person**" shall include individuals, bodies corporate, unincorporated associations and partnerships; and

1.2.8   the phrases "**other**", "**including**" and "**in particular**" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

SUBSCRIPTION

2.

2.1   Subject to the Customer procuring that the Book Store pays the Subscription Fees in respect of the Access Cards purchased in accordance with Clause 8, the restrictions set out in this Clause 2 and the other terms and conditions of this Agreement, from the relevant Subscription Start Date the Service Provider grants to the Customer a non-exclusive, non-transferable right to permit the Users to Use the Apps, Service, Content and the Documentation solely for the purpose of education, training or educational research only.

2.2   In relation to the Users, the Customer undertakes that:

2.2.1   in relation to the Subscription, the maximum number of Users that it authorises to access and Use the Apps, Service, Content and the Documentation shall not exceed the maximum number detailed in the Subscription Form, and shall not exceed the maximum storage of 1 gigabyte used by each User and shall not exceed 250MB x maximum number of Users by each Subscription;

2.2.2 each User shall keep a secure password for the User's Use of the Apps, Service, Content and Documentation and shall keep such password confidential; and

2.2.3 it shall ensure no Users under the age of 13 years access the Apps or Service.

2.3 Without limiting the above in any way, the Customer (and the Customer shall procure that the User) must not:

2.3.1 use the Apps or the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement or any Terms of Service, or act fraudulently or maliciously, for example, by using another User's account, or by hacking into or inserting malicious code, including Viruses, or harmful data, into the Apps, any Service or any operating system;

2.3.2 infringe the Service Provider's Intellectual Property Rights or those of any relevant licensor or any third party in relation to its use of the Apps or any Service;

2.3.3 transmit any material that is defamatory, offensive or otherwise objectionable in relation to its use of the Apps or any Service;

2.3.4 use the Apps or any Service in a way that could damage, disable, overburden, impair or compromise the Service Provider's systems or security or interfere with other users;

2.3.5 collect or harvest any information or data from any Service or Service Provider's systems, except for User Content or Content which the User has obtained written permission from the relevant party to use;

2.3.6 attempt to decipher any transmissions to or from the servers running any Service; or

2.3.7 perform any security testing of the Apps or Service or the Service's hosting platform either manually or utilising any automated system.

2.4 Except as expressly set out in this Agreement or as permitted by any local Laws, the Customer (and the Customer shall procure that the User) agrees not to:

2.4.1 copy the Apps, Service, Content or Documentation except for the purposes of:

(a) downloading the Apps or Documentation onto a Device and then subsequently copying those Apps or Documentation onto other Devices; or

(b) providing the Content to Users as part of the Service,

for the avoidance of doubt this shall not allow the User to copy any of the code within the Apps or Service nor any of the text or concepts in the Content or Documentation;

2.4.2 use the Apps, Service, Content or Documentation to provide services to third parties;

2.4.3 rent, lease, sub-license, loan, distribute, disclose, or otherwise commercially exploit the Apps, Service, Content or Documentation or otherwise make them available in whole or in part to any third party except for the purposes specified in Clause 2.4.1;

2.4.4 make alterations to, or modifications of, the whole or any part of the Apps or Service or Documentation, or permit the Apps or Service or Content or Documentation or any part of these to be combined with, or become incorporated in, any other programs; or

2.4.5 disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Apps or Service or attempt to do any such thing.

2.5 The Customer shall use all reasonable efforts to prevent any unauthorised access to, or Use of, the Apps, Service, Content, or Documentation and, in the event of any such unauthorised access or Use, promptly notify the Service Provider.

2.6 The rights provided under this Clause 2 are granted to the Customer only, and shall not be considered granted to any Subsidiary or holding company of the Customer, related company, affiliate, parent undertaking or Subsidiary undertaking (as those terms or similar terms are defined in the Laws of the Territory) or any connected body to the Customer.

3. **CHANGES TO SUBSCRIPTION**

3.1 Subject to Clauses 3.2 and 3.3, the Customer may, from time to time, increase the:

3.1.1 maximum number of Users, or the maximum storage limits in excess of the numbers set out in the Subscription Form;

3.1.2 scope and coverage of the Content,

and the Service Provider shall grant access to the Apps, Service, the Documentation and revised and/or new Content (as the case may be) to such additional Users and storage in accordance with the provisions of this Agreement.

3.2 If the Customer wishes to make changes to the term of the Subscription, number of Users, maximum storage limits or scope and coverage of Content in accordance with Clause 3.1, the Customer shall notify the Service Provider in writing. The Service Provider shall evaluate such request and respond to the Customer with approval or disapproval of the request and the Customer shall be issued with a new Subscription Form detailing the change which shall be deemed to be accepted by the Customer continuing to use the Apps, Service, Documentation and the Content.

3.3 If the Service Provider approves the Customer's request to make changes to their Subscription in accordance with Clause 3.1, the Customer shall, procure that the Book Store pays, within the time period specified in the Subscription Form, the Service Provider's invoice in respect of the relevant revised Subscription Fees for any revisions or changes to this Agreement.

4. **SERVICES**

4.1 The Service Provider shall during the term of this Agreement provide the Apps, Service and Content and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 The Service Provider shall provide standard Support for the Apps and Service at no additional charge, and/or upgraded support if purchased as an additional service under a separate professional services agreement.

4.3 The Service Provider shall use commercially reasonable efforts to make the Services available 24 hours a day, seven days a week, except for:

4.3.1 planned maintenance carried out during the maintenance window of 8 a.m. to 10 a.m. Monday (New Zealand time); and

4.3.2 unscheduled maintenance, provided that the Service Provider has used reasonable efforts to give the Designated Customer Contact at least 24 hours' notice in advance.

4.4 The Customer acknowledges that the Subscription Fees are substantially in relation to the rights to receive the benefit of the Services and Content, as the rights to use the Apps and Documentation is ancillary and incidental to the main function of this Agreement.

4.5 The Service Provider reserves the right to request User or Customer feedback on the Apps, Service, Content and Documentation by using any technical means including the use of pop-ups during the receipt of the Services or using the Service Provider's website, or by email.

5. CONTENT, USER CONTENT, AND DATA

5.1 The Service Provider shall follow its standard archiving procedures for the User Content. In the event of any loss or damage to the User Content the Customer's sole and exclusive remedy shall be for the Service Provider to use reasonable efforts to restore the lost or damaged User Content from the latest back-up of such User Content maintained by the Service Provider in accordance with its archiving procedure. Notwithstanding the foregoing, the Service Provider shall not be responsible for any loss, destruction, alteration or disclosure of User Content caused by any third party.

5.2 The Customer acknowledges that:

5.2.1 commercial use of the Content is not permitted, unless the Customer has written permission from the owner of the Content;

5.2.2 unauthorised copying of the Content is not permitted, unless the Customer has written permission from the owner of the Content;

5.2.3 it may copy, modify, and use the Content (excluding Third Party Content) either alone or in combination with User Content for non-profit, non-commercial, educational, or educational research purposes without obtaining written permission from the owner of the Content;

5.2.4 where the provision of Content is subject to third party consent, the Service Provider reserves the right to:

(a) remove or restrict access to such Content at any time; and/or

(b) require that the Customer returns to the Service Provider the Content or destroys any physical copies of the Content (as applicable),

if the requisite third party consent is withdrawn;

5.2.5 the Service Provider's prior written approval, which shall not be unreasonably withheld, must be obtained for the Customer to disclose any part of the Content or Documentation to third parties; and

5.2.6 any comments the Customer makes in relation to the Services, Content, Apps or Documentation must be accurate and not misleading.

For the avoidance of doubt, Clause 5.2 shall not preclude the Customer from providing the Content to Users as part of the Service.

5.3 The Customer shall not represent or cause others to believe that the Content is the Customer's original works, or that the Service Provider endorses or is affiliated with any entity, product or service. The Customer expressly agrees to display the Service Provider's (and relevant licensors', if any) copyright and proprietary notice(s) with all of the Content, or any portion(s) thereof, that the Customer uses.

5.4 If the Customer copies, modifies, and uses Content (excluding Third Party Content) either alone or in combination with User Content in accordance with clause 5.2.3, and in doing so creates Derivative Works in which Intellectual Property Rights subsist, then the Customer may only use such Derivative Works within the Service, or within any other service or application provided by the Service Provider from time-to-time.

5.5 The Customer:

5.5.1 acknowledges that content which it may wish to use in combination with the Content or User Content may include content in which Intellectual

Property Rights owned by third parties may subsist; and

5.5.2 shall obtain any licenses for the benefit of the Service Provider and itself required in order to use such third party content from their respective third party owner(s). The Service Provider disclaims all liability for Customer's infringement or other violation of third party rights in third party content.

5.6 Any User Content may be subject to the Service Provider's review. While the Service Provider reserves the right to review, monitor, remove or delete User Content, the Service Provider is under no obligation to do so.

5.7 The Service Provider reserves the right at its sole and absolute discretion to restrict access to the Service, refuse to display User Content on the Service, remove User Content from the Service or refuse to use any User Content if the Service Provider considers it necessary or appropriate, including if the Service Provider receives a complaint alleging Intellectual Property Rights infringement or if the User Content is deemed by the Service Provider to be objectionable, to potentially infringe any third party rights or to be contrary to applicable Laws or otherwise unsuitable for use in the Service.

5.8 If in the Service Provider's sole judgment any User Content is in violation of applicable Laws such User Content may be reported by the Service Provider to law enforcement authorities.

5.9 If the Service Provider processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that all actions taken under this Agreement will comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. section 1232g; 34 CFR Part 99) ("**FERPA**"). The Customer shall be the data controller (as in, have direct control of the data, in compliance with FERPA) and the Service Provider shall be a data processor and in any such case:

5.9.1 personal data will be stored in the United States of America ("**USA**"), and will not be transferred outside the USA unless the Law or requests of Government entities requires that the personal data is stored or transferred outside the USA;

5.9.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Service Provider so that the Service Provider may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;

5.9.3 the Customer shall ensure that the Users and relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

5.9.4 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage; and

5.9.5 the Service Provider shall ensure that no data is used for any purpose other than for which it was shared by the Customer.

5.10 For the purposes of this Agreement "**process**", "**personal data**", "**data controller**" and "**data processor**" have the same meanings as those terms are defined in the relevant legislation. For the avoidance of doubt, "personal data" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located and meets or exceeds any relevant definition in FERPA.

5.11 The Customer acknowledges that the Service Provider may use any Data, Content, and User Content in accordance with the FERPA/Privacy Policy for the Service.

5.12 Notwithstanding clause 5.2.3, the Customer may copy, modify, and use Third Party Content, either alone or in combination with User Content, for non-profit, non-commercial, educational, or educational research purposes, only where the Service Provider has obtained relevant permission from the owner of such Third Party Content and the Service Provider has confirmed to the Customer in writing that such permission has been obtained.

5.13 The Customer acknowledges that the Service Provider is not a "**covered entity**" or a "**business associate**" as such terms are defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act ("**HITECH**") and the regulations promulgated thereunder ("**HIPAA**"). The Customer further acknowledges that the Services are not designed with security and access management for processing "**protected health information**" as defined under HIPAA. Subject to the FERPA/Privacy Policy for the Service, the Service Provider is not required by law or by the provision of Services to keep protected health information confidential. The Customer shall not, and shall not permit any User or any other person to, provide any protected health information to, or process such protected health information through, the Services. The Customer is solely responsible for reviewing all Data and User Content and shall ensure that no Data or User Content constitutes or contains any protected health information. The Service Provider is not responsible or liable for any damage or loss related to the improper use or disclosure of any protected health information. The Service Provider reserves the right to promptly remove any Data or User Content that it believes may be protected by HIPAA or analogous state law.

6. SERVICE PROVIDER'S OBLIGATIONS

6.1 The Service Provider warrants that the Service will be performed with reasonable skill and care.

6.2 The Service Provider warrants that it will comply with all applicable Laws and regulations with respect to its activities under this Agreement, especially but not exclusively those promulgated by the United States Department of Education, applicable accreditors of the Customer or its affiliates, and applicable state bodies; and including FERPA and US Program Integrity regulations including any applicable textbook disclosure laws or regulations.

6.3 The warranty at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Apps or Service contrary to the Service Provider's instructions, or modification or alteration of the Apps or Service by any party other than the Service Provider. If the Services do not conform with the foregoing warranty, the Service Provider will, at its expense, use reasonable efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in Clause 6.1. Notwithstanding the foregoing, the Service Provider:

6.3.1 does not warrant that the Customer's Use of the Service will be uninterrupted or error-free; nor that the Apps, Service, Content or Documentation and/or the information obtained by the Customer through the Service will meet the Customer's requirements; and

6.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Apps, Service, Content and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 This Agreement shall not prevent the Service Provider from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 provide the Service Provider with:

(a) all necessary cooperation in relation to this Agreement; and

(b) all necessary access to such information as may be required by the Service Provider,

in order to render the Apps and Service, including but not limited to customer data, security access information and configuration services;

7.1.2 comply with all applicable Laws and regulations with respect to its activities under this Agreement, especially but not exclusively those of applicable accreditors of the Customer or its affiliates, and assist Service Provider in all good faith in its compliance obligations;

7.1.3 ensure that the Users Use the Apps, Service, Content and the Documentation in accordance with the terms and conditions of this Agreement, the Terms of Service and shall be responsible for any User's breach of this Agreement and the Terms of Service;

7.1.4 ensure that its network and systems comply with the relevant specifications provided by the Service Provider from time to time;

7.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer Systems to the Service Provider's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

7.1.6 procure that if a User knows or discovers the identity of a person or patient depicted in the Content or User Content, they will not disclose this information to a third party;

7.1.7 procure that Users treat Content and User Content in accordance with the relevant Laws for the ethical management of patients and health information; and

7.1.8 provide security to detect and/or prevent unauthorised access, disclosure or use of any personal data.

8. INVOICING AND PAYMENT

8.1 The Customer shall procure that the Book Store sends the Service Provider a purchase order for the quantity of Access Cards specified in the Subscription Form on or before the date specified in the Subscription Form. Following receipt of the purchase order from the Book Store the Service Provider will issue an invoice for the Subscription Fees in respect of the relevant purchase order. The Customer shall procure that the Book Store pays the Subscription Fees without set-off or deduction within 30 days of the date of invoice ("**Due Date**").

8.2 All amounts and fees stated or referred to in this Agreement:

8.2.1 shall be payable in the currency specified in the Subscription Form;

8.2.2 are non-cancellable and non-refundable; and

8.2.3 are exclusive of any taxes, which shall be added to the Service Provider's invoice(s) at the appropriate rate.

8.3 If the Service Provider has not received payment within 14 days after the Due Date, and without limit to any other rights and remedies of the Service Provider:

8.3.1 the Service Provider may, without liability to the Customer, disable the Customer's instances (and any User's passwords), and access to all or part of the Apps, Service or Content and the Service Provider shall be under no obligation to provide any or all of the Apps, Service or Content while the invoice(s) concerned remain unpaid; and

8.3.2 the Service Provider may charge the Book Store interest on the overdue amount (which the Customer shall procure that the Book Store immediately pays the Service Provider on demand) at the rate of 1.5 per cent per month, or the maximum rate permitted by relevant Laws, whichever is lower. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall procure that the Book Store pays the interest together with the overdue amount.

8.4 Notwithstanding that the Book Store is acting as the payment provider for the Subscription Fees, the Customer shall at all times remain liable for the payment of the Subscription Fees if the Book Store does not pay the relevant payment to the Customer.

8.5 The Customer shall procure that the Book Store accepts and agrees to the payment provisions in this Agreement, notwithstanding that there may be contrary provisions in the Book Store's standard terms and conditions or in any terms and conditions in any purchase order of the Book Store.

8.6 The Subscription Fees which apply to any Term during any extension following the Initial Subscription Term shall be equal to Subscription Fees for the Term that applied during the immediately prior term unless the Service Provider has given the Customer written notice of a pricing increase at least two months before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter, and the Subscription Form shall be deemed to have been amended accordingly. Any such pricing increase will not exceed the Subscription Fee Percentage Cap of the pricing for the Subscription Fees in the immediately prior term, unless the pricing in the prior term was designated in the Subscription Form as promotional or one-time (or words to that effect), in which case there shall be no restrictions on the adjustments to the Subscription Fees.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Customer acknowledges that all Intellectual Property Rights in the Apps, Service, Content, Derivative Works and Documentation anywhere in the world belong to the Service Provider or its relevant licensors, that rights in the Apps, Service, Content, Derivative Works and Documentation are licensed (not sold) to the Customer, and that the Customer has no rights in, or to, the Apps, Service, Content, Derivative Works and Documentation other than the right to use each of them in accordance with the terms of this Agreement. This Agreement does not grant the Users any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of Apps, Service, Content, Derivative Works and Documentation.

9.2 The Customer acknowledges that the Customer has no right to have access to the Apps or Service in source-code form.

9.3 The integrity of the Apps, Service, Content and Documentation may be protected by digital rights management ("**DRM**") so that the Intellectual Property Rights, including copyright, in the Apps, Service, Content and Documentation are not misappropriated. The Customer must not attempt in any way to remove or circumvent any such DRM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in its possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such DRM.

9.4 The Service Provider does not acquire any Intellectual Property Rights in respect of User Content and accordingly the Customer grants (and procures that its Users grant) the Service Provider a non-exclusive, perpetual, fully paid-up and royalty free licence to use, host, store, copy and modify the User Content for the benefit of the Apps and Service.

10. INDEMNITY PROVIDED BY CUSTOMER

10.1 To the maximum extent permitted by law, the Customer shall defend, indemnify and hold harmless the Service Provider against all Losses arising out of or in connection with the Customer's Use of the Apps, Service, Content, User Content and/or Documentation.

10.2 In relation to any claim which gives rise or may give rise to any Loss in respect of which the Customer shall indemnify the Service Provider under Clause 10.1:

10.2.1 the Service Provider shall give the Customer prompt notice of any such claim;

10.2.2 the Service Provider shall provide reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

10.2.3 the Customer shall be given sole authority to defend or settle the claim.

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY PROVIDED BY SERVICE PROVIDER

11.1 Subject to Clauses 11.2 and 11.3, the Service Provider will defend any claim against the Customer and pay the damages and costs finally awarded against the Customer by a court of competent jurisdiction to the extent the Apps, Service, Content, and Documentation is held to infringe any Intellectual Property Rights of any third party in the Territory.

11.2 The Customer shall:

11.2.1 without delay (but in no case later than 10 days from the date the Customer became aware of such claim) provide written notification to the Service Provider of the claim;

11.2.2 allow the Service Provider to conduct the defence to the action or claim and all negotiations for settlement relating to the action or claim;

11.2.3 not make any admission or take any other action which may be prejudicial to the defence of the action or claim or which may adversely affect the Service Provider's ability to negotiate a satisfactory settlement to the action or claim; and

11.2.4 at the request and expense of the Service Provider, provide all reasonable assistance in defending the action or claim.

11.3 The Service Provider will not be liable to the Customer if an infringement claim is based on:

11.3.1 use of the Apps, Service, Content, and Documentation in combination with components of any third party IT environment or Customer Systems;

11.3.2 modification of the Apps, Service, Content, and Documentation by anyone other than the Service Provider;

11.3.3 use of the Apps, Service, Content, and Documentation where a non-infringing version or release of the Apps, Service, Content, and Documentation was offered by the Service Provider which would have avoided the claim of infringement;

11.3.4 aspects of the Apps, Service, Content, and Documentation which were based on information, direction or specifications provided by the Customer; or

11.3.5 use of the Apps, Service, Content, and Documentation by the Users in breach of any terms of this Agreement.

12. CONFIDENTIALITY

12.1 The Customer and the Service Provider each agree to keep confidential and not to disclose to any third party (other than to the Permitted Recipients, under equivalent obligations of confidentiality) any information relating to the other's past, present and future research, development, business activities, products, services and technical knowledge, disclosed in connection with the Apps, Service, Content, Data and Documentation and which is identified by the disclosing party as confidential information or which a reasonable person would deem to be confidential under the circumstances ("**Confidential Information**").

12.2 The Customer and the Service Provider each agrees:

12.2.1 not to make use of any Confidential Information of the other party for any purpose other than:

(a) using the Apps, Service, Content, Data and Documentation in accordance with this Agreement or the Terms of Service; or

(b) as required by relevant Laws and applicable regulations, especially but not exclusively any and all applicable accreditor or regulator requirement;

12.2.2 not to copy or reproduce any Confidential Information without the disclosing party's prior written consent except as reasonably needed to perform its obligations under this Agreement. The receiving party agrees to protect the Confidential Information of the disclosing party in the same manner that it protects its own similar Confidential Information, but in no event using less than a reasonable standard of care.

12.3 The obligations of confidentiality and non-use set out in this Clause 12 shall not apply to any Confidential Information where the receiving party can demonstrate that the Confidential Information concerned:

12.3.1 is or becomes publicly known through no breach of this Clause 12;

12.3.2 is lawfully received from an independent third party which was not, to the receiving party's knowledge, under an obligation not to disclose such information;

12.3.3 is already known to the receiving party with no obligation of confidentiality at the date it was disclosed by or obtained from the disclosing party;

12.3.4 is disclosed without restriction by the disclosing party to any third party; or

12.3.5 is independently developed by or for it without use of the Confidential Information.

13. TERM AND TERMINATION

13.1 This Agreement commences on the Effective Date and continues until the Subscription has expired or has been terminated as provided in this Clause 13.

13.2 Except as otherwise specified in the Subscription Form, the Subscription will automatically renew for additional periods equal to the Initial Subscription Term, unless either party gives the other notice of non-renewal at least one month before the expiration of the relevant term.

13.3 Notwithstanding any other provision of this Agreement, and without limiting any other rights that the parties may have, either party may immediately terminate this Agreement by written notice to the other if:

13.3.1 the other party commits a material breach of its obligations under this Agreement and fails to remedy such breach (if capable of remedy) within 14 Business Days of having received written notice of breach; or

13.3.2 the other party enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade.

13.4 On termination of this Agreement for any reason:

13.4.1 all licences granted under this Agreement shall immediately terminate;

13.4.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;

13.4.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and

13.4.4 the Service Provider will destroy or otherwise dispose of any of the User Content in its possession once it is no longer required for the specific purpose for which it was provided in compliance with FERPA and all applicable laws and regulations.

14. LIMITATION OF LIABILITY

Disclaimer of warranties

14.1 Except for the express warranties set out in Clause 6.2, the Apps, the Service, the Content, Documentation and other information are provided "as is" and Service Provider hereby disclaims all warranties, whether express, implied, statutory or other, and Service Provider specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and all warranties arising from course of dealing, usage or trade practice. The Service Provider does not warrant that the Customer's Use of the Apps or Service will be uninterrupted or error-free, nor that the Apps, Service, the Content, Documentation and/or information obtained by the Customer through the Apps or Service will meet the Customer's requirements;

14.2 The Customer acknowledges that the Apps, Service and Content have not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Apps, Service and Content as described in the Documentation meet its requirements.

14.3 The Customer acknowledges that the Apps and Service may not be free of bugs and agrees that the existence of minor errors will not constitute a breach of this Agreement.

14.4 The Service Provider shall not under any circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

14.4.1 loss of profits, sales, business, or revenue;

14.4.2 business interruption;

14.4.3 loss of anticipated savings;

14.4.4 loss or corruption of data or information;

14.4.5 loss of business opportunity, goodwill or reputation; or

14.4.6 any incidental, indirect or consequential, special or punitive loss or damage.

14.5 Other than the losses set out in Clause 14.4 (for which the Service Provider is not liable), the Service Provider's maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to 100 per cent of the Subscription Fees paid by the Book Store in the year which the liability arises.

14.6 Nothing in this Agreement shall limit or exclude the Service Provider's liability for any liability that cannot be excluded or limited by Law.

14.7 This Agreement sets out the full extent of the Service Provider's obligations and liabilities in respect of the supply of the Apps, Service, Content and Documentation. Except as expressly stated in this Agreement, there are no clauses, conditions, warranties, representations or other terms, express or implied, that are binding on the Service Provider. Any clause, condition, warranty, representation or other term concerning the supply of the Apps, Service, Content or Documentation which might otherwise be implied into, or incorporated in, this Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by Law.

14.8 The Customer acknowledges that the Apps, Service, Documentation and Content are used only as a reference tool, similar to the use of a textbook or a journal article and that the Apps, Service, Documentation and Content are not to be used as a substitute for appropriate physician or nurse practitioner diagnostic decision making. The responsibility for decisions regarding actual patient care rests solely with the physician or nurse practitioner treating a patient.

15. ASSIGNMENT

15.1 Neither party may assign or otherwise transfer any benefit or obligation arising under this Agreement without the prior written consent of the other party.

15.2 Notwithstanding Clause 15.1, the Service Provider may assign or transfer this Agreement or any or all of its rights and/or obligations under it to any company in its Group, unless such company in the Group would not be approved under any applicable approval requirements of the Customer's accreditor or other regulatory body.

16. FORCE MAJEURE

16.1 The Service Provider shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Service Provider or any other party), failure of a utility service or transport, failures or fluctuations in electrical power or telecommunications service, telecommunications network or other equipment, expropriation, condemnation of facilities or destruction, in whole or part, of the equipment or property necessary to perform the Services, internet service provider failure or delay, act of God, war, riot, civil commotion, malicious damage, compliance with any Laws or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of service providers or sub-contractors.

17. NOTICES

17.1 Any notice given under or in relation to this Agreement will be in writing and signed by or on behalf of the party giving it and may be served by:

17.1.1 delivering it personally or by sending it by post or tracked delivery;

17.1.2 email or facsimile transmission,

to the address and for the attention of the relevant party as notified by that party during the term of this Agreement.

17.2 Any such notice will be deemed to have been received:

17.2.1 if delivered personally, at the time of delivery;

17.2.2 in the case of post or tracked delivery, 72 hours from the date of posting;

17.2.3 in the case of facsimile 24 hours after the time of transmission provided an error-free transmission has been received by the sender; and

17.2.4 in the case of email at the time the email enters the Designated Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.

17.3 The contact details of the parties for the purposes of Clause 17.1 are given in the Subscription Form.

18. PUBLICITY

18.1 All advertising, press releases, public announcements and public disclosures by either party relating to this Agreement which includes:

18.2 the other party's name, trade names, trademarks, logos, service marks or trade dress (collectively, "**Name**"); or

18.3 language from which the connection of such Name may be inferred or implied, will be coordinated with and subject to approval by both parties prior to release, such approval not to be unreasonably withheld, provided, however, that:

18.3.1 either party may indicate to third parties that the Service Provider is providing services to the Customer; and

18.3.2 the Service Provider may use the Customer as a reference.

19. DISPUTE RESOLUTION PROCEDURE

19.1 If any dispute arises in connection with this Agreement, a representative of each party with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet (either physically or remotely) in good faith in an effort to resolve the dispute. If the dispute is not resolved at that meeting, either party may commence legal proceedings.

19.2 Nothing in Clause 19 shall prevent either party from seeking urgent injunctive relief.

20. GENERAL

20.1 A person who is not a party to this Agreement (a "**third party**") shall have no rights to enforce any term of this Agreement.

20.2 No delay by either party in enforcing its rights will limit or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

20.3 No variation of this Agreement (except for any pricing adjustments which have been applied in accordance with Clause 8.4 or for any changes to the Subscription Form which will be valid if such changes have been agreed by the parties by the exchange of emails, letters or faxes) will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.

20.4 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.

20.5 This Agreement contains the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them, and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly

incorporated in this Agreement. Nothing in this Agreement will operate to limit or exclude any liability for fraud.

20.6   Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

20.7   Except as expressly provided, no terms and conditions, standard or otherwise, contained on any invoice, order form, licence or other document of the Customer shall apply to the subject matter unless incorporated as a variation agreed in writing between the parties and signed by the relevant representatives of each party.

20.8   From time to time the Service Provider may use a third party for the transmission of communications to the Customer and Users in which case, notwithstanding anything to the contrary in this Agreement, such transmission of communications shall be subject to the terms and conditions of the relevant third party providing such services.

20.9   This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single Agreement.

21.   GOVERNING LAW AND JURISDICTION

21.1   This Agreement will be governed by and interpreted in accordance with the Laws of California, or if required by the Customer, the state law of the Customer, and the applicable federal laws of the United States of America without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the Laws of the Territory as detailed in the Subscription Form.

21.2   Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the city and county of City and County of San Francisco or if required by the Customer, in the courts of the state of the Customer and in the city and county nominated by the Customer, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

Last updated 6 March 2019