

LT TRIAL AGREEMENT (NEW ZEALAND VERSION)

BACKGROUND

This Agreement governs the license and use of:

- (A) 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**”);
- (B) images and videos, audio files, data files, animations and text (as specified in the Lt Trial Form) owned by the Service Provider or relevant licensors, but excluding User Content (the “**Content**”);
- (C) 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
- (D) 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 trial basis subject to the terms and conditions of this Agreement. By accepting this Agreement, either by clicking a box indicating acceptance or submitting a request to trial Lt via the ADInstruments website www.adinstruments.com which 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 Agreement together with the Lt Trial Form;

“**Apps**” has the meaning given under the section titled “Background”;

“**Confidential Information**” has the meaning given in clause 9.1;

“**Content**” has the meaning given under the section titled “Background”;

“**Customer**” means as specified in the Lt Trial 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 2.1.5 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 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 12.2.4;

“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”;

“Lt Trial Form” means the form setting out the details of the trial;

“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) any applicable judgment of a relevant court of law which is a binding precedent in the Territory; and
- (c) 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 on a solicitor and own client basis 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 Service, Apps, Content and/or Documentation as well as the receiving party's auditors and professional advisers;

“Privacy Policy for the Service” means the privacy policy for the Service available at adi.to/ltprivacy, as updated from time to time;

“Purpose” means to evaluate the Service, Apps, Content and/or Documentation before purchasing subscriptions and entering into a formal subscription agreement;

“Service” means has the meaning given under the section titled “Background”;

“**Service Provider**” means ADInstruments NZ Limited, 77 Vogel Street, Dunedin 9016, NEW ZEALAND email:legal@adinstruments.com;

“**Term**” means the term of this Agreement as set out in the Lt Trial Form, which may be extended as set out in clause 8.2;

“**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/lterms;

“**Territory**” means as specified in the Lt Trial Form;

“**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 App;

“**Trial Start Date**” means the date specified in the Lt Trial Form;

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

“**User Content**” means any content provided by the User or 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 further specified in the Lt Trial Form. For the avoidance of doubt, one user means one individual person and not a group of people;

“**Virus**” 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
- (b) data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 In this Agreement:

1.2.1 if the content of the Lt Trial Form conflicts with the **clauses** 1 to 15 of this Agreement, the latter shall prevail; and

1.2.2 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.

2. CUSTOMER RIGHTS AND RESPONSIBILITIES

2.1 Subject to the restrictions set out in clause 2.2 and the other terms and conditions of this Agreement, from the Trial 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 during the Term to:

- 2.1.1 download, install and use the Apps on Devices subject to this Evaluation Trial Agreement;
- 2.1.2 receive and use any free supplementary software code or update of the Apps incorporating “patches” and corrections of errors as may be provided by the Service Provider from time to time;
- 2.1.3 access the Service;
- 2.1.4 download, view and use the Documentation; and
- 2.1.5 copy, modify, and use the Content (excluding Third Party Content) either alone or in combination with User Content,

in each case solely for the Purpose.

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

- 2.2.1 the maximum number of Users that it authorises to access and Use the Apps, Service, Content and the Documentation shall not generally exceed the number of Users set out in the Lt Trial Form;
- 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 Viruses 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 downloading the Apps or Documentation onto a Device and then subsequently copying those Apps or Documentation onto other Devices. 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 Documentation;
 - 2.4.2 use the Apps, Service, Content or Documentation to provide services to third parties other than for the purpose of providing non-profit, non-commercial, educational, or educational research services;
 - 2.4.3 rent, lease, sub-license, loan, distribute, disclose, or otherwise commercially exploit the Apps, Service 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 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 acknowledges and agrees that if it copies, modifies, or Uses the Content (excluding Third Party Content) either alone or in combination with User Content in accordance with clause 2.1.5 above, such Content and combined content (including any Derivative Works) may only be used within the Service, or within any other service provided by the Service Provider from time-to-time in accordance with the Purpose.
- 2.6 Notwithstanding clause 2.1.5 above, 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.
- 2.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or Use of, the Apps, Service, or Documentation and, in the event of any such unauthorised access or Use, promptly notify the Service Provider.

3. CUSTOMER'S UNDERTAKINGS

- 3.1 The Customer shall:
- 3.1.1 comply with all applicable Laws with respect to its activities under this Agreement;
 - 3.1.2 ensure that the Users Use the Apps, Service 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;
 - 3.1.3 ensure that its network and systems comply with the relevant specifications provided by the Service Provider from time to time;

- 3.1.4 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;
 - 3.1.5 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; and
 - 3.1.6 procure that Users treat Content and User Content in accordance with the relevant Laws for the ethical management of patients and health information.
- 3.2 The Service Provider shall be entitled to use any Customer feedback to improve, modify or change the Apps, Service, Content and Documentation without payment to the Customer.

4. SERVICES

- 4.1 The Customer acknowledges that the Apps, Service and the Documentation are all provided “as is” and no representations, conditions, warranties or other terms of any kind are given in respect of the Apps, Service and Documentation, and all statutory warranties and conditions are excluded to the fullest extent possible.
- 4.2 The Service Provider:
- 4.2.1 does not warrant that the Customer's Use of the Apps, Service and Documentation will be uninterrupted or error-free; nor that the Apps, Service and Documentation and/or the information obtained by the Customer through the Service will meet the Customer's requirements; and
 - 4.2.2 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 and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.3 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 popups 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 Customer acknowledges that:
- 5.1.1 all Uses of Content shall be for the Purpose only;
 - 5.1.2 commercial use of the Content is not permitted, unless the Customer has written permission from the owner of the Content;
 - 5.1.3 unauthorised copying of the Content is not permitted, unless the Customer has written permission from the owner of the Content.
- 5.2 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.

5.3 The Customer:

5.3.1 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

5.3.2 shall obtain any licenses for the benefit of the Service Provider and itself required in order to use such 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.

5.4 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.

5.5 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.

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

5.7 The Customer acknowledges that:

5.7.1 where the supply 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;

5.7.2 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;

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

5.7.4 the Service Provider may use any Data, Content, and User Content in accordance with the Privacy Policy for the Service.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 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.
- 6.2 The Customer acknowledges that the Customer has no right to have access to the Apps or Service in source-code form.
- 6.3 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.
- 6.4 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.

7. INDEMNITY PROVIDED BY CUSTOMER

- 7.1 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.

8. TERM AND TERMINATION

- 8.1 This Agreement shall, unless otherwise terminated, continue for the Term.
- 8.2 The Service Provider may, upon written request by the Customer, extend the then current Term by a period agreed by the parties. The Customer shall send its written request for an extension to the Service Provider no later than 10 business days prior to the expiry of the then current Term. If the Service Provider accepts the extension request from the Customer it shall confirm any such extension by email to the Customer.
- 8.3 Either party may terminate this Agreement on 14 days written notice to the other party.
- 8.4 On termination or expiry of this Agreement for any reason:
- 8.4.1 all licences granted under this Agreement shall immediately terminate;
 - 8.4.2 the Customer shall return and make no further use of any Content and other items (and all copies of them) belonging to the Service Provider;

- 8.4.3 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
- 8.4.4 the Service Provider may destroy or otherwise dispose of any User Content in its possession after 30 days of termination or expiry of this Agreement.

9. CONFIDENTIALITY

- 9.1 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**”).
- 9.2 The Customer and the Service Provider each agrees:
- 9.2.1 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;
- 9.2.2 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.
- 9.3 The obligations of confidentiality and non-use set out in this clause 9 shall not apply to any Confidential Information where the receiving party can demonstrate that the Confidential Information concerned:
- 9.3.1 is or becomes publicly known through no breach of this clause 9;
 - 9.3.2 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;
 - 9.3.3 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;
 - 9.3.4 is disclosed without restriction by the disclosing party to any third party; or
 - 9.3.5 is independently developed by or for it without use of the Confidential Information.

10. LIMITATION OF LIABILITY

- 10.1 Except for death and personal injury caused by the Service Provider's negligence, the Service Provider shall have no liability of any kind to the Customer in respect of the Apps, Service, or Documentation. In particular, the Service Provider shall have no liability for any data loss or corruption during the Term.

11. ASSIGNMENT

- 11.1 The Customer shall not assign or otherwise transfer any benefit or obligation arising under this Agreement without the prior written consent of the Service Provider.

12. NOTICES

- 12.1 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:

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

12.1.2 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.

- 12.2 Any such notice will be deemed to have been received:

12.2.1 if delivered personally, at the time of delivery;

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

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

12.2.4 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.

- 12.3 For the purposes of this clause, the contact details of the Service Provider are set out in the Definitions section of this Agreement and the contact details of the Customer were provided to the Service Provider at the time of submitting the Lt Trial Form, as may be updated from time to time.

13. RESOLUTION PROCEDURE

- 13.1 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.

- 13.2 Nothing in clause 13 shall prevent either party from seeking urgent injunctive relief.

14. GENERAL

- 14.1 A person who is not a party to this Agreement (a “**third party**”) shall have no rights to enforce any term of this Agreement.

- 14.2 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.

- 14.3 No variation of this Agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.

- 14.4 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.
- 14.5 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.
- 14.6 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.
- 14.7 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.
- 14.8 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.
- 14.9 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.

15. GOVERNING LAW AND JURISDICTION

- 15.1 This Agreement will be governed by and interpreted in accordance with the Laws of New Zealand.
- 15.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand over any claim or matter arising under or in connection with this Agreement.

Agreement last updated: 17 March 2020