Lt Subscription Agreement (Australia Version)

A SUBSCRIPTION AGREEMENT FORM AND ORDER FORM (AS APPLICABLE) WILL BE PROVIDED TO CUSTOMERS FOR THE PURCHASE MODEL REFERRED TO BELOW. UPON SIGNATURE BY THE CUSTOMER AND WRITTEN CONFIRMATION OF APPROVAL BY THE SERVICE PROVIDER, THE SUBSCRIPTION AGREEMENT FORM AND ORDER FORM (AS APPLICABLE) SHALL BECOME LEGALLY BINDING AND COVERED BY THIS LT SUBSCRIPTION AGREEMENT.

BACKGROUND

(A) This Agreement covers the purchase model where the Customer pays the Fees directly to the Service Provider (known as the "**Institution/Department Direct Purchase Model**").

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

(i) web-based application service "**Lt**" provided by the Service Provider via the Apps, via Lt.app 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 Order Form) owned by the Service Provider or relevant licensors, but excluding User Created Content and User Uploaded 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 and/or Users on the terms of this Agreement and the Terms of Service for the purpose of non-profit, non-commercial, educational or educational research services.

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

(D) 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.

(E) By accepting this Agreement, either by clicking a box indicating acceptance or by signing a Subscription Agreement 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.

(F) In addition to a Subscription Agreement Form, an Order Form(s) will be issued by the Service Provider to the Customer to reflect the Services and/or Content ordered by the Customer in accordance with this Agreement, and other necessary commercial details. For the avoidance of doubt, a Customer may have several active Order Forms under a Lt Subscription Agreement.

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 Lt Subscription Agreement (Australia) together with the Subscription Agreement Form;

"**Agreement End Date**" means the date as specified in the Subscription Agreement Form;

"**Agreement Start Date**" means the date this Agreement is effective as specified in the Subscription Agreement Form;

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

"**Business Day**" means any day other than a Saturday, a Sunday or a public holiday in the country where the Customer is principally based;

"**Confidential Information**" has the meaning given in Clause 13.1;

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

"**Content End Date**" means the "Content End Date" specified in the Order Form;

"Content Start Date" means the "Content Start Date" specified in the Order Form;

"**Contract**" means this Agreement and the Order Form(s), as may be amended from time to time;

"**Customer**" means as specified in the Subscription Agreement 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, the 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 6.2.3 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 Created Content, create derivative works in which separate and new Intellectual Property Rights may subsist;

"**Designated Instance Administration Contact**" means the educator in the Customer organisation who has the responsibility for administrating the instance of the Service from the Customer's side;

"**Designated Information System**" means the information system designated by a party under this Agreement to receive electronic notices pursuant to this Agreement;

"**Device**" means a 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 9.1;

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

"**Fees**" means the fees payable by the Customer to the Service Provider as set out in the Order Form(s), or the amount of fees notified by the Service Provider in accordance with Clause 9.4;

"**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;

"**Institution/Department Direct Purchase Model**" has the meaning given in paragraph (A) of the section titled "Background";

"**Initial Term**" means the period of time from the Agreement Start Date until the Agreement End Date;

"**Instructor's Material**" in the Service is ancillary material that is used to provide additional instruction to educators about related Content in the Service;

"**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 Australia; 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 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;

"**Order Form**" means the document titled "Lt Order Form (Australia)" which specifies some commercial details of the order;

"**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;

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

"**Renewal Term**" means the period of the renewed term as specified in the Subscription Agreement Form in relation to this Agreement and (if applicable) the period of the renewed term as specified in the Order Form in relation to each Contract;

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

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

"**Services End Date**" means the "Services End Date" specified in the Order Form;

"**Services Start Date**" means the "Services Start Date" specified in the Order Form;

"**Subscription Agreement Form**" means the form titled "Lt Subscription Agreement Form (Australia)" setting out the key contractual details of the order;

"**Subsidiary**" in relation to a company wherever incorporated (a holding company) means a "**subsidiary**" as defined in the relevant companies legislation in Australia) 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/ltterms;

"**Third Party Content**" means Content made available by the Service Provider via the Service, which is owned or controlled by third parties, subject to third party restrictions on use and may be referred to as third party content (using the copyright symbol) in the Instructor's Materials;

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

"**User Created Content**" means any content provided by the User or the Customer that has been created by the User or the Customer;

"**User Uploaded Content**" means any content provided by the User or the Customer that is owned or controlled by third parties;

"**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. For the avoidance of doubt, one user means one individual person and not a group of people;

"**View-only Access**" means the User may view only, but not edit, copy or download Content; and

"**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 22 of this Agreement, Clauses 1 to 22 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.

2. STRUCTURE OF THIS AGREEMENT

2.1 This Agreement is structured so that individual Order Forms may be entered into by the parties.

2.2 Order Forms are governed by and subject to this Agreement.

2.3 The terms of this Agreement shall be incorporated into and shall form part of each Order Form to the express exclusion of any other terms and conditions of whatever nature (oral or written):

2.3.1 on which any purchase order is given to the Service Provider; or

2.3.2 subject to which the Order Form is accepted or purportedly accepted by the Customer; or

2.3.3 are contained in correspondence or elsewhere or implied by trade, custom or course of dealing.

2.4 Unless otherwise expressly agreed by the parties, each Order Form shall constitute a separate Contract under this Agreement.

3. USER RIGHTS AND RESTRICTIONS

3.1 Subject to:

3.1.1 the Customer paying the Fees;

3.1.2 the restrictions set out in this Clause 3; and

3.1.3 the other terms and conditions of this Agreement,

from the Services Start Date until the Services End Date (and any subsequent Renewal Term, if applicable) 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.

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

3.2.1 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 of Users specified in the Order 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;

3.2.2 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

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

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

3.3.1 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;

3.3.2 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;

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

3.3.4 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;

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

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

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

3.4 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:

3.4.1 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;

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

3.4.3 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 3.4.1;

3.4.4 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

3.4.5 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.

3.5 Notwithstanding Clause 3.1, the Customer acknowledges that the User only has the right to Use the Content from the Content Start Date until the Content End Date.

3.6 The Customer shall use all reasonable endeavours 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.

3.7 The rights provided under this Clause 3 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 Australia) or any connected body to the Customer.

4. NEW ORDER FORM AND CHANGES TO ORDER FORM

4.1 Subject to Clauses 4.2 and 4.4, the Customer may, from time to time:

4.1.1 change the Services Start Date or the Services End Date;

4.1.2 increase or decrease the maximum number of Users as set out in the Order Form;

4.1.3 increase or decrease the scope and coverage of the Content,

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

4.2 If the Customer wishes to make changes to the Services Start Date or the Services End Date, number of Users or scope and coverage of Content in accordance with Clause 4.1 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 Order Form detailing the change which shall be deemed to be accepted by the Customer continuing to use the Apps, Service, Documentation and the Content.

4.3 If the Service Provider approves the Customer's request to make changes in accordance with Clause 4.1, the Customer shall prior to the Due Date pay to the Service Provider the relevant revised Fees for any revisions or changes to this Agreement.

4.4 If the Customer's request to decrease the scope and coverage of the Content has been accepted by the Service Provider, the Service Provider at its sole discretion may continue to make that Content available to the Customer by granting View-only Access.

5. **SERVICES**

5.1 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.

5.2 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.

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

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

5.3.2 unscheduled maintenance, provided that the Service Provider has used reasonable endeavours to give the Customer at least 24 hours' notice in advance.

5.4 The Customer acknowledges that the 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.

5.5 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.

6. **CONTENT, USER CREATED CONTENT, DATA AND DATA PROTECTION**

6.1 The Service Provider shall follow its standard archiving procedures for the User Created Content. In the event of any loss or damage to the User Created Content the Customer's sole and exclusive remedy shall be for the Service Provider to use reasonable endeavours to restore the lost or damaged User Created Content from the latest back-up of such User Created 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 Created Content caused by any third party.

6.2 The Customer acknowledges that:

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

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

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

6.2.4 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;

6.2.5 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

6.2.6 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 6.2 shall not preclude the Customer from providing the Content to Users as part of the Service.

6.3 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.

6.4 If the Customer copies, modifies, and uses Content (excluding Third Party Content) either alone or in combination with User Created Content in accordance with Clause 6.2.3, 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.

6.5 The Customer:

6.5.1 acknowledges that User Uploaded Content and other content which it may wish to use in combination with the Content or User Created Content may include content in which Intellectual Property Rights owned by third parties may subsist; and

6.5.2 shall obtain any licences for the benefit of the Service Provider and itself required in order to use such third party content from the 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.

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

6.7 The Service Provider reserves the right at its sole and absolute discretion to restrict access to the Service, refuse to display User Created Content or User Uploaded Content on the Service, remove User Created Content or User Uploaded Content from the Service or refuse to use any User Created Content or User Uploaded 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 Created Content or User Uploaded 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.

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

6.9 Notwithstanding Clause 6.2.3, the Customer may copy, modify, and use Third Party Content, either alone or in combination with User Created 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.

6.10 The Customer:

6.10.1 acknowledges and agrees, and shall ensure that its Users acknowledge and agree, that the Service Provider may use and disclose personal information about the Customer and its Users in accordance with the Privacy Policy for the Service; and

6.10.2 warrants that it has notified or made each relevant User aware of the matters required in Australian Privacy Principle 5.1 in respect of the disclosure to and use by the Service Provider of the personal information provided by or on behalf of the Customer to the Service Provider.

6.11 The Service Provider:

6.11.1 acknowledges and agrees that it shall comply with the requirements of the Privacy Act 1988 (Cth) in respect of the handling of personal information made available to the Service Provider by the Customer or User;

6.11.2 agrees to comply with the Information Privacy Principles as if it were the Customer in respect of personal information made available to the Service Provider by the Customer or User.

7. **SERVICE PROVIDER'S OBLIGATIONS**

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

7.2 The warranty at Clause 7.1 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 endeavours 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 7.1. Notwithstanding the foregoing, the Service Provider:

7.2.1 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

7.2.2 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, Content and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 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.

8. **CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

8.1.1 provide the Service Provider with:

(a) all necessary co-operation 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;

8.1.2 comply with all applicable Laws with respect to its activities under this Agreement;

8.1.3 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;

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

8.1.5 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;

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

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

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

9. INVOICING AND PAYMENT

9.1 The Service Provider will issue an invoice for the Fees in advance either annually or in accordance with any different billing frequency stated in the Order Form. The Customer shall pay the Fees without set-off or deduction within 30 days of the date of invoice ("**Due Date**"). If the Customer provides credit or debit card information to the Service Provider, the Customer authorises the Service Provider to charge such credit or debit card for the Fees for the Initial Term and any Renewal Terms as described in Clause 14.2 and 14.3.

9.2 All amounts and Fees stated or referred to in this Agreement:

9.2.1 shall be payable in the currency specified in the Order Form;

9.2.2 are non-cancellable and non-refundable; and

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

9.3 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:

9.3.1 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

9.3.2 the Service Provider may charge the Customer interest on the overdue amount (payable by the Customer immediately 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 pay the interest together with the overdue amount.

9.4 The Fees which apply to any Renewal Term following the Initial Term shall be equal to Fees (as extrapolated for 12 months, if the Initial Term was not 12 months) 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 Order Form shall be deemed to have been amended accordingly. There shall be no restrictions on the adjustments to the Fees.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 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 for the purposes of education, training or educational research only, 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. The Customer's use of the Apps, Service, Content, Derivative Works and Documentation must be accompanied by a notice stating that all Intellectual Property Rights in the Apps, Service, Content, Derivative Works and Documentation belong to the Service Provider or the relevant licensor. 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. The Customer shall, and shall procure that any relevant third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of perfecting the Service Provider's ownership of the Intellectual Property Rights in any Derivative Works.

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

10.3 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.

10.4 The Service Provider does not acquire any Intellectual Property Rights in respect of User Created 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 Created Content for the benefit of the Apps and Service.

11. INDEMNITY PROVIDED BY CUSTOMER

11.1 The Customer shall defend, indemnify and hold harmless the Service Provider against all Losses suffered by the Service Provider arising out of or in connection with:

11.1.1 the Customer's Use of the Apps, Service, Content and/or Documentation; or

11.1.2 the Customer's Use or provision of the User Created Content and/or User Uploaded Content.

11.2 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 11.1:

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

11.2.2 the Service Provider shall provide reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

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

12. INDEMNITY PROVIDED BY SERVICE PROVIDER

12.1 Subject to Clauses 12.2 and 12.3, 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 Australia.

12.2 The Customer shall:

12.2.1 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;

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

12.2.3 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

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

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

12.3.1 use of the Apps, Service, Content, and Documentation in combination with User Created Content and User Uploaded Content;

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

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

12.3.4 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;

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

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

13. CONFIDENTIALITY

13.1 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**").

13.2 The Customer and the Service Provider each agrees:

13.2.1 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;

13.2.2 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.

13.3 The obligations of confidentiality and non-use set out in this Clause 13 shall not apply to any Confidential Information where the receiving party can demonstrate that the Confidential Information concerned:

13.3.1 is or becomes publicly known through no breach of this Clause 13;

13.3.2 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;

13.3.3 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;

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

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

14. TERM AND TERMINATION

14.1 This Agreement commences on the Agreement Start Date and continues until the Agreement End Date provided that:

14.1.1 the Customer does not exercise its right to terminate this Agreement in accordance with Clause 14.2 prior to this Agreement being automatically renewed; or

14.1.2 this Agreement is not otherwise terminated in accordance with Clause 14.4.

14.2 This Agreement will automatically renew for additional periods equal to the Renewal Term, unless either party gives the other notice of non-renewal at least one month before the expiration of the relevant term.

14.3 Each Contract will automatically renew for additional periods equal to the Renewal Term, unless either party gives the other notice of non-renewal at least one month before the expiration of the relevant term.

14.4 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:

14.4.1 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

14.4.2 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.

14.5 Either party may terminate a Contract immediately by written notice if circumstances arise which entitle that party to terminate this Agreement pursuant to Clause 14.4.

14.6 On termination of this Agreement for any reason:

14.6.1 all Contracts shall immediately terminate;

14.6.2 all licences granted under this Agreement shall immediately terminate;

14.6.3 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;

14.6.4 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

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

14.7 On termination of a Contract for any reason:

14.7.1 all licences granted under that Contract shall immediately terminate;

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

14.7.3 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

14.7.4 the Service Provider may destroy or otherwise dispose of any of the User Created Content in relation to that Contract in its possession after 30 days of termination or expiry of that Contract.

15. LIMITATION OF LIABILITY

15.1 The Customer acknowledges that 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, satisfactory quality, 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, Content, Documentation and/or information obtained by the Customer through the Apps or Service will meet the Customer's requirements.

15.2 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.

15.3 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.

15.4 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:

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

15.4.2 business interruption;

15.4.3 loss of anticipated savings;

15.4.4 loss or corruption of data or information;

15.4.5 loss of business opportunity, goodwill or reputation; or

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

15.5 Other than the losses set out in Clause 15.4 (for which the Service Provider is not liable), the Service Provider's maximum aggregate liability under or in connection with a Contract whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to 100 per cent of the Fees paid by the Customer under that Contract over the period of 12 months immediately preceding the month in which the claim arose.

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

15.7 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.

15.8 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.

16. ASSIGNMENT

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

16.2 Notwithstanding Clause 16.1, 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.

17. FORCE MAJEURE

17.1 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.

18. NOTICES

18.1 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:

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

18.1.2 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.

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

18.2.1 if delivered personally, at the time of delivery;

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

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

18.2.4 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.

18.3 The contact details of the parties for the purposes of Clause 18.1 are given in the Subscription Agreement Form.

19. PUBLICITY

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

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

19.1.2 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:

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

(b) the Service Provider may use the Customer as a reference.

20. DISPUTE RESOLUTION PROCEDURE

20.1 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.

20.2 Nothing in Clause 20 shall prevent either party from seeking urgent injunctive relief.

21. GENERAL

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

21.2 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.

21.3 No variation of this Agreement (except for any pricing adjustments which have been applied in accordance with Clause 9.4) or for any changes to the Subscription Agreement 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.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

22. **GOVERNING LAW AND JURISDICTION**

22.1 This Agreement will be governed by and interpreted in accordance with the Laws of New South Wales, Australia 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 New South Wales, Australia.

22.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia over any claim or matter arising under or in connection with this Agreement.

Version last updated 15th December 2025