

## **Licence Agreement**

### **Please Read These Terms Carefully**

This Licence Agreement (**Agreement**) is a binding legal agreement between you (**Licensee** or **you**) and Macquarie University ABN 90 952 801 237 of Balaclava Rd, North Ryde, NSW Australia 2109 (**Licensor, us** or **we**) (together, the **parties** or a **party**) for the use of the Tool and Documentation.

## **AGREED TERMS**

### **1. ACCEPTANCE**

- 1.1 By clicking on the “accept” button below you agree to the terms of this Agreement which will bind you and your employees.
- 1.2 If you do not agree to the terms of this Agreement, click on the “I do not accept” button.

### **2. DEFINITIONS**

The following definitions apply throughout this agreement.

- 2.1 “Data” means the Licensee’s data uploaded from the iOS App to the Web App.
- 2.2 “iOS App” means the iOS application available for download that enables collection of data.
- 2.3 “Documentation” means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Tool.
- 2.4 “Fee” means the fee specified on the Order Form as the one-off payment for the hosting services contemplated in this Agreement.
- 2.5 “Intellectual Property Rights” means any and all existing and future intellectual and industrial property rights throughout the world, including rights in relation to patents, copyright, trademarks, designs, circuit layouts, business and domain names and trade secrets (including the right to apply for registration of any such rights), and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.
- 2.6 “Order Form” means the order form filled out and submitted by or on behalf of the Licensee, and accepted by the Licensor, for the Licensee’s use of the Tool and Documentation.
- 2.7 “Personnel” means the Licensee’s personnel specified in the Order Form (or as notified to us pursuant to clause 5.1 (e)) authorised to use the Software for the Permitted Use.
- 2.8 “Permitted Use” means the purpose specified in the Order Form.
- 2.9 “Tool” means the software program known as WOMBAT, comprising both the Web App and the iOS App.
- 2.10 “Term” means a period of two (2) years, unless renewed in accordance with clause 7.2 of this Agreement.
- 2.11 “Web App” means the unique web address to a secure external server where data is stored.
- 2.12 “WOMBAT” means the Work Observation Method By Activity Timing, a research tool to facilitate the collection of data relating to health professionals’ work and communication patterns, comprising certain processes, procedures and the Documentation produced by the Licensor, as amended from time to time.

### **3. GRANT AND SCOPE OF LICENCE**

- 3.1 We grant to you a non-exclusive, non-transferable license to use the Tool and the Documentation for the Term and for the Permitted Use, on the terms and conditions set out in this Agreement.

- 3.2 On acceptance of this Agreement and payment of the Fee, we will deploy the Tool and provide the Documentation to you within fifteen (15) working days. Our working days exclude 27 – 31 December.

#### **4. UPDATES AND NEW RELEASES**

- 4.1 We may update or require you to update the Tool, provided that the Tool matches the description of it that we provided to you before you bought it.
- 4.2 This Agreement will continue to apply in all respects to the update to the Tool or a new release which is deemed to be the Tool for the purpose of this Agreement.
- 4.3 We will not be liable to you for loss or damage that you could have avoided by following our advice to apply an update offered to you, or by you failing to correctly follow installation instructions.

#### **5. USE AND RESTRICTIONS**

- 5.1 You must (and must ensure that your Personnel):
- (a) use the Tool in accordance with the Documentation and only for the Permitted Use;
  - (b) use commercially reasonable efforts to safeguard the Tool from infringement, misappropriation, theft, misuse, or unauthorised access;
  - (c) promptly notify us if you become aware of any infringement of our Intellectual Property Rights;
  - (d) only permit the Personnel access and use of the Tool for the Permitted Use;
  - (e) notify us in writing if there is a change in Personnel. Only ten (10) Personnel will be authorised to access and use the Tool and Documentation at any given time;
  - (f) permit us (or our nominated auditor) to audit your records at any time during the Term, on at least 5 days written notice, for the purpose of confirming your compliance with this Agreement; and
  - (g) acknowledge the WOMBAT name in all publications and presentations (and as we may direct from time to time).
- 5.2 Except as expressly set out in this Agreement, you must not (and must ensure that your Personnel do not):
- (a) use the Tool in any way that could damage our reputation or goodwill;
  - (b) use the Tool or Documentation for any re-sale purposes;
  - (c) copy or distribute the Tool or Documentation or de-compile, disassemble or reverse engineer the Tool or permit any third party to do so;
  - (d) remove any copyright or proprietary notices on the Tool; or
  - (e) rent, lease, sub-license, loan, translate, merge, adapt, reproduce, make error corrections, vary, alter or modify, the whole or any part of the Tool or Documentation nor permit the Tool or any part of it to be combined with, or become incorporated in, any other programs.
- 5.3 The Fee you pay does not include support for your study design, development or any project management activities.
- 5.4 We will provide technical and troubleshooting support at deployment of the Tool.

#### **6. INTELLECTUAL PROPERTY RIGHTS AND USE OF NAME**

- 6.1 You acknowledge and agree that:
- (a) we own all Intellectual Property Rights in the Tool and Documentation and nothing in this Agreement constitutes a transfer of any Intellectual Property Rights;

- (b) you have no right to have access to the Tool in source code form other than as expressly provided in this Agreement;
  - (c) you will not during or any time after the expiry or termination of this Agreement permit any act which infringes our Intellectual Property Rights in the Tool and the Documentation; and
  - (d) you will indemnify us against all liabilities, costs and expenses which we may incur to a third party as a result of your breach of clauses 6.1 (a) – (c) of this Agreement.
- 6.2 All Data collected by you through the iOS App, and uploaded to, and generated by, the Web App, is your property. You acknowledge and agree that:
- (a) it is your responsibility to ensure that your Data is accurate and not misleading;
  - (b) your Data does not infringe any third party's rights, including any privacy obligations owed to a third party; and
  - (c) you indemnify us against all liabilities, costs and expenses which we may incur to a third party as a result of your breach of clauses 6.2 (a) – (b) of this Agreement.
- 6.3 You agree that we may refer to you as a customer for marketing of the Tool. We will not use your trademark or logo without your prior written consent.

## **7. TERM AND TERMINATION**

- 7.1 This Agreement commences upon payment of the Fee and is granted for the duration of the Term.
- 7.2 You may apply for a renewal of the licence of the Tool and Documentation by contacting us. We will agree with you any renewal fee and the renewal term. We may refuse a renewal if you are in breach of this Agreement. On payment of any renewal fee, the terms and conditions of this Agreement will apply.
- 7.3 We may terminate this Agreement immediately by written notice to you if:
- (a) you commit or allow to be committed a material breach of this Agreement, which is not remediable or if capable of remedy, you fail to remedy the breach within 14 days of written notice; or
  - (b) you enter into any form of insolvency, liquidation or external administration, whether voluntary or involuntary, formal or otherwise.
- 7.4 Upon expiry or termination for any reason:
- (a) all rights granted to you under this Agreement immediately cease;
  - (b) you must cease all activities authorised by this Agreement; and
  - (c) within 21 days of termination, you must delete or remove the Tool and Documentation from all computer equipment and mobile devices in your possession, custody or control.
- 7.5 No expiration or termination will affect your obligation to pay all Fees that may have become due before such expiration or termination or entitle you to any refund.
- 7.6 Even after your rights under this Agreement are terminated, all provisions of this Agreement which by their nature should survive, will survive, including, without limitation, ownership provisions, indemnification, warranty disclaimers, and limitations of liability.

## **8. WARRANTY AND LIMITATION OF LIABILITY**

- 8.1 You warrant that you have the power to enter into this Agreement and to perform your obligations under this Agreement.
- 8.2 To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.

- 8.3 To the full extent permitted by law, no warranty is made that the Tool will be available on an uninterrupted, timely, secure, or error-free basis, or will be accurate, reliable, free from viruses or other harmful code.
- 8.4 You acknowledge that the Tool has not been developed to meet your individual requirements, and that it is your responsibility to ensure that the facilities and functions of the Tool meet your requirements.
- 8.5 This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, we limit our liability in respect of any claim to, at our option:
- (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 8.6 We will not be liable or responsible to you for consequential or incidental damages, or loss of profits, revenue, goodwill or opportunities in contract, tort, under any statute or otherwise (including negligence) arising from or in any way related to this Agreement, the Tool or Documentation.
- 8.7 Our total aggregate liability to you for all claims relating to this Agreement, whether in contract, tort (including but not limited to negligence), in equity, under statute or on any other basis, is limited to the Fees payable by you under this Agreement.

## **9. PRIVACY AND ACCESS TO DATA**

- 9.1 Your privacy is important to us. We will only use your personal information as set out in our Privacy Policy or as specified in this Agreement.
- 9.2 Data uploaded to the Web App is hosted by us on a secure server. Those servers are located in Australia, unless we notify you otherwise. On the expiration or termination of this Agreement, the instance (where your Data is located on the server) will be decommissioned and your Data deleted. It is your responsibility to download your Data prior to decommissioning of the instance. We will give you 21 days written notice prior to decommissioning.
- 9.3 We may have access to your Data, for the purpose of resolving any technical issues. We will take all reasonable efforts to ensure the Data is secure at all times.

## **10. DISPUTES**

- 10.1 In the case of a dispute arising under this Agreement (the **Dispute**) a party must give written notice (the **Notice**) to the other party specifying the nature of the Dispute.
- 10.2 Within twenty-one (21) days of receipt of the Notice (unless otherwise agreed in writing) the parties must meet with a view to resolving the Dispute.
- 10.3 Nothing in this clause prevents a party from commencing legal proceedings for urgent interlocutory relief.

## **11. GENERAL**

- 11.1 You may contact us on [wombat@mq.edu.au](mailto:wombat@mq.edu.au) if you have any queries or wish to give a notice pursuant to this Agreement.
- 11.2 This Agreement is governed by the laws of New South Wales, Australia and any dispute relating to it must only be referred to the courts of New South Wales and the Federal Courts of Australia.
- 11.3 Each clause of this Agreement operates separately. If any court or relevant authority decides that any of them are unlawful or invalid, the remaining clauses will remain in full force and effect.

- 11.4 You must not assign, transfer or in any way charge, mortgage or deal with any of your rights or obligations under this Agreement to another person without our prior written consent.
- 11.5 We may transfer our rights and obligations under these terms to another entity. We will provide you with written notice.
- 11.6 Failure by us at any time to insist on your performance of any provision of this Agreement is not a waiver of our rights to insist on performance of that or any other provision of this Agreement.
- 11.7 Each party agrees that it is not and agrees not to claim or imply that it is, a partner or agent of the other party or otherwise able to bind or represent the other party.
- 11.8 We reserve the right to amend this Agreement at any time by posting the amended terms on the Web App and / or iOS App. If we make material changes to this Agreement, we will notify you by the e-mail you have provided so that you can access and review the changes. By continuing to use the Tool after notice of changes has been sent to you or published on the Web App and / or iOS App, you are deemed to have consented to the changes.
- 11.9 No party will be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If such event continues for more than 30 continuous days, then either party may terminate this agreement with immediate effect by written notice to the other party and clauses 7.4 – 7.6 of this Agreement will apply.
- 11.10 This Agreement (and any document expressly referred to in it) constitutes the entire agreement between us and supersedes all previous agreements, promises, warranties and representations between us, whether written or oral, relating to its subject matter.